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AMF Regulatory Issue Updates As At August 15/19

The following is a summary of updates on AMF regulatory issues which were provided in liaison meetings involving CLHIA/ACCAP staff executives Lyne Duhaime, President, Quebec Affairs and Senior Vice-President, Market Conduct Policy and Regulation; and Michele Helie, Director, Quebec Affairs and Market Conduct Policy and Regulation, with CAFII Co-Executive Directors Brendan Wycks and Keith Martin on July 18/19 and August 9/19.

Spousal Coverage Issue

CLHIA/ACCAP holds periodic in-person meetings with the AMF staff executives, which deal with a range of current life and health insurance-related regulatory issues. At the most recent such meeting on July 3/19, the Spousal Coverage Issue was one of the main topics of discussion.

The AMF stated that it has not shifted or relaxed its views on the Spousal Coverage Issue, such that in the absence of the creditor being able to demonstrate a clear pecuniary interest in the life and/or health of a debtor's spouse, no credit protection insurance should be offered to the spouse.

In that regard, the AMF staff executives said that they were pleased with the several insurer Action Plans they had received on the Spousal Coverage Issue which said that, on a go forward basis, the insurer would only offer spousal coverage when there was clear evidence that the spouse was directly connected to the debt obligation; or, alternatively, stated that the insurer would discontinue offering credit protection insurance spousal coverage altogether. That was the sort of Action Plan that they were looking for, the AMF representatives stated.

Conversely, the AMF was not happy or satisfied with Action Plan submissions which took a different and contrary approach, and would be following up with those insurers accordingly.

To the surprise of the CLHIA/ACCAP representatives present, the AMF staff executives also indicated that the regulator now expects to see existing/already in force creditor's group insurance spousal coverage brought into compliance with their interpretation of the Regulation Respecting Insurance, i.e. that existing spousal coverage be terminated upon an appropriate triggering event, such as renewal of or material change in the debt obligation. Previously, the AMF had indicated to industry representatives that it was only interested in enforcing its interpretation with respect to creditor's group insurance spousal coverage on new business and on a go-forward, rather than retroactive, basis.

CLHIA/ACCAP held a teleconference meeting with its members on August 14/19 which dealt exclusively with the AMF spousal coverage issue and related considerations, including whether or not it should have a follow-up meeting with the AMF about its responses to insurers' Action Plans submissions; and, if so, what should be the messaging and tenor of that follow-up.

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As an outcome of that August 14/19 meeting, CLHIA/ACCAP reports that its members view the removal of existing spousal coverage as very problematic, since doing so would seemingly violate Article 2405 of the Civil Code of Quebec (CCQ) and it would expose insurers to class action suits.

(Article 2405 of the CCQ reads as follows: In non-marine insurance, changes to the contract made by the parties are evidenced by riders attached to the policy.

However, any rider stipulating a reduction of the insurer's liability or an increase in the insured's obligations, other than an increased premium, has no effect unless the policyholder consents to the change in writing.

Where such a change is made upon renewal of the contract, the insurer shall indicate it clearly to the insured in a separate document from the rider which stipulates it. The change is presumed to be accepted by the insured 30 days after receipt of the document.)

Had the AMF communicated to the industry before the May 3/19 deadline for submitting Action Plans (many of which provide for the ceasing of spousal coverage on a go-forward basis) its current request/demand that existing spousal coverage be removed retroactively, CLHIA/ACCAP members would have considered legal avenues further.

In their August 14/19 meeting, CLHIA/ACCAP members agreed to set up an initial meeting with the AMF to see if the regulator and the industry can talk things through and come to a common understanding/approach for existing coverage, as a first step. If that fails, other avenues will be considered. Michele Helie, Director, Quebec Affairs and Market Conduct Policy and Regulation, is trying to set up that meeting with the AMF as soon as possible.

Fair Treatment of Consumers Concerns Arising From Credit Protection Insurance Loss Ratios
AMF staff executives indicated that based on some industry data they had recently gathered, they had concerns about the loss ratios for credit protection insurance products offered by industry, which reinforced in their minds that these products were not consistent with the fair treatment of consumers.

The AMF representatives advised that they had developed estimates of loss ratios based on data received from insurers as part of their Spousal Coverage Issue Action Plan submissions.

The AMF's extrapolation calculations found that in 2017, credit protection insurance products had a 17% loss ratio overall; and in 2018, they had a 25% loss ratio overall.

More specifically, in terms of the range of credit protection insurance loss ratios for products being offered to consumers, the AMF's extrapolation calculations found the following for 2018:

AMF Findings Re Loss Ratio Ranges For Credit Protection Insurance Products In 2018

Product	**Range of Loss Ratios**
Credit Card Balance Protection Insurance	0.62% to 56%
Traditional Loan Credit Protection Insurance	19.1% to 40.4%

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When the AMF representatives shared these extrapolation calculations at the July 3/19 meeting¸ the industry representatives' jaws dropped.

The AMF staff executives said that they had a fairly high degree of confidence in their loss ratio extrapolation calculations; and that the numbers raised serious questions about the suitability and fairness of credit protection insurance products for consumers.

However, the AMF also acknowledged that the data on which they had based their loss ratio calculations came from a small sample and were imperfect (some insurers were unable to segregate and provide the requested data in their Action Plans); and, as such, they recognized that more work needed to be done to refine and confirm the loss ratio calculations, and they would therefore not be publishing them on their website or otherwise publicizing them at this time.

AMF Supervisory Review Of Critical Illness Insurance
The AMF plans to launch a supervisory review of critical illness insurance in the Fall of 2019, now that it is wrapping up its work on the Spousal Coverage Issue. This review will be akin to the recent review of group disability insurance which it conducted in the Fall and Winter of 2018-19.

Possible Industry Association-Developed Template For "Summary" To Replace Distribution Guide
(There had been discussion at the CAFII EOC about the possibility of CAFII working with CLHIA/ACCAP on developing a template of the new Summary that is to replace the Distribution Guide in Quebec, in accordance with the final version of the Regulation on Alternative Distribution Methods (RADM).)

CLHIA/ACCAP advised that it has a "Working Group with the AMF On Implementation of the RADM" and the idea of developing a template for the Summary had been contemplated by the industry representatives on that Working Group. However, in the end, CLHIA/ACCAP decided not to bring that matter to the AMF as a Working Group agenda item, as they wished to avoid having the AMF be involved in developing prescriptive proposals around how the Summary should look or be structured.

It was better, CLHIA/ACCAP decided, for industry participants to make those decisions on their own, especially since the RADM provides a great deal of flexibility around the Summary. Instead, CLHIA/ACCAP will be developing a Guidelines document on the new Summary – different ways and different examples of how the RADM's requirements with respect to the Summary can be met -- and providing that document to its members as a resource tool.

Are Insurance Coverages Embedded In A Credit Card Subject To RADM Requirement For A Summary?
Both CAFII and CLHIA/ACCAP members have been wondering and discussing whether or not the RADM requirement for a Summary extends to embedded credit card insurance, such as (but not limited to) embedded travel medical insurance, or other insurance products that are not add-ons but which come with and as a part of the credit card.

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At CLHIA/ACCAP, a recent quick survey of the membership revealed that no consensus exists on this issue. Furthermore, there was uneasiness about asking the AMF for clarity on this matter, with some members concerned that the AMF may, in response, rule that there is indeed a requirement to provide consumers with a Summary for such embedded coverages whereas some members firmly believe that there is not such a requirement and they would prefer simply not to produce such a Summary and push back with the AMF if they are told, on an individual company basis, that they should produce one.

In the past, the AMF has been inconsistent on this issue. It has told some insurers that they must provide a Distribution Guide for such embedded coverages, but it has also not responded to other members who made written submissions which made the case that such embedded coverages were exempt from the Distribution Guide requirement.

CLHIA/ACCAP plans to survey its members again on their positions on this issue and their desired next steps with respect to embedded coverage, to see if there is a consensus and appetite to bring this matter forward for discussion in an upcoming meeting with the AMF in the Fall.

AMF Position On Insurance Coverages Embedded In A Credit Card
After the AMF's public release of information about the sanction imposed and settlement agreement reached in the AIG/Amex Bank of Canada matter covered in the industry trade press article set out in Appendix A below, CLHIA/ACCAP and a CAFII member (CIBC Insurance) looked into the matter further and uncovered the following additional insights:

CLHIA/ACCAP
The disability coverage embedded in the Amex credit card product in question had no relation to the debt; it was simply "customer longevity-related" (coverage was in place continuously, so long as the consumer remained a cardholder).

CIBC Insurance
This particular insurance coverage embedded in an Amex credit card is a fairly unique product in the marketplace. Even though it is called disability insurance, the benefit can be triggered only by an accident, and not by a sickness. It is not actually credit protection insurance linked to indebtedness on the credit card, but rather it is a lump sum disability payment (not periodic payments). The benefit amount increases with the number of years the cardholder has had the card.

With those being key facts about the product in question, the AMF saw this as a simple, straightforward offer of insurance, which is not creditor's group insurance and does not fall under the province's Distribution Without Representation regime and which should have been distributed through a licensed advisor.

Appendix A

AMF Position On Insurance Coverages Embedded In A Credit Card

The link below is to a recent posting (July 26/19) on the AMF web site (French site only) which highlights an agreement and settlement on a "creditor's disability insurance embedded as a business credit card benefit" matter between AIG Insurance Company of Canada and the AMF, in which an administrative monetary penalty of $180,000 has been imposed upon AIG related to its underwriting of disability coverage on business credit cards issued by Amex Bank of Canada.

https://lautorite.qc.ca/grand-public/salle-de-presse/actualite/fiche-dactualite/une-entente-intervient-entre-lautorite-et-la-compagnie-dassurance-aig-du-canada/

The French content on this matter from the AMF's site is set out below, along with an English translation of this "Decision and Order for Blocking and Prohibition."

Montreal, July 26/19 - A settlement has been reached between the Autorité des marchés financiers and the AIG Insurance Company of Canada (AIG), under which an administrative monetary penalty of $ 180,000 has been paid for a failure related to the distribution of a group disability insurance product for business credit card holders issued by AMEX Bank of Canada (AMEX).

AIG acknowledged that the distribution of this product did not comply with certain provisions of the Act Respecting the Distribution of Financial Products and Services (ARDFPS), in particular since it was offered automatically as a benefit associated with certain credit cards issued by AMEX. It was not possible for cardholders to decline the insurance, other than by refusing the card, and no certified representative was involved in the process to assist the credit card applicants in enrolling in the insurance coverage. This way of distributing an insurance product contravenes the sound business practices that an authorized insurer must follow.

This product has been offered in Quebec for over 24 years. The information available for the years 2012 to 2018 inclusively shows that 22,652 people were covered by this insurance in Quebec and that total premiums of approximately $ 133,000 were collected during those years. Other than the annual fees associated with the credit card, which range from $ 99 to $ 499, no additional fees were charged to the insureds as premiums as they were paid by AMEX.
The settlement has no impact on the validity or the terms and conditions of the certificates of insurance already issued; and they will remain valid despite the termination of distribution of this insurance product, by 1 January 2020 at the latest.

AIG co-operated fully with the Authority in this matter and took the necessary measures to prevent a similar situation from re-occurring.

The Autorité des marchés financiers is the regulatory and supervisory body for Québec's financial sector.

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Montréal, 26 juillet 2019 – Une entente est intervenue entre l'Autorité des marchés financiers et La Compagnie d'assurance AIG du Canada (AIG) en vertu de laquelle une pénalité administrative de 180 000 $ a été payée pour un manquement lié à la distribution d'un produit d'assurance invalidité collective destiné aux détenteurs de cartes de crédit pour entreprises émises par la Banque AMEX du Canada (AMEX).

AIG a reconnu que la distribution de ce produit n'était pas conforme à certaines dispositions de la *Loi sur la distribution de produits et services financiers*, notamment puisque celui-ci était offert de manière automatique à titre d'avantage associé à certaines cartes de crédit AMEX. En effet, il n'était pas possible pour les détenteurs de cartes de refuser l'assurance autrement qu'en refusant la carte et aucun représentant certifié n'intervenait dans le processus pour les faire adhérer. Cette manière de distribuer un produit d'assurance contrevient aux saines pratiques commerciales que doit suivre un assureur autorisé.

Ce produit a été offert au Québec durant plus de 24 ans. L'information disponible pour les années 2012 à 2018 inclusivement permet de constater que 22 652 personnes ont été couvertes par cette assurance au Québec et que des primes totales d'approximativement 133 000 $ ont été perçues durant ces années. Outre les frais annuels associés à la carte de crédit, lesquels varient entre 99 $ et 499 $, aucuns frais supplémentaires n'étaient exigés de l'assuré à titre de prime, celle-ci étant assumée par AMEX.

L'entente n'a pas d'impact sur la validité, les termes et les conditions des certificats d'assurance déjà émis et ceux-ci demeureront en vigueur malgré la fin de la distribution du produit d'assurance, et ce, au plus tard jusqu'au 1er janvier 2020.

AIG a offert son entière collaboration à l'Autorité dans ce dossier et a pris les mesures nécessaires pour éviter qu'une situation similaire ne se reproduise.

L'Autorité des marchés financiers est l'organisme de réglementation et d'encadrement du secteur financier du Québec.