

# **CAFII Summary Notes**

## **CLHIA Conference, 8-10 May, 2019**

### **Niagara Falls, Ontario**

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## Overview and Approach

The 8-10 May, 2019 CLHIA Compliance and Consumer Complaints Conference included many presentations that are relevant to CAFII members. Not all presentations are summarized here, only those which had a particular focus of interest to our members.

As well, CAFII organized five in-person meetings with regulators during breaks in the conference, and those meetings are summarized in the Appendices to this Report. Those meetings held were with

- Insurance Council of BC;
- Alberta Insurance Council;
- Insurance Councils of Saskatchewan and CISRO;
- Insurance Council of Manitoba; and
- FCNB.

The event program and the biographies of most speakers can be found at the following link:

[eventmobi.com/compliance2019](http://eventmobi.com/compliance2019)

Event presentations are posted at the following link:

<https://eventmobi.com/compliance2019/documents/df0dc24c-c466-4297-aed4-946a9d7d13d5>

## 8 May, 2019

### Tone at the Top—Global Life and Health Trends

Monica Ningen, President and CEO, Swiss Re Canada and English Caribbean

Monica Ningen, President and CEO of Swiss Re Canada and English Caribbean, gave a wide-ranging presentation on the emerging trends in life and health insurance. Consistent with a theme echoed throughout the conference, she felt that technology and digitization would have profound impacts on the industry, and that the various trends at play were converging and reinforcing each other.

She noted that communicable diseases were on the rise as were respiratory illnesses. Many of these developments were preventable, but the challenge was around how to encourage healthy choices. Obesity was an example of something on the rise that would have a negative impact on individuals and on the life and health insurance industry; but while obesity is preventable, how do you influence people to make the right choices so as to avoid it? The challenge for governments and for industry is figuring out ways to incentivize people to change bad behaviours that give rise to negative outcomes.

As the population ages, these challenges will only become more complex. Preventing illnesses or deaths caused by modifiable behaviour that occurs years or decades after a life and health insurance policy is first sold is an enormous opportunity—and risk—for the industry. How can you help people make the right choices? “Dynamic underwriting” might be an option—using data from wearables as well as from other sources to modify, in real time, premiums based upon the behaviours of policy-holders.

## Economic Update

### Sal Guatieri, Senior Economist and Director, BMO Capital Markets

Sal Guatieri, Senior Economist and Director, BMO Capital Markets, gave a sweeping overview of the economic landscape, with a central message that interest rates are unlikely to increase significantly in the near to medium future. Inflation, he noted, is not picking up steam despite the strong performance of the economy. Usually, when the economy is near full-capacity and unemployment is low—conditions that exist today in Canada—inflationary pressures begin to emerge. What has changed is structural, namely e-commerce is putting downward pricing pressure upon the entire retail environment, and automation is putting downward wage pressure on the labour market. Up to 40% of all jobs in the next 20 years will be automated. Furthermore, there is so much household and government debt that there are enormous pressures to keep interest rates low—the economy could not tolerate any sizeable increases, and the Bank of Canada knows that. Housing prices will continue to be under upward pressure due to high immigration rates which continue to increase demand.

## Update from the Canadian Council of Insurance Regulators

### Brian Mills, Vice-Chair of CCIR; and CEO and Superintendent of Financial Services, FSCO

Brian Mills, Vice-Chair of the Canadian Council of Insurance Regulators (CCIR) and the CEO and Superintendent of Financial Services, Financial Services Commission of Ontario (FSCO), highlighted that this would be his last major address in his current role, as the Financial Services Regulatory Authority (FSRA) will replace FSCO in the near future as Ontario's insurance regulator. He said he was positive about the new regulator, because it would have enhanced resources and rule-making powers, giving it the ability to respond to market developments more quickly than FSCO could.

Regarding CCIR, Mr. Mills noted that its governance structure had changed, with more Vice-Chair positions recently created. Ontario through FSRA would play a key role in CCIR going forward. Mr. Mills reiterated CCIR's commitment to harmonization. He noted that CCIR has many initiatives underway, including the CCIR/CISRO Fair Treatment of Customers (FTC) Guidance which was released in September 2018. The eight areas covered by the document were all critical and would be monitored closely by CCIR.

Mr. Mills also touched on initiatives around cooperative supervision; the Segregated Funds Working Group and its position paper on disclosure.

Mr. Mills said that the summary data from the Annual Statement on Market Conduct would eventually be shared with the industry, but it might take several more years for the data to be sufficiently clean and reliable for that to occur. He noted that CCIR's Travel Insurance Working Group was also looking to collect data to better understand key developments in that segment of the insurance industry.

He spoke about the recent court case in Saskatchewan regarding universal life interest-bearing side accounts, and said he was pleased that this case was dismissed by the court.

Mr. Mills said that CCIR's current three-year Strategic Plan would continue to the end of March 2020, and that work would begin soon on the next three-year plan. He expected that CCIR would reach out to industry stakeholders on the next three-year plan in the Fall of 2019. Electronic communication initiatives are expected to be an important component of the new plan.

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Mr. Mills also advised that the International Monetary Fund (IMF)'s Financial Sector Assessment Program (FSAP) — which audited Canada's insurance regulation/supervision framework once every three years—has concluded its 2018/19 review and will be issuing a report soon. A key objective of this initiative comes out of the learnings from the 2009 financial crisis, he noted, and in particular it is focused on the importance of regulators working effectively together in the event of a crisis.

### Regulatory Perspectives from Across Canada

Nancy Carroll, Partner, McCarthy Tetrault (moderator)

Harry James, Senior Regulatory Advisor, Financial Institutions Commission, British Columbia

Nathalie Sirois, Senior Director, Supervision of Insurers and Control of Right to Practice, Autorité des marchés financiers, Quebec

Judy Pfeifer, Chief Public Affairs Officer, Financial Services Regulatory Authority of Ontario (FSRA)

Angela Mazerolle, Superintendent of Pensions and Superintendent of Insurance, Financial and Consumer Services Commission, New Brunswick

Nancy Carroll introduced the four panelists who each gave an overview of their organizations' priorities.

Angela Mazerolle, Superintendent of Pensions and Superintendent of Insurance, Financial and Consumer Services Commission, New Brunswick noted that the FCNB was established in 2013, and the legislation governing oversight of the insurance industry was currently undergoing a revision, through a complete rewrite of the Insurance Act. This will be a multi-year effort that industry will be consulted on. The intention is for the FCNB to be given the tools to allow it to be more proactive.

Nathalie Sirois, Senior Director, Supervision of Insurers and Control of Right to Practice, Autorité des marchés financiers, Quebec, said that the AMF's Annual Statement of Priorities would be released very soon, in the Spring of 2019, and will take into account all AMF activities. Consumer education will continue to be a focus. Ms. Sirois said that the IMF's 2018-19FSAP report on Canada should be released in June 2019, with recommendations; she added that regulatory action plans may emerge from it. Ms. Sirois also reiterated the commitment of the AMF to the CCIR.

Ms. Sirois said that the CCIR/CISRO FTC Guidance continues to be a critical priority, and going forward the CCIR/CISROFTC Working Group will place a particular focus on incentives management. There is a desire for the industry to respond to this priority.

Ms. Sirois added that the AMF will also shortly update and release a new version of its own FTC Guidance (the Sound Commercial Practices Guideline). Other priorities which the AMF is looking at include fintech. Developments in open banking and open insurance will also be monitored carefully. The new accounting rule IFRS-17 from the International Accounting Standards Board (IASB) is a key issue, including possible amendments to it.

Judy Pfeifer, Chief Public Affairs Officer, FSRA said that the new, soon-to-be-launched financial services regulator in Ontario has four immediate priorities.

The first is the practical requirement to launch, which will probably happen in June 2019.

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The second is the transformation of the regulatory framework--FSRA has rule-making authority, and it is committed to continuing with a principles-based regulatory approach. Its first consultations were on its fee structure.

Third, the authority is focused on burden reduction and on regulatory harmonization across jurisdictions.

Fourth, efforts should have a purpose. Collecting data needs to lead to something useful, and there is a need to improve the effectiveness of regulations in the insurance industry.

Harry James, Senior Regulatory Advisor, Financial Institutions Commission, British Columbia, said that FICOM was also undergoing a transformation; it would become a Crown Corporation in the summer of 2019, and be renamed the British Columbia Financial Services Authority (FSA). This arms-length from-government regulator would be launched after the necessary legislative changes are passed and proclaimed into force.

Mr. James said it was important for regulators to collect and act on market conduct data. It was also necessary to look at possible risks and how to mitigate them. Specifically, he said a major earthquake in B.C. could be a systemic risk that could impact upon the life and health industry. It could disrupt business models and negatively affect the Canadian economy.

Mr. James also said that a 2019 update/audit review following up on FICOM's 2015 Creditor's Group Insurance Bulletin was wrapping up, and he hoped that the data would not require further conversations on industry practices.

He also noted that B.C. had been criticized for not reigning in misconduct, recently exposed in real estate and money laundering, and this was also a reason for the creation of a beefed-up new regulatory authority. It would be self-funded by the industry, and a consultation would occur in the near future around the proposed new fee structure. He noted the lack of resources at FICOM and its high employee vacancy rates, and the need to embark on a new path.

### Question and Answer Session with the Panel

The presentations were followed by a question and answer period.

Nathalie Sirois noted that the AMF's Annual Report on Financial Institutions was due to be released in June 2019, and would focus on governance issues.

Regarding the AMF's Regulation Respecting Alternative Distribution Methods, insurers need to share a plan of action for implementation with the AMF by 13 June, 2019.

With respect to a CCIR matter, Ms. Sirois noted that nearly all insurers had filed the 2019 Annual Statement on Market Conduct by the May 1/19 deadline. She said that more attention needs to be focused on the quality of the data and on improving the survey. The intention is to release summary survey results to the industry, but before doing so the CCIR needs to be confident in the quality of the data; so more work is required in this area. There will be a particular interest in the data around claims ratios, she indicated.



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Ms. Sirois said that the AMF has many initiatives underway around innovation, and was working with insurers to learn how they were attempting to automate internal manual processes; what systems they were investing in to improve distribution and interaction with customers; and how they were gathering information to offer more personalized services to customers.

Judy Pfeifer, FSRA, acknowledged the pain points caused by different regulatory filing/response requirements that have the same intention, such as the guidelines on FTC issued by both CCIR/CISRO and FSCO. This is being looked at now within FSRA, with the recognition that harmonization is preferred whenever possible. It was noted that FSRA would have an Innovation Office in the policy section of the Authority, which was meant to provide insight on innovation and fintech. There will be an effort to reach out to and be understanding of the unique needs of start-ups, and there will be co-ordination with the Ontario Securities Commission to avoid duplication in this area.

Angie Mazerolle said that New Brunswick had endorsed the CCIR/CISRO Guidance on FTC in February 2019, and future audit inspections in her province would include reference to the Guidance. She noted that David Weir was leading the FCNB's efforts on the rewrite of the Insurance Act, which would touch on many issues, including development of a Restricted Insurance Agent (RIA) licensing regime for incidental sales, new auto rate regulations, and enhancing consumer protection.

Harry James said that in future legislation will be required to codify FTC, and there is a need for industry to operationalize the CCIR/CISRO Guidance. He noted that the BC's Auditor General had recently issued a report that was not flattering to FICOM, and that the Commission was under-funded, with a 65% employee vacancy rate. The new FSA will not have the same salary constraints and will be more able to recruit and pay for executive talent.

### Workshop—How Companies are Implementing FTC Guidelines

Emily Hassin, Assistant Vice-President Senior Business Compliance Officer, Individual Customer Canada Life

Jodi Ziegler, AVP and Chief Compliance Officer, Retail Markets, Manulife

Lynne Chlala, Assistant Vice-President, Senior Business Compliance Officer, Canada Life

Jean-Patrice Dozois, Senior Director, Legal Affairs and Compliance, Humania Assurance Inc.

This panel offered a range of opinions on operationalizing concepts related to the Fair Treatment of Customers. It was observed that industry generally feels that it is already compliant with the CCIR/CISRO Guidance on FTC and that it has been compliant in the past with previous expectations of regulators around FTC; but the challenge is demonstrating that to them. Part of the issue is that insurers need to modify their language to better demonstrate their commitment to these principles.

Jean-Patrice Dozois provided a specific set of insights regarding a recent audit of his company which was jointly conducted by FCNB, CCIR, and the AMF on adherence to the CCIR/CISRO FTC Guidance. The audit specifically focused on integration of FTC principles in product design, complaints handling, and claims handling. Mr. Dozois recommended documenting adherence to FTC as the regulators want evidence of adherence to the principles, as opposed to just statements to that effect. Weaving the language of FTC into policies, training, and compliance documents is highly advisable.

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As well, Mr. Dozois recommended having examples of FTC being operationalized captured within documents being submitted to the company's Board, which could then be used to demonstrate good governance to regulators. He suggested "setting the right tone" by also including FTC language in reports, on the company website, and so forth. Measures and controls should try to reflect adherence to FTC principles, including measures with third-party suppliers, advisors, and agencies.

It was clear from the Humania audit, Mr. Dozois said, that the regulators themselves are working through how to measure and evaluate adherence to FTC. Bonuses, penalties, and other financial measures are an area that the regulators are particularly struggling with. Industry can provide evidence that helps the regulators find measures that demonstrate adherence to FTC; for example, customer satisfaction surveys, or examples of the successful resolution of complaints, can be measurements that the regulator finds helpful.

Product development verbiage needs to be clearly explained and well-understood, Mr. Dozois continued. Clear language here is critical—a simple example is to call a "policy" a "contract" which is language that is more easily understood by a regulator. Policies should use specific examples—by way of illustration, instead of describing insurance principles, a policy could say "if this happened to Jodi, here is how her insurance would work."

Companies should consider a "Charter of Rights for Claims" for customers, Mr. Dozois said. None of this is substantively new, but it is necessary to position company actions in a way that makes it clear to regulators that the industry is adhering to FTC Guidelines.

Jodi Ziegler echoed these comments, noting that a recent regulatory audit conducted at Manulife revealed that each regulator had its own priorities and agenda. It was important to reflect FTC concepts in all documents, including agent training documents, information for customers, and claims and complaints documents. It was advisable to do periodic self-assessments that look at these issues from the perspective of a regulator. To satisfy the regulator, one report is not sufficient—a multitude of different but related reports need to be shared, each using appropriate FTC-oriented language and each telling part of a larger story. Regulators want to see different policies all reinforcing FTC, including asking advisors to sign codes of conduct related to FTC.

Incentives management will be a critical area of interest regulators, Ms. Ziegler asserted. Monitoring potential conflicts of interest is high on the priority list for regulators, with a focus on "needs-based selling." Product marketing and advertising is another area that will likely gain increased attention.

Ms. Ziegler opined that because advisors work with more than one insurance company, it is critical to continue to emphasize to the regulators that the application of FTC, especially as it relates to the behaviour of advisors and third-party sellers, must be done at an industry, not company, level. Industry collaboration will be critical to a successful outcome on this FTC journey.

The AMF is leading the charge on FTC, but other regulators will follow suit, Ms. Ziegler stated. There is a disconnect between how regulators perceive the industry to be behaving, and how industry itself feels it is behaving. There is a need to make the conversation more positive.

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Lynne Chlala provided a detailed case study of an AMF Group Disability Survey of the Quebec group benefits industry. This exercise came about when a particular company in Quebec denied a university professor's claim due to a mental health exception, which caused considerable negative media coverage.

The AMF sent all insurers with group disability business in the province of Quebec a questionnaire regarding their group disability practices on 27 April, 2018, with answers due on 15 June, 2018. The survey's questions covered the following topics:

1. Overview of offering;
2. Disability claims;
3. Mental health disability claims;
4. Group disability insurance complaints;
5. Questions and documentation relating to group disability insurance.

The last section (Section 5) had over 60 questions, broken up into 10 sections, including 20 questions on claims processing. The AMF then conducted company-specific follow-up meetings in the Fall of 2018.

The AMF issued a public report as well as company-specific, proprietary reports in March 2019. The public report can be found at:

[https://lautorite.qc.ca/fileadmin/lautorite/grand\\_public/publications/professionnels/assurance/Rapport-intervention-transversale-assurance-invalidite-collective\\_an.pdf](https://lautorite.qc.ca/fileadmin/lautorite/grand_public/publications/professionnels/assurance/Rapport-intervention-transversale-assurance-invalidite-collective_an.pdf)

The AMF's Report stated that their analysis *"did not expose any systemic problems with the way the industry manages group disability insurance,"* but it nevertheless made a series of recommendations related to *"some practices that require corrective action in order to meet its expectations and ensure FTC,"* specifically:

- Information provided to participants regarding coverage under the master policy and reasons for denying a claim were not always sufficient, timely, or presented in clear language;
- The decision review process is not always "explicitly" presented to participants and consists of multiple steps, making it "onerous" for participants;
- Information about the complaint examination process is not always easily accessible; and
- Criteria used to determine whether or not a health professional needs to be consulted are not always formally documented.

The Report was broken up into five sections: information for consumers; claims examination and settlement; complaint examination and dispute resolution; governance; and the protection of personal information.

Ms. Chlala stated that a key learning was the need to use appropriate language when answering questions posed by the regulator, and to try to create a positive narrative. It was helpful to make targeted requests for information to make the information-gathering phase more efficient. Questions should be answered carefully, with the objective of telling a coherent story, and ensuring that the story told aligns with your company's philosophy and values. The AMF's final report, Ms. Chlala opined, presented an opportunity to fine-tune practices, to sharpen the company's FTC lens, and to apply the lessons learned to other areas of activity of the company.

Incentives management is an example of where it is critical for the industry to coordinate activities, Ms. Chlala asserted. The AMF often wants to impose company-specific adjustments in the area of incentives management, but if one company adjusts practices and the rest of the industry does not, advisors will simply move their business. The regulators do not always appreciate or understand these pressures and business realities. Incentives management needs to be done through, for example, CLHIA Guidelines.

### Corporate Governance Guideline, Key Changes to Board Operations

Robert McDowell, Partner, Faskens

David Grad, EVP, General Counsel and Corporate Secretary, Chief Compliance Officer and Ombudsman, Primerica Life Insurance Company of Canada

Jeremy W. Trickett, SVP, Corporate Secretary and Chief Governance, Great West Lifeco. Inc.

This panel discussed changes made in September 2018 when OSFI finalized its revamped Corporate Governance Guideline (CGG) to simplify communications between management and the Board and to ensure that the Board's duties were strategic in nature.

Mr. McDowell said that the increasing level and complexity of regulatory requirements can make compliance and legal officers complacent, causing them to feel that a change is about “more, yet again”—but that would be a mistake in terms of the Corporate Governance Guideline (CGG), which is a fundamental and impactful change that must be reviewed carefully. It is also a subtle, principles-based Guideline, with Mr. McDowell noting that “one of our messages today is that there are many ways that corporate governance is organized at different institutions and there is no one right way. It varies notably by institution.”

Mr. McDowell noted that the CGG says “the hallmarks of an effective Board include demonstrated sound judgement, initiative, proactiveness, responsiveness and operational excellence. Board members should strive to facilitate open communication, collaboration and appropriate debate in the decision-making process.”

The CGG takes a principles-based and outcomes-based approach, and clearly delineates between the responsibilities of the Board and Senior Management. There is also a consolidation of Board and Senior Management duties provided in this CGG. The idea is that the CGG will be the sole repository of OSFI's expectations of Boards for Federally Regulated Financial Institutions (FRFIs).

The CGG requires a director to not only have heightened financial industry and risk management competence, but also to (a) not only approve but oversee strategy, risk management and oversight, Board and Senior Management functions themselves, and audit plans, and (b) not just review and discuss but to challenge, advise and guide Senior Management on operational and business policies, business performance and effectiveness of risk management.

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Specifically, in addition to the roles and responsibilities of the Board outlined in federal legislation, the Board should discharge, at a minimum, essential duties in relation to the FRFI, where essential duties include to approve and oversee strategy; risk management; Board, Senior Management and oversight functions; and audit plans. The Board is not expected to review and discuss, but rather to challenge, provide advice and offer guidance to the Senior Management of the FRFI, as appropriate, on operational and business policies. This includes significant operational, business and risk management policies of the FRFI, including those in respect of credit, market, operational, regulatory compliance and strategic risks, and their effectiveness; and the compensation policy for all human resources that is consistent with the Financial Stability Board (FSB) Principles for Sound Compensation and related Implementation Standards.

One serious, very impactful point made was that these expectations require a very serious intent, amount of time, work, diligence and consideration on the part of a Board member. The level of work, investment and engagement on the part of a Director has increased significantly as a result of the Guidance.

Board members will have to know more, read more, prepare longer for meetings, and follow financial industry and risk management developments on an ongoing basis more than ever before; and therefore they overall will need to spend notably more time to be a Director of an FRFI and be engaged in the culture, risk management, business and operations of the FRFI. A Board member is expected to understand the decisions, plans and policies being undertaken by senior management and their potential impact on the FRFI.

This requires meaningful attention and application of a Director's talents and time. Putting the onus on Boards of Directors to determine how they are going to achieve the applicable governance outcomes for the many specific points and principles-based recommendations in the CGG means that the responsibilities and duties of the Board are more onerous than ever before.

This will also put even more responsibility on those who prepare meeting packages for the Board. Officers and directors owe three principal corporate law duties to the FRFI:

1. A fiduciary duty of loyalty (to act honestly and in good faith with a view to the best interests of the FRFI);
2. A duty of care (to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances); and
3. A duty to comply with the Insurance Companies Act (Canada) (ICA), its regulations, the incorporating instrument and the by-laws of the corporation.

All of these responsibilities will now increase. The law on corporate board obligations makes it clear that company law duties require Directors of large corporations, and of insurance companies in particular, to implement appropriate compliance procedures, information-gathering systems, monitoring systems, and auditing procedures. Failure to consider the appropriate level of procedures would very likely be a breach of the good faith duty and expose Directors and Officers to substantial, uninsured personal liability for losses caused by compliance deficiencies.

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The standards contained in the OSFI Guidelines can have serious implications for personal liability in several ways. OSFI Guidelines will be used as an evidentiary benchmark to ascertain whether the decision-making process of Directors and Officers was adequate enough to be made in good faith. If the company suffers losses due to a failure to consider OSFI Guidelines adequately, the Superintendent may commence a derivative action against them personally. Such a failure might undermine a director's or officer's good faith defence to the offence provisions in the ICA. A failure to consider OSFI Guidelines adequately could undermine a director's or officer's claim for indemnification or insurance.

In discussion, it was noted that Officers responsible for preparing the Board for its meetings had to ensure that they did not produce such voluminous packages that it was impossible for the Board to read and absorb the material. It was also noted that OSFI understood that standards had to vary based on the complexity, size, culture, and resources available to different institutions—one size did not fit all, and the Guideline was definitely principles-based, not prescriptive, with the opportunity for different organizations to tailor its expectations to their own circumstances. The key here is that the Board is not expected to be rubber-stamping the decisions of FRFIs, but rather to be thinking and challenging recommendations and options. To do this, the Board needs to get timely, accurate, relevant information. As well, Board members need to provide oversight of subsidiaries.

### [OmbudService Issues Panel](#)

[Dylan Friedmann](#), VP Client and Partner Experience, Apexa (Moderator)

[Valerie Howes](#), AVP Special Investigations and Consumer Complaints Legal, Compliance and SIU Department, Foresters Financial

[Sherri Langford](#), Director, Compliance, La Capitale Financial Security Insurance Company

[Jean Lamy](#), Ombudsman, Manulife

What is an OmbudService? According to Wikipedia, it is an indigenous Swedish, Danish and Norwegian term, essentially meaning "representative" (with the word umbud/ombud meaning proxy, attorney, that is someone who is authorized to act for someone else, a meaning it still has in the Scandinavian languages). According to Webster's Dictionary, it is someone "that investigates reported complaints (as from students or consumers), reports findings, and helps to achieve equitable settlements."

The panelists noted that a complaint means an expression of dissatisfaction about products, services or intermediaries. This may be gleaned from the language used or from specific comments made. A complaint can be made either orally or in writing (by mail, fax or email). A reportable complaint is the expression of at least one of the following elements that persists after being considered and examined by someone at the operational level that is capable of making a decision on the matter:

- A reproach against the organization;
- Identification of a real or potential harm that a consumer has experienced or may experience; or
- A request for a remedial action.

The initial expression of dissatisfaction by a consumer will not be considered a reportable complaint where the issue is settled in the ordinary course of business.

With respect to the role of the Ombuds Office, it has the following key responsibilities:

- Reviews complaints and ensures customers are provided with fair outcomes;

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- Acts as a point of contact for regulators and government agencies, industry ombudservices and other third parties;
- Together with the Chief Compliance Officer, establishes and maintains the Canadian Complaint Management Program and Strategy;
- Monitors and reports on the operation and effectiveness of the Program, to ensure it continues to meet regulatory requirements and the expectations of regulators and industry ombudservices; and
- Monitors and reports on legislative, regulatory and industry developments relating to complaint handling obligations, and makes recommendations for change, as required.

The panelists noted that dealing with complaints is not possible with a “one-size fits all” approach. There are many different factors at play, and the regulatory authorities involved might be federal, provincial, international, or the model could be self-regulatory. Some organizations have internal ombudspeople, others outsource this function to service organizations specializing in this function.

All complaints and escalations must be handled promptly, accurately, and with the utmost courtesy. All complaints and personal information collected, whether written or oral, must also be handled in a timely, professional and confidential manner. Sometimes, the investigation into the complaint reveals a more systemic issue that needs to be reviewed.

The panelists’ description of their approach to escalations revealed that there were two significantly different ways of handling such a situation, each with benefits and drawbacks—one was to have it coordinated and managed by a centralized, specialized unit; another was to have the business unit responsible handle the response.

Another observation was that social media was becoming an increasingly important factor in the equation, with consumers often going directly to social media platforms to air their concerns. This required, separate from responding to the complaint, a separate public affairs and communications strategy and added complexity to the process.

### Update on the Financial Services Regulatory Authority of Ontario (FSRA)

Judy Pfeifer, Chief Public Affairs Officer, Financial Services Regulatory Authority of Ontario (FSRA)  
 Judy Pfeifer, Chief of Public Affairs at the Financial Services Regulatory Authority of Ontario (FSRA), gave an update on the soon-to-be-launched Authority.

Speaking at a high level, she said that the Government of Ontario had chosen to embark on a new path with a new regulator because multiple reports found that the existing regulator had encountered significant challenges. Underlying her statements, and reading between the lines, was the implication that the culture of FSCO was inadequate, and that replacement, not reform, was the only path to a renewed and effective regulatory Authority. In her Powerpoint presentation, she called out the following quote from a key report on the creation of FSRA, the March 31, 2016 “Review of the Mandates” document from the Ministry of Finance-appointed Expert Panel which delivered recommendations to the Government of Ontario on the future of financial services regulation in Ontario:



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*With financial services and pensions sectors changing at a rapid pace... Ontario needs a regulatory authority that is flexible, innovative, and in possession of expertise appropriate to match the consistently evolving financial environment. We call not for amendments, revisions or improvements to the existing regulatory framework and apparatus, but for the replacement of the current regulatory structure and approach with a more nimble and accountable one ...*

Ms. Pfeifer noted that eight financial services sectors would likely be regulated by FSRA, with the possibility that financial planners and advisors would be added at a later date. Those sectors are:

- Property and casualty insurance;
- Life and health insurance;
- Credit unions and caisses populaires;
- Loan and trust companies;
- Mortgage brokers;
- Health service providers (related to auto insurance);
- Pension plan administrators; and
- Financial planners and advisors (proposed).

FSRA obtains its authority through a legislative mandate, and has enhanced powers and authority above and beyond what FSCO had. The legislative mandate of FSRA is:

- Regulate and generally supervise the regulated sectors;
- Contribute to public confidence in the regulated sectors;
- Monitor and evaluate developments and trends in the regulated sectors;
- Cooperate and collaborate with other regulators where appropriate;
- Promote public education and knowledge about the regulated sectors;
- Promote transparency and disclosure of information by the regulated sectors; and
- Deter deceptive or fraudulent conduct, practices and activities by the regulated sectors.

The specific mandate of FSRA with respect to the regulation of financial services is to promote high standards of business conduct; to protect the rights and interests of consumers; and to foster a strong, sustainable, competitive and innovative financial services sector.

FSRA will also have an Office of the Consumer, under Glen Padassery, Executive Vice-President of Policy. FSRA will focus on enablement, empowerment, and on a cultural and regulatory transformation. It will continue, however, to operate under a principles-based regulatory philosophy.

Ms. Pfeifer stated that FSRA's new strategic approach will be focused on consumer protection, fairness, and choice. She said that FSRA is committed to seeking and listening to industry priorities. Its strategic priorities are to be principles-based; to have rule-making powers; to issue clear guidance; to take an approach that is risk-based, evidence-driven and outcomes focused; to have a collaborative, consultative and transparent culture; to be dynamic; and to have operational independence from, while being in continuous collaboration with, the government.



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Ms. Pfeifer emphasized on several occasions during her presentation that FSRA is committed to industry engagement and consultation. Seven Industry Advisory Groups (IAGs), including one for life insurance agents and another for Life and Health Insurance<sup>1</sup> were established in July 2018 to provide regulated sector industry insight and views to FSRA management and its Board of Directors. To date, the IAGs have been engaged on two key FSRA initiatives: FSRA's proposed new fee rule, and its 2019-20 priorities and budget. FSRA recently launched a stakeholder engagement to seek industry input on how it wants to engage with FSRA, with 55,000 stakeholders offered the opportunity to respond to an online survey. Overall, FSRA's priorities include burden reduction, regulatory effectiveness, and sector-specific initiatives. For life and health insurance, the sector-specific initiatives are to adopt effective conduct standards, to improve licensing effectiveness and efficiency, and to harmonize FTC guidelines.

With respect to effective conduct standards, Ms. Pfeifer noted that strengthened conduct standards will eliminate oversight gaps in the industry, ensure a level playing field for all industry participants and help increase fairness to consumers. A next step will be to engage with CLHIA and with other regulators to better understand positions and opportunities for consensus. If stakeholders in a particular subsector adopt a code of conduct, FSRA will review it and consider adopting it for use in its supervision of that sector. FSRA will also be transparent on why certain approaches are adopted or not.

With respect to improving licensing effectiveness and efficiency, Ms. Pfeifer noted that there was a lack of coordination and information-sharing regarding bad actors; there was a need to review and potentially harmonize standards for continuing education and professional liability/E&O insurance; a need for professional development/continuing education requirements to support good practices; and a lack of licensing ease/alignment across jurisdictions which creates unnecessary burdens.

Next steps include consulting with CLHIA and other industry stakeholders on required improvements in licensing systems; and requirements to ensure appropriate continuing education, E&O insurance requirements; and to restrict the entry of or require the exit of "bad actors."

With respect to harmonizing guidelines on FTC, it was acknowledged that the industry told FSRA that there are over-lapping and potentially inconsistent Guidance documents issued by different regulatory bodies, which creates confusion. Next steps include consulting with stakeholders and other regulators to determine harmonized conduct expectations so FSRA can provide clarity about how this Guidance is to be interpreted and applied in day-to-day business throughout both the P&C and life and health product life cycles in Ontario.

In conclusion, Ms. Pfeifer said that FSRA was committed to an open, transparent and collaborative approach that engages its stakeholders and ensures broad input and diverse perspectives to inform FSRA's direction. FSRA is also committed to further expand its online engagement. Ms. Pfeifer encouraged interested stakeholders to subscribe to the FSRA newsletter, at [www.fsrao.com](http://www.fsrao.com).

<sup>1</sup> The latter IAG had CLHIA and CAFII as its joint members.

9 May, 2019

## Update from the Office of the Superintendent of Financial Institutions

Elspeth Bowler, Managing Director, Insurance Supervision Sector, OSFI

Elspeth Bowler, Managing Director, Insurance Supervision Sector, OSFI began her presentation by noting the changes made to the Corporate Governance Guideline.

Some things stayed the same, she said, including a focus on the Board's prudential duties, and the recognition that practices may depend on size, ownership structure, and the nature and complexity of a company's operations, strategy, and risk profile.

What has changed is that the new Guideline is more principles-based and is better consolidated, has clarified the role of the Board, and is outcomes based—the critical issue for a Board is “what” not “how.” Specifically, OSFI expects a Board for a Federally Regulated Financial Institution (FRFI) to question and challenge management:

*Board provides challenge, advice and guidance to Senior Management on significant operational, business, risk and crisis management policies of the FRFI, including policies in respect of credit, market, operational, insurance, regulatory compliance and strategic risks, and their effectiveness.*

Ms. Bowler also provided an update on the Life Insurance Capital Adequacy Test (LICAT), noting that the updated requirements were implemented on December 31, 2018. She noted that requirements included that disclosures should adhere to guiding principles, the need for minimum quantitative information with accompanying narrative, and the requirement that disclosures be subject to internal controls and audit processes. Ms. Bowler also provided an update on the complex processes and transitions under way with respect to IFRS 17.

She provided as well a quick update on the discussion paper on the Reinsurance Framework published in June 2018.

Ms. Bowler also spoke about how OSFI views culture, noting that there are different perspectives on conduct culture, risk culture, and corporate culture overall. OSFI's pilot assessments have focused on risk culture, but subsequent analysis points to the need to capture a broader scope than risk culture alone. OSFI's revised Corporate Governance Guideline (2018) uses both “culture” and “risk culture” terminology; however, no consistent definition of these terms has been agreed to, as of yet, among regulators.

Currently, OSFI's Revised Corporate Governance Guideline (Sept 2018) includes multiple references to culture, including that the Board of Directors is directly accountable for a FRFI's culture, and points to the role of the Board and Senior Management in promoting a risk culture that stresses integrity and effective risk management.

In 2019-2020, OSFI will engage in Initiatives including an industry scan to review how Boards are executing this responsibility around culture, to review initiatives underway within institutions on culture, and to determine what measures and tools are being used to gauge culture.

## Quebec Update

Nathalie Sirois, Senior Director, Supervision of Insurers and Control of the Right to Practice, [Autorité des marchés financiers \(AMF\)](#)

Nathalie Sirois of the AMF gave an overview of some of the major initiatives currently underway at the AMF, with a strong focus on the soon-to-be-released final version of the Regulation Respecting Alternative Distribution Methods.

She said that there was a public consultation between 10 October and 10 December 2019 on the Regulation, including a webinar which had 75 in-person attendees and 150 online attendees. Most of the comments on the Regulation were around offering insurance on the internet.

She said that changes were made to the Regulation based on the feedback received. These included changes to wording and vocabulary, and around enrollment in group insurance, group annuities, and pensions which are now explicitly excluded from the Regulation.

Ms. Sirois noted that while there is an immediate requirement to make an insurance representative available to a customer who wants such access, the need to post a new, shortened summary that replaces the Distribution Guide will have a one-year transition period – to June 13, 2020 -- for implementation. She also noted the use of the term “digital space” to replace “platform” and that transactional sites alone are subject to the new Regulation, with marketing and informational sites exempted.

Ms. Sirois said that the final version of the Regulation will be available by 15 May, 2019 and that the AMF will provide guidance on implementation issues. She noted that AMF Guidelines are no longer subject to the Finance Minister’s approval. There is also an intention to provide the AMF with additional rule-making powers with respect to insurers, subject to the approval of the Finance Minister.

## Privacy Update

Ira Parghi, Counsel, Borden Ladner Gervais LLP

[Victor Lee, Director, Group Customer Compliance, Canada Life](#)

As of November 1, 2018, under the new regulations for organizations subject to the Personal Information Protection and Electronic Documents Act, organizations must:

- Report to the Privacy Commissioner’s office any breach of security safeguards where it creates a “real risk of significant harm” (“RROSH”);
- Notify individuals affected by a breach of security safeguards where there is a real risk of significant harm;
- Keep records of all breaches of security safeguards that affect the personal information under their control; and
- Keep those records for two years.

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It was noted that a privacy breach causing significant harm includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property. Factors that are relevant to determining whether a breach of security safeguards creates a real risk of significant harm include the sensitivity of the personal information involved in the breach of security safeguards, and the probability the personal information has been, is being, or will be misused.

The notification must be made “as soon as feasible after the organization determines that the breach has occurred.” The panelists noted that this has created a bit of a dilemma, because while it was important to report the breach quickly, it should also be reported accurately with all the context and background fully understood and explained. Often soon after a breach is discovered, there is confusion, inaccurate information provided, and false assumptions made. It is important to be factual and objective, and that can require investigation and take time.

Ira Parghi spoke eloquently to the question of how to report the breach, noting the importance of a submission that was informative, not alarmist, that clearly identifies the relevant information involved, that does not overstate what is known, which avoids the urge to rush, and which applies the test of what would happen if the information was “in the local paper, front page, above the fold.” Bottom line, Ms. Parghi stated, was to also apply the concept of how the information in the submission would be used if it was “in plaintiffs’ counsel’s hands.”

The panel session concluded with a review of new Ontario Privacy Commission’s requirements around obtaining “meaningful disclosure” of private information, and around requirements for trans-border data flows.

### Workshop on Current Issues in Alternative Distribution

Sarah Hobbs, Director Policy, CLHIA (Moderator)

Azmina Karim-Bondy, Chief Legal Counsel, Dealer Services and Special Markets Solutions, Industrial Alliance

Fay Coleman, Manager, TDI Compliance, TD Insurance

Diane Quigley, Director, Credit Insurance Product and Pricing, CUMIS Life Insurance

Azmina Karim-Bondy, Chief Legal Counsel, Dealer Services and Special Markets Solutions, Industrial Alliance, gave an overview of the current status of alternative distribution of insurance in various provincial jurisdictions. Alternative distribution was defined as the selling of insurance without an agent, often to pay off a loan or debt obligation in the event of an unforeseen life event like death or disability.

In British Columbia, currently there is an exemption from the need to hold a license for a person whose only activity as an insurance agent or insurance salesperson is in connection with credit insurance sold incidentally to the granting or arranging of credit by that person or that person's employer<sup>2</sup>. In 2015, FICOM also issued a Bulletin<sup>3</sup> outlining expectations for these sellers, which are

<sup>2</sup> The relevant statute is s.2(c), FIA Regulations, Insurance Licensing Exemptions Regulation, B.C. Reg. 328/90.

<sup>3</sup> See FICOM Bulletin INS-15-002 of September 2015 which sets out FICOM’s expectations for insurers, exempt sellers and creditors regarding creditor’s group insurance (“CGI”) being offered in BC.

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- Effective oversight and control over its CGI products;
- Ongoing training programs for exempt sellers; and
- Clear definition of roles and responsibilities of third parties, distributors and exempt sellers.

The 2015 FICOM CGI Information Bulletin also required the creditor to play an active role in the procurement, product design and negotiation of the terms and conditions of the CGI program.

To ensure compliance with the Bulletin, FICOM has recently issued a market conduct survey on this category of sales in the past; and on February 11, 2019, it sent a CGI Compliance Follow-Up Inquiry to insurers; replies were due on April 25/19.

Ms. Karim-Bondy noted that BC was currently the only Western province without a Restricted Insurance License regime,<sup>4</sup> but that may soon change. The BC Financial Institutions Act is currently under review, and changes are expected in 2019, in connection with the move to transform FICOM into an arms-length Crown Corporation called the Financial Services Authority, there also appears to be a strong likelihood that BC will introduce a restricted insurance agent (RIA) licensing regime

In Saskatchewan, an RIA licence has been required in order to sell creditor's group insurance since 2010. Distributors can obtain a "restricted insurance agent's certificate," which allows the distributor and its employees to act as insurance agents with respect to certain types of products including creditor insurance.<sup>5</sup> The new Saskatchewan Insurance Act and Regulations are currently expected to come into force in January 2020. The restricted licensing provisions will largely not change, but they will now be included in the Act itself<sup>6</sup>. However, Ms. Karim-Bondy noted that a new provision has been added requiring insurers to screen the RIAs which they sponsor. As well, the Regulations accompanying the new Act will include additional new categories of applicants for a restricted license, as well as new classes of insurance.

Alberta also has a restricted licensing regime, which has been required to sell creditor's group insurance since 2000, and that is not expected to change in the near future. Distributors can apply for a "restricted insurance agent's certificate," which allows the distributor and its employees to act as insurance agents specifically for the distribution of creditor group insurance<sup>7</sup>.

Manitoba has required a restricted insurance license to sell creditor group insurance since 2015. Distributors who are incidental sellers of insurance can apply for a "restricted insurance agent's certificate," which allows the distributor and its employees to act as insurance agents<sup>8</sup>.

<sup>4</sup> A Restricted Insurance License is a licensing requirement to sell exempt insurance, however it is not offered to the individual but to the institution some of whose employees are selling the insurance. The license provides a broad right to sell exempt insurance products to all those employees, through the company license.

<sup>5</sup> The relevant Statute is s.15 to the Saskatchewan Insurance Regulations, 2003, RRS c S-26 Reg 8.

<sup>6</sup> These provisions in the Act will be in Sections 5-69 to 5- 82.

<sup>7</sup> Consult s.454 Insurance Act, R.S.A. 2000, c. I-3; and s.14, s.15 Insurance Agents and Adjusters Regulation, Alberta Regulation 122/2001.

<sup>8</sup> Consult s.380.1 to The Insurance Act C.C.S.M. c. I40/

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Fay Coleman, Manager, TDI Compliance, TD Insurance next gave an overview of the situation in Canada's Eastern provinces, where currently RIA regimes are not in place but where other regulatory requirements exist.

In Ontario, FSCO's "Treating Financial Services Consumers Fairly" (TCF) Superintendent Guideline (Guideline No. 03/18) was released in the Fall of 2018. The Guideline was released to ensure there is a common understanding between FSCO and its licensees as to what it means to treat consumers fairly.

The eight expectations of the Guideline cover the following areas:

1. Corporate Governance;
2. Agent Training and Outsourcing Arrangements;
3. Incentives and Remuneration;
4. Product Marketing and Advertising;
5. Information Provided to Consumers;
6. Claims Handling;
7. Complaints Handling and Dispute Settlement;
8. Privacy Breach Reporting.

Ms. Coleman also provided more detail on each of these eight requirements, and how insurers can best attempt to meet the expectations in each category. Common themes were clear policies, adequate training of employees, clear communication, a culture focused on the fair treatment of customers, proper compliance, control and complaints handling procedures, and ongoing reviews to ensure compliance with the Guideline.

Ms. Coleman next provided an update on CLHIA Guideline G7, noting that it was thematically consistent with the FSCO FTC Guideline. The Guideline's general principles are around a customer-focused approach, clear disclosure, and insurer accountability.

With respect to a customer-focused approach, the Guideline states:

*"Insurers should promote a culture of treating customers fairly. The principle includes promoting outcomes such as:*

- providing consumers with accurate and sufficient information before, during and after the sale;*
- avoiding the risk of sales which are not appropriate to the customer's situation;*
- handling claims in a timely and fair manner; and*
- dealing with customer complaints and disputes in a timely and fair manner."*

With respect to clear disclosure, the Guideline states that "information should be communicated clearly, regardless of the medium of communication (e.g., face-to-face, telephone, direct mail, electronic)." Regarding insurer accountability, the Guideline states that "where an insurer uses a third party to perform specific functions, the insurer retains ultimate responsibility and, accordingly, must use contractual or other means to ensure that the third party is performing those functions and to require behavior from the third party that is consistent with this Guideline."

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Ms. Coleman concluded her excellent and well-researched overview by noting that while there are currently no specific licensing requirements for the incidental sale of insurance products in the Atlantic Canada provinces, that appears likely to change soon. Some provinces are in the process of updating their jurisdictional legislation and regulations and that might offer the opportunity to look at a different system, and specifically the draft *Maritime Model Insurance Act* foresees a restricted licensing regime for enrolment into creditors group insurance products.

Finally, Ms. Coleman noted that in Quebec, the AMF (Autorité des marchés financiers) published in the Fall of 2018 its Draft Regulation Respecting Alternative Distribution Methods, and sought feedback and comments. The Draft Regulation includes provisions to replace the Distribution Guide with a Product Summary. As well, an amendment was made to Bill 141 allowing consumers to seek assistance from a licensed representative at any point during the online insurance transaction. Bill 141 became law on June 13, 2018 and is formally known as the *Act Mainly to Improve the Regulation of the Financial Sector, the Protection of Deposits of Money and the Operation of Financial Institutions*.

Diane Quigley, Director, Credit Insurance Product and Pricing, CUMIS Life Insurance, focused her presentation on current issues in alternative distribution. Noting the importance of trying to keep things simple, and acknowledging that in practice that was an extremely challenging thing to do, she said that there are specific steps in product design that need to be followed to produce a satisfactory outcome.

First is understanding the lending needs of the borrower, and the nature of the underlying debt (such as the loan amount, the nature of the loan, interest rates and amortization periods).

Product design next needs to take into account each jurisdiction's unique requirements to ensure regulatory compliance. This requires knowledge of the relevant provincial Insurance Act, including restricted licensing requirements. Furthermore, the insurer needs to engage all contractual parties in this exercise.

There next needs to be consideration given to point of sale issues. All training must be completed, the technology that connects to the point of sale must be considered, along with considerations around the system of record, disclosures to be consistent with CLHIA's Guideline G-7, the underwriting method to be used, and ensuring that all insured borrower contractual documents are signed off, translated, compliant, and tested.

The next step in product design is customer service and the need to be accountable to the customer. There needs to be clarity on who is accountable for customer service, with representatives trained on all questions, and with all communications ready to go at the time of launch. Claims forms, and adjudicators, need to be ready from day one. The new product needs to correctly set up on all internal systems.

There also needs to be work done on the insurance product itself. Decisions must be made on what coverages are appropriate: life, disability, critical illness, loss of employment, along with what product parameters are appropriate to the underlying debt. The product parameters have to be sorted out, and the need for reinsurance needs to be determined. The system needs to capture information to ensure proper financial reporting.



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Ultimately, the product design needs to ensure that the borrower is front-and-centre, with each of these considerations critical to a successful roll-out:

- The insurance is understood;
- The insurance is accessible;
- The resulting premium is affordable;
- Enrolling is easy;
- The enrolment, certificate of insurance and any other point of sale document are easy to read and comply with G-7; and
- The consumer has been treated fairly, throughout.

Ms. Quigley concluded her insightful and interesting presentation by emphasizing the fast-changing regulatory environment and the need to keep that in mind during product design. Tax changes, IFRS-17 implications, LICAT implications on pricing approach, and the importance of Fair Treatment of Customers Guidelines all need to be carefully considered.

### Francophone Luncheon

Michèle Hélie, Director, Quebec Affairs and Market Conduct Policy and Regulation, CLHIA

Jean Lamy, Ombudsman, Manulife

Over 45 people were in attendance at the Francophone Luncheon, whose dominant theme was frustration and concern over the increasingly arbitrary and capricious nature of the AMF as a regulator. There were many anecdotes shared about situations where the AMF proved of late to be intransigent and difficult to deal with. A strong view emerged that the AMF had shifted significantly over the past year as a regulator, with a less consultative approach. There was also a view that the AMF was increasingly moving away from a principles-based approach to a more prescriptive, and occasionally arbitrary, regulatory philosophy.

### Chief Compliance Officers Panel

Meaghan Obere Tower, Partner, Stikeman Elliott (Moderator)

Amy Metzger, Vice President of Canadian Compliance

Kevin Cloherty, Global Compliance Chief, Manulife

Russell Purre, Vice-President and Chief Compliance Officer Canada, Sun Life Financial

An interesting observation made at this panel was that compliance officers need to be translators, explaining not always easily understood government regulations to business officers who use a different language and have a different perspective.

Another observation was that technological change would inevitably have an impact on compliance practices, and machine learning and advanced analytics could provide compliance officers with tools and information that allow them to more quickly recognize patterns of behaviour that they need to investigate.



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All of this is happening at a time where the regulatory authorities' expectations are increasing, especially through the emphasis on the Fair Treatment of Consumers. Companies are expected to have processes in place to protect the interests of consumers, and to make sure they are sold products they want and need.

The regulatory burden, all the panelists agreed, was becoming increasingly heavy. Customers' expectations were also on the rise. The ability for customers to find out about poor practices was increasing, as was the willingness and ability of dissatisfied customers to post negative information on social media. The panelists noted that while the requirements of compliance officers were rooted in long-established practices, the environment in which those practices were manifested was ever-changing. That change in fact was increasing in speed and complexity.

## Federal Financial Sector Framework Review 2019

Brent Mizzen, Assistant Vice-President, Underwriting and Policy, CLHIA

Brent Mizzen began his presentation by noting that federal financial institutions legislation is reviewed regularly, typically every five years, including the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act, and the Trust and Loan Companies Act. These reviews occur because a well-functioning financial sector is critical to supporting a strong and growing economy.

In the most recent review, there was a Finance Department consultation in August 2016 that summarized the current landscape and identified emerging trends, with invitations for comment from interested stakeholders. In general, the feedback was that the framework was generally working well. However, there were substantive changes proposed to address barriers to infrastructure investment, along with changes to promote fintech innovation.

Infrastructure (e.g., airports, roads, hospitals, government services) is a key asset class for insurers. These assets are predictable, stable, and match well to insurers' long-term liabilities. There is also a significant infrastructure deficit in Canada, estimated at over \$400 billion dollars. There is a limit to the ability of the public sector to close this gap, leading to the desire for the private sector to be more involved. In 2018, industry had over \$860 billion in assets in Canada, over 90% of which was in long-term investments. The private sector has both a strong capacity to invest as well as a desire to invest more.

However, there are barriers limiting the ability of the private sector to increase its infrastructure investment. One is identifying appropriate opportunities. The other is the Insurance Companies Act, which restricts insurers from holding more than 25% equity in a corporation/partnership, and from owning more than a 10% voting interest in a corporation.

Industry has therefore suggested that appropriate modifications to these restrictions would allow the government to achieve public policy goals and permit industry to better match long-term assets and liabilities.

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With respect to Fintech, it was felt that this was helping to drive innovation. Insurers understand the market and how to deliver products, and fintechs bring new perspectives about opportunities and are able to move quickly. Collaboration between insurers and fintechs could benefit the consumer. A properly structured framework was required that facilitates innovation while maintaining consumer protection, including exploring developing fintech sandboxes and fintech hubs. The ownership restrictions noted above around infrastructure were also an impediment to insurers investing more heavily in fintech firms.

In response, the federal government's 2018 budget brought forward legislative amendments to permit life and health insurance companies to make long-term and predictable investments in infrastructure, and to provide greater flexibility for financial institutions to invest in and partner with fintechs so as to enable the delivery of financial services in new and innovative ways. However, more work including on "enabling regulations" is still needed.

### 10 May, 2019

#### Government Relations

Brent Mizzen, Assistant Vice-President, Underwriting and Policy, CLHIA

Ali Ghiassi, Vice-President Industry Affairs and Government Relations

Alanna Boyd, Vice-President Government Relations, Regulatory Affairs and Sustainability

Chris Donnelly, Vice-President and Counsel, Regulatory and Public Affairs

This panel offered an overview of the benefits that government relations can bring to an insurance company. Regulatory developments often result from government reactions to public issues, and if government relations officers can provide factual information and persuasive evidence to counter comments that government players are hearing, it can fend off unwanted developments and save enormous amounts of effort and grief.

It is critical to have a solid research basis, and personal relations with government officials, to manage this process properly.

The panel emphasized the importance of a professional approach to government relations, which includes understanding the concerns of those who have the ear of government, getting a solid research and fact basis to understand the real concerns, identifying the best approach to take in the existing environment, and the need to have ongoing, personal conversations with decision-makers on the critical issues.

The panel provided in-depth case study examples on two recent critical files that needed to be managed currently: genetic testing and pharmacare.

With respect to genetic testing, industry was not engaged adequately on this issue previously, and this led to the federal parliament unanimously passing a private members' bill to prohibit private insurance firms from having access to genetic testing results. The law is now being challenged in the courts on constitutional grounds; and, if overturned, there is an opportunity for industry to learn from what happened and have a more effective government relations approach in the next round.

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With respect to pharmacare, there are those on the extremes of this issue, but most Canadians are in the middle, according to research. This middle ground combines a desire for some form of a national pharmacare program, with a concern from those who have private benefits that they not lose those private benefits. Most Canadians also want the government to focus pharmacare investments in a way that provides access to those who really need it and currently do not have it.

### Provincial Insurance Councils Panel

Erica Hiemstra, Assistant Vice President, Market Conduct Policy and Regulation (moderator)

Joanne Abram, Chief Executive Officer, Alberta Insurance Council

April Stadnek, Director of Strategic Initiatives, Insurance Councils of Saskatchewan

Barbara Palace Churchill, Executive Director, Insurance Council of Manitoba

Janet Sinclair, Executive Director, Insurance Council of British Columbia

Janet Sinclair, Executive Director, Insurance Council of British Columbia, noted that BC has E&O insurance and continuing education legislative requirements for insurance licensees. To ensure these are being adhered to requires audits, and these have increased over the past year. Insurance companies have been increasingly helpful in ensuring that licensees adhere to these requirements, and in helping the Insurance Council of BC enforce these requirements.

This was a consistent theme throughout the panel presentations—audits are a necessary but incomplete tool to ensure licensee adherence to requirements, and insurance companies were ultimately accountable for the behaviour of their agents and the licensees representing them; their engagement in the enforcement of legislated requirements was essential to an effective functioning of the system. For example, insurance companies were able to confirm that their licensees in B.C. had E&O requirements for 12,000 individuals, and for the 92 for whom they could not confirm this, the ICBC was able to investigate and identify the 49 who actually did not hold the insurance.

Continuing education credits are more challenging. Licensees are more cavalier about not conforming to CE requirements than they are for E&O. Up to 10% of individual audits ended up with suspensions until the licensee could conform to requirements. Ms. Sinclair said that she was always exploring better ways to ensure conformance with regulatory requirements.

Ms. Sinclair said that lapses do occur and there is confusion in the marketplace. Some licensees operate in more than one province and do not understand that the rules may differ from one jurisdiction to another. There is a need to better share information between jurisdictions about agents who are suspended. A suspended agent in B.C. is given a hearing if they wish, and the judgment can be appealed.

Ms. Sinclair also said that coming out of the current 10-year review of the BC Financial Institutions Act, an RIA regime is likely to be created in the province, with Manitoba's most recently created RIA regime as the primary model.

Ms. Stadnek said that Saskatchewan attempts to verify E&O compliance at the time of licensee renewal. Efforts are constantly made to remind licensees of the requirements, such as a 2016 Bulletin that was sent out on this matter and which has just been sent out again. Fines have increased to \$1,000 for lapses, which has helped with compliance. Some of the compliance problems emerge from a lack of knowledge, such as the incorrect belief that E&O is not required if the licensee is not currently writing business.

Ms. Stadnek said that continuing education audits had not taken place for a while, but there was the intention to hire staff to do such audits in 2020.

Ms. Stadnek also said that reporting is important--licensees and their sponsor must report on their activities and these reports must be reviewed. She raised some of the issues faced in Saskatchewan, such as sponsors not knowing who they were sponsoring.

The CCIR/CISRO Guidance on the Fair Treatment of Customers was an important development and would be another critical lens through which licensee behaviour would be evaluated.

In Saskatchewan, the new Insurance Act will require, for the first time, that MGAs be licensed, Ms. Stadnek advised.

Ms. Palace Churchill said that technology is being used in Manitoba to try to address some of the issues raised by her colleagues; for example, Manitoba is creating tools to make continuing education reporting more automated. Audits have not been done on continuing education for a while, and there is an effort to try to verify compliance online.

With respect to E&O insurance, Ms. Palace Churchill echoed the view that the insurance companies have been extremely helpful in assisting the Insurance Council in enforcing requirements.

Licensees who do not conform to the requirements placed on them can be disqualified, and to be reinstated they need to re-apply and that application must be reviewed. There are 16,000 life licenses in the province, and 100 have been disqualified. Companies are reminding advisors of the consequences of not complying, and that has had positive results.

Ms. Palace Churchill cited some examples of inappropriate behaviour that can lead to sanctions, such as an advisor taking a loan from a client. Any such conflict of interest is subject to sanction. In other cases, an assistant to a licensed advisor was offering advice or writing business, which is not permitted.

Ms. Abram made the point, which the other panelists readily agreed with, that these problems increase when the economy worsens. That is because as people lose jobs or struggle economically, they are more likely to look at other options, of which selling insurance is one. This has been observed in Alberta, where some of these new entrants are less credible agents, with the result that they create problems that more established agents do not.

Ms. Abram cited some cases of egregious misconduct that the Alberta Insurance Council has recently had to deal with, such as people with criminal records that make them inappropriate representatives of insurance companies, who are nonetheless sponsored and apply for a license.

## CLHIA Priorities

### Stephen Frank, President and Chief Executive Officer, CLHIA

Mr. Frank began his presentation by reminding participants of the size and importance of the life and health insurance industry. The industry protects nearly 29 million Canadians, is highly competitive, paid \$92billion in benefits to policy-holders in 2017, and employs 155,000 Canadians.

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CLHIA's 2019 priorities are pharmacare reform, market conduct regulation, use of genetic tests, and advocating for policy changes to enhance retirement savings.

With respect to pharmacare reform, Mr. Frank said the industry was pushing for a balanced approach, and he felt that the debate in Canada had become more reasonable and nuanced, although that could change as a federal election approaches. It was important, he said, for proposals from government to be clear and detailed. Meanwhile, the industry is continuing to try to implement appropriate incremental reforms to improve access to required drugs for Canadians.

Mr. Frank expressed the view that the regulatory environment was becoming more complex and difficult. The concept of the Fair Treatment of Customers, in his view, would over time have profound implications for the industry. At the same time, there is increased evidence that regulators across the country are becoming more muscular and more willing to intervene. Over the medium term, these developments are likely to create significant changes to how the industry distributes products.

On the issue of genetic testing, Mr. Frank said that the current federal prohibition on the use of genetic test results is too broad and will limit the availability of insurance to Canadians. A more flexible approach is needed, one that balances legitimate privacy concerns with facilitating access to insurance. The federal Bill is currently being challenged constitutionally and will go to the Supreme Court for a ruling. Ultimately, the CLHIA is looking for a more flexible approach, one which ensures that Canadians can get the insurance coverage they need. Areas for discussion include differentiating between predictive and diagnostic tests, and protecting against large anti-selection risk on pools.

Canadians need better options to manage the risk of their outliving their retirement money; and the CLHIA, along with a coalition of retirement advocates, is pushing for reforms to increase options for Canadians. Some options are deferred life annuities, and allowing defined contribution plans to pool risk among members and, ideally, between plans.

As well, the CLHIA is looking at how tax-sheltered savings could be used to purchase these new solutions. The recent federal budget opened the door on these solutions, but some work is still needed to fine-tune these proposals.

Finally, Mr. Frank said fraud is a significant and growing issue, and would also be an area of dedicated CLHIA attention.

### Sales Practices and Advisor Oversight

[Jill McCutcheon, Partner, Torys LLP](#)

Jill McCutcheon began her presentation by reviewing some of the statistics around misconduct by licensed agents, followed by some illustrative case studies, including examples of conflict of interest, misrepresentation, and outright fraud.

A key point she made in regard to these transgressions is that it is extremely difficult for regulators to discover this sort of misconduct on their own, and often these cases are discovered and investigated by regulators due to the insurer raising the issue. Industry is a critical partner to regulators in these sorts of cases, and their assistance is greatly appreciated.

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Ms. McCutcheon noted that misbehaviour by an intermediary exposes his/her sponsoring insurance company to potential liability: “an agent at common law acting within his or her scope of authority or with the tacit acceptance of an insurer can bind the insurer/render insurer liable both to customers and regulators.” The key point that Ms. McCutcheon made is that regulators are increasingly expecting insurance companies to be aware of these behaviours by agents, and are frustrated by what they perceive as a lack of oversight, especially by MGAs that are expected by the insurance company to provide the oversight of agents, which they may not be doing adequately. Regulators are increasingly willing to take action if an insurer has not provided proper oversight over an MGA that has licensed agents that it is not itself properly managing, for compliance with regulatory rules.

Specifically, Ms. McCutcheon said that the consistent regulatory themes are

- There is too much distance between the insurer and the ultimate seller of the product;
- The Insurer is responsible for fair treatment of customers throughout the life-cycle of the insurance product; and
- There is too much reliance on/lack of supervision of MGAs who oversee agent suitability and activities.

To reinforce this point, Ms. McCutcheon noted that the CCIR/CISRO Fair Treatment of Customers Guidance contains clear statements that insurers should:

- Have effective systems and controls in place for selecting and managing intermediaries (includes MGAs);
- Conduct due diligence in the selection of intermediaries to assess, amongst other things, that they are authorized and have the appropriate knowledge and ability to conduct insurance business;
- Have written agreements;
- On an ongoing basis ensure that the intermediary continues to be authorized and remains “suitable”;
- Be satisfied that the involved intermediaries are providing information to customers in such a manner that will assist them in making an informed decision; and
- Analyze complaints concerning intermediaries.

It was noted that the CCIR/CISRO FTC Guidance also contains a clear statement that insurers should:

- Communicate and report to the regulatory authorities any intermediary with whom they have transacted that may be unsuitable or not duly authorized;
- Identify intermediaries with frequent complaints; and
- Report recurring issues to the regulator.

Ms. McCutcheon then provided a list of “must-do” activities for the insurer, and said that oversight issues will continue to become more important to regulators, especially given the increasing importance of the FTC Guidance. She concluded by saying that insurers have to act as a regulatory partner, and “Insurers need to revisit and validate their oversight construct particularly where MGAs are involved and possibly do more.”

An MGA representative in the audience protested some of the comments that Ms. McCutcheon made, but she reminded that individual that she was not expressing her personal views or offering opinions on MGAs as a part of the industry make-up, but reflecting real concerns expressed by regulatory authorities around insurer oversight and the expectations of regulators in this area.

## Appendix 1

### CAFII Attendees at One or More Meetings with Regulators and Policy-Makers

Martin Boyle, BMO Insurance *Chair*  
Diane Quigley, CUMIS Group Inc.  
Peter Thorn, TD Insurance  
John Lewsen, BMO  
Kamana Tripathi, TD Insurance  
Scott Kirby, TD Insurance  
Rob Dobbins, Assurant  
Fay Coleman, TD Insurance  
Laura Bedford, RBC Insurance  
Michelle Costello, CUMIS Group Inc.  
Isabelle Choquette, Desjardins  
Brendan Wycks, CAFII  
Keith Martin, CAFII

## Appendix 2

### CAFII Liaison and Dialogue Meeting With the Financial and Consumer Services Commission of New Brunswick (FCNB)

Angela Mazerolle, Superintendent of Insurance, FCNB (8 May, 2019)

Angela Mazerolle was engaged and collaborative in her dialogue discussion with CAFII. After introductions, a series of issues were briefly discussed, starting with her noting that the CCIR/CISRO Fair Treatment of Customers Guidance was something New Brunswick was engaged in from its inception, and New Brunswick felt that the Guidance struck the right tone and was a balanced document, which is why it was officially endorsed by FCNB on 19 February, 2019. In an interesting comment, she said that in the course of regular audits and reviews, the FTC Guidance would now be part of what FCNB would be looking to ensure compliance with.

Ms. Mazerolle noted that David Weir from her team was leading the effort on a complete rewrite of the New Brunswick Insurance Act, and that this would be a multi-year effort. Stakeholders would be consulted and she said that she was aware that he had already reached out to CAFII. She also said that work was continuing on the possibility of developing a restricted insurance agent (RIA) licensing regime in New Brunswick, and that this was something that was being explored very seriously.

Brendan Wycks informed Ms. Mazerolle that he and Keith Martin would be attending the FCNB's upcoming first annual "Consumer Protection Conference" in Fredericton on 11 June, 2019.

Keith Martin shared that CAFII was going to present a webinar to the CCIR/CISRO on its research findings from a study on consumer attitudes towards credit protection insurance, and that CAFII hoped that FCNB would "attend". Ms. Mazerolle expressed a strong interest in finding out more about the research and trying to have FCNB representatives participate in the webinar.



## Appendix 3

### CAFII Liaison and Dialogue Meeting With the Insurance Councils of Saskatchewan and CISRO

Ron Fullan, Executive Director, ICS, and Chair of CISRO

April Stadnek, Director, Strategic Initiatives, ICS

April Stadnek started the meeting and Ron Fullan arrived a few minutes later. The issue of an Advisory Committee in Saskatchewan for the RIA regime was raised, and Mr. Fullan said that this had now moved to the Superintendent of Insurance, and he would have to approve it for it to be accepted. He suggested we reach out to Jan Seibel in the Superintendent's office to get an update. He also noted that the formal launch would require a minor change to the by-laws that the ICS operated under, and this would be done with the implementation of the new Saskatchewan Insurance Act on 1 January, 2020.

However, Mr. Fullan felt that a "soft launch" that informally allowed for consultations could occur before that date, but not before the approval of the Superintendent.

On the issue of CISRO's new three-year Strategic Plan, Mr. Fullan said that he was very pleased with the progress and discipline that CISRO had increasingly demonstrated. The organization had come a long way, and while he felt that there was still progress to be made on harmonization and on coordination, he was also very pleased with what had been achieved.

The Secretariat supporting CISRO on a trial basis had proven very successful, and would be formally approved as a permanent Secretariat. However, Joanna Reading was not continuing in that role and Adrienne Warner would soon be taking over the responsibilities for the CISRO Secretariat. FSRA would house both the CCIR and CISRO Secretariats after it takes over from FSCO.

Mr. Fullan said that CISRO was very committed to the Guidance on the Fair Treatment of Customers, and would try to incorporate it into its analysis and reviews.

He also said, in frank off-the-cuff comments, that CCIR was the lead on that and other issues that it cooperated with CISRO on, and they very much had a "big brother-little brother" relationship. Mr. Fullan also noted that there was no lack of issues that regulators needed to grapple with, including fintech and new technologies, such as how insurance will work with autonomous vehicles, by way of example.

Brendan Wycks noted that CAFII would be making a follow-up visit to the four Western Canada provinces in October 2019 to meet with key western regulators and policy-makers in their own jurisdictions, and we looked forward to meeting again then.

Keith Martin shared that CAFII was going to present a webinar to the CCIR/CISRO on its research findings from a study on consumer attitudes towards credit protection insurance, and that CAFII hoped that the Insurance Councils of Saskatchewan and other CISRO members would "attend". Mr. Fullan and Ms. Stadnek expressed a strong interest in finding out more about the research and trying to participate in the webinar.

## Appendix 4

### CAFII Liaison and Dialogue Meeting With the Insurance Council of Manitoba

Barbara Palace Churchill, Executive Director, ICM

At an early morning breakfast meeting, Ms. Churchill spent a bit of time speaking about the political environment in Manitoba and the country, as well as the ways that Manitoba was dealing with flooding issues. She said that many of the issues she grapples with are around E&O insurance, continuing education, and other licensing issues. She proudly said that the ICM had now added additional payment and registration functionality on its website, although it was restricted to individuals accessing the site from within Canada or the United States.

Brendan Wycks noted that CAFII would be making a follow-up visit to the four Western Canada provinces in October 2019 to meet with key western regulators and policy-makers in their own jurisdictions, and we looked forward to meeting again then.

Keith Martin shared that CAFII was going to present a webinar to the CCIR/CISRO on its research findings from a study on consumer attitudes towards credit protection insurance, and that CAFII hoped that FCNB would “attend”. Ms. Palace Churchill expressed a strong interest in finding out more about the research and trying to have Insurance Council of Manitoba representatives participate in the webinar.

Brendan Wycks updated Ms. Palace Churchill on the progress that CAFII, with CLHIA, had made in conjunction with the Insurance Councils of Saskatchewan on the development of a Restricted Insurance Agents Advisory Committee, to create a “voice” for RIA licensees in that province. Ms. Palace Churchill responded that that development was of keen interest to her and the Insurance Council of Manitoba; and she would like to be updated as this file moved along.

## Appendix 5

### CAFII Liaison and Dialogue Meeting With the Insurance Council of BC

Janet Sinclair, Executive Director, Insurance Council of BC

Kandace Hopkins, Director, Practice and Quality Assurance, Insurance Council of BC

Ms. Sinclair explained that Kandace Hopkins had recently taken on a new staff executive role at the Insurance Council of BC and was now undertaking a variety of important strategic initiatives. Key issues the ICBC is dealing with include E&O issues and continuing education.

There was a high-level discussion of some of the key issues the Insurance Council of BC was dealing with. Ms. Sinclair was not sure when the new Financial Services Authority would come into force in BC, but she did not feel that it would have an impact on the structure or duties of the Insurance Council of BC.

Brendan Wycks noted that CAFII would be making a follow-up visit to the four Western Canada provinces in October 2019 to meet with key western regulators and policy-makers in their own jurisdictions, and we looked forward to meeting again then.

Keith Martin shared that CAFII was going to present a webinar to the CCIR/CISRO on its research findings from a study on consumer attitudes towards credit protection insurance, and that CAFII hoped that FCNB would “attend”. Ms. Palace Churchill expressed a strong interest in finding out more about the research and trying to have Insurance Council of BC representatives participate in the webinar.

Brendan Wycks updated Ms. Sinclair and Ms. Hopkins on the progress that CAFII, with CLHIA, had made in conjunction with the Insurance Councils of Saskatchewan on the development of a Restricted Insurance Agents Advisory Committee, to create a “voice” for RIA licensees in that province. They responded that that development was of keen interest to them and the Insurance Council of BC; and they would like to be updated as this file moved along.

## Appendix 6

### CAFII Liaison and Dialogue Meeting With the Alberta Insurance Council

Joanne Abram, CEO, AIC

Anthonet Maramieri, COO, AIC

A lunch session with Joanne Abram and Anthonet Maramieri was very open and collaborative, with excellent and informal discussion on a wide-range of issues. Ms. Abram noted that it had taken a long time for the AIC to have a sufficient complement of public representatives to make decisions, due to the slow pace of government appointments, but that finally the necessary appointments had been made. As a result, the decision to put some consumer definitions of credit-related insurance that can be offered in Alberta under a Restricted Certificate of Authority on the AIC website had been approved, and this would occur in short order<sup>9</sup>.

Ms. Abram was asked about the proposal to create a single “financial services super regulator” in Alberta, and she said that while this was still an item of discussion, she was not aware of any specific plans or timelines.

Brendan Wycks updated Ms. Abram and Ms. Maramieri on the progress that CAFII, with CLHIA, had made in conjunction with the Insurance Councils of Saskatchewan on the development of a Restricted Insurance Agents Advisory Committee, to create a “voice” for RIA licensees in that province. They responded that that development was of keen interest to them and the Alberta Insurance Council; and they would like to be updated as this file moved along.

Brendan Wycks noted that CAFII would be making a follow-up visit to the four Western Canada provinces in October 2019 to meet with key western regulators and policy-makers in their own jurisdictions, and we looked forward to meeting again then.

Keith Martin shared that CAFII was going to present a webinar to the CCIR/CISRO on its research findings from a study on consumer attitudes towards credit protection insurance, and that CAFII hoped that FCNB would “attend”. Ms. Abram expressed a strong interest in finding out more about the research and trying to have AIC representatives participate in the webinar.

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<sup>9</sup> This is a development that CLHIA has been resisting, out of concern it could cause consumer confusion, but to no avail.