

Regulatory Update – CAFII Executive Operations Committee, October 17, 2016

Prepared By Brendan Wycks, CAFII Executive Director

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Federal/National

Canadian Council of Insurance Regulators

CCIR May Decide Not To Issue Travel Insurance Position Paper

In response to an audience question following his presentation at the Travel Health Insurance Association (THiA)'s Annual General Meeting on September 27/16, Harry James, Chair of CCIR's Travel Insurance Working Group (TIWG), said that while a Position Paper identifying industry practices that need to be improved upon is still the next phase in the TIWG's work plan, it is possible that the Council may decide not to issue a Position Paper.

"I would expect that there will be a Position Paper, but that's going to be up to the membership of the full Council. We have not rushed to a judgement; we haven't made a determination yet as to whether a Position Paper is necessary."

Earlier, in his prepared remarks, Harry had indicated that after it consults with industry Associations over the coming Fall months – following their submission of responses to the TIWG's Health Insurance Products Issues Paper by September 30 – the TIWG's next step will be to develop a Position Paper and present an advanced draft to the Council at its Winter 2017 meeting in January. Thereafter, the final phase of the CCIR review of travel health insurance (THI) will be to follow-up two years later to determine if improved practices have been adopted by the industry and if they're being effective.

In his prepared remarks on the TIWG's work and, in particular, its Issues Paper, Harry also made the following observations:

- public perception was a key driver for the CCIR in initiating a review of THI. There was a sense that public confidence in THI was eroding. Consumers were telling us that they are not certain that "a promise made is a promise kept" is true of THI;
- high automatic acceptance rates may lead consumers to believe that they have coverage which they actually do not qualify for;
- international regulators are looking at the hypothesis that there is "over-selling" of insurance, including THI;
- another regulatory concern which the TIWG identified about THI is the use of "cost containment services" to manage claims (provided a high level summary of three similar court cases in the U.S. related to Canadian insureds);
- the data from all of the three surveys that the TIWG was able to look at – KPMG's survey for THiA from 2014; the TIWG's survey of travel health insurers from 2015 which had significant data integrity challenges; and Pollara's 2015 survey for CAFII of consumer satisfaction with THI – just wasn't conclusive and reliable;
- CAFII's Pollara research showed that the further along in the THI process you are in terms of purchase and use, the more satisfied you are. But that begs the question of whether the industry is doing enough in terms of Fair Treatment of Customers at the outset of the process;
- the first iteration of CCIR's Annual Statement on Market Conduct will not seek THI data, but we can expect that it will added into a subsequent iteration of the Statement.

CCIR Considering Addition Of Attestation To Annual Statement On Market Conduct

On September 22/16, Martin Boyle, CCIR Policy Manager, confirmed to B. Wycks that the Council's Insurance Core Principles Implementation Committee (ICPic) is looking at adding an attestation to its Annual Statement on Market Conduct (Life and Health), and CAFII's views on the matter will be taken into consideration.

On September 21/16, B. Wycks wrote to M. Boyle as follows: *it has come to CAFII's attention that serious consideration is being given to adding an attestation to the Annual Statement on Market Conduct (PC) along the following lines: 'the insurer is in compliance with the applicable federal, provincial, and territorial Insurance Acts and regulations.' Given that efforts are being made to ensure that the Annual Statement (PC) and the Annual Statement (Life and Health) are in harmony, we're wondering if CCIR plans intends to add an identical/similar attestation to the Annual Statement (Life and Health)?*

CAFII members had an opportunity to discuss that prospect in a meeting yesterday. We are opposed to the adding of such a broad, sweeping attestation to the Annual Statement (Life and Health) since we do not believe that insurers will be comfortable with signing off on it. Our members would be comfortable with an attestation focused on the information provided in completing the Annual Statement, from which the "compliance with applicable laws..." component has been removed.

In reply, M. Boyle said *thank you for your email and recommendations regarding the proposed attestation for the Annual Statement. You are correct that the attestation is being considered for both the P&C and life and health versions of the Annual Statement. However, it should be noted that the initial draft of the language that was shared with you was just that: an initial draft. The content of the proposed attestation is under review, which will include your comments below. We have also heard similar concerns regarding the portion you flagged from other industry associations as well.*

CCIR Members Embracing Co-operative Framework

In CAFII's Industry Issues Dialogue with the AMF on October 4/16, Patrick Dery, Superintendent, Solvency at the AMF and current Chair of CCIR, advised that Council members are very much embracing and participating collaboratively in the Co-operative Framework for Market Conduct Supervision in its first year.

He indicated that adopting co-operative off-site inspections of insurers, on the company's own premises, is one of the proofs that CCIR members have embraced the Co-operative Framework. Three initiatives were adopted under the 2016 Co-operative Plan; and one of those is to conduct one or two company-specific reviews this year, he noted. As well, multi-jurisdictional teams of four or five people are doing thematic reviews together and "that is a first for insurance regulation in Canada," he stressed.

Financial Consumer Agency of Canada

FCAC Finds "Strong Market Conduct" Among Banks, Insurers

The Financial Consumer Agency of Canada (FCAC) says that, for the most part, financial services institutions are behaving themselves in how they treat their clients. In its latest annual report, published in early October, the FCAC indicates that it has observed "strong market conduct" among federally regulated financial services firms, such as banks and insurers. More specifically, the FCAC's compliance efforts uncovered "no major or systemic concerns."

During the past year, the FCAC investigated 708 potential breaches of federal legislation, regulations, voluntary codes of conduct and public commitments; and any compliance issues that it uncovered “were addressed in a timely and effective manner.”

Travel Health Insurance Association

THiA To Introduce “Travel Insurance Bill of Rights”

At its Annual General Meeting on September 27/16, THiA announced that it will soon be introducing a Travel Insurance Bill of Rights for consumers. The Bill of Rights initiative is the work of the Association’s 20/20 Task Force and intended to produce a “quick win” for THiA and the industry in terms of consumer and regulatory relations.

An advanced draft of the Bill of Rights is currently being reviewed by the Association’s executive and the final version is expected to be released with some fanfare before the end of 2016, following ratification by the membership.

The Bill of Rights contains 10 travel insurance rights of consumers; and four consumer responsibilities with respect to travel insurance.

Among the 10 consumer rights in the draft Bill are: to request clarification; to review and modify your medical questionnaire; to receive world-wide assistance and toll-free support; to escalate and appeal; to confidentiality; to know your insurer (policy will clearly identify insurer); and to your preferred language.

The four consumer responsibilities in the Bill are: to provide accurate information; to understand your purchase; to travel with proof of insurance; and to notify your travel insurance provider.

THiA’s plans for the Bill of Rights include prominent positioning on the Association’s web site; a requirement that members agree to abide by its provisions; the development of an associated “Seal of Approval” for members to display on their own web sites and in corporate communications; and a promotional consumer video. Member compliance with the Bill of Rights will be based on a self-reporting/honour system initially; but a more regulated system will eventually be developed.

At the AGM, THiA indicated that the Travel Insurance Bill of Rights would be mentioned in the Association’s response to the CCIR TIWG’s Travel Health Insurance Products Issues Paper, but a reading of THiA’s submission indicates that that turned out not to be the case.

THiA Well-Advanced On Travel Insurance Professional (TIP) Curriculum

At THiA’s Annual General Meeting on September 27/16, David Hartman, a Past-President of the Association and current Chair of its Education Committee, reported that the Association has made major progress over the past year in developing the educational curriculum for a Travel Insurance Professional (TIP) accreditation program. The program should be ready for implementation in the Spring of 2017.

With participation and co-operation from the Association of Canadian Travel Agencies (ACTA), the Education Committee has put together a 230-page curriculum with nine chapters; and a refined second draft is currently being reviewed by the THiA executive.

The committee’s further tasks include creation of a study manual and exams for the TIP designation; defining online hosting and related implementation requirements and securing an online education partner via a Request for Proposals process; and development of a marketing plan.

THiA makes a passing mention of this initiative in its submission on the CCIR TIWG's Travel Health Insurance Products Issues Paper, asserting that "THiA's creation of the first travel insurance-specific educational curriculum has the potential to be a tremendous tool to better educate the industry."

Canadian Life and Health Insurance Association

CLHIA Fact Book Shows Average Canadian Household Has \$388K In Life Coverage

On September 15/16, CLHIA released the 2016 edition of its industry fact book "*Canadian Life and Health Insurance Facts*." The annual fact book shows that in 2015, purchases of insurance products by Canadians continued to increase, with premium revenues surpassing \$100 billion for the first time led by the retirement solutions market.

On average, each Canadian had \$198,000 of life insurance coverage in 2015, a figure which includes both individual and group coverage. The household average was \$388,000, which CLHIA notes is about five times the typical household income.

Nationally, the average size of a new individual life insurance policy was \$330,000. Alberta and Manitoba had the largest average face value amounts at \$400,000 and \$399,000 respectively, while New Brunswick had the lowest average policy size at \$210,000.

Overall, 22 million Canadians own \$4.3 trillion dollars of life insurance, and virtually all individual coverage was purchased through financial advisors. CLHIA points out that Canadians almost always buy their individual life insurance through an agent or advisor. "Simpler products sold by direct mail or online marketing, while increasing, still only account for 1% of individual premiums," the report says.

As for the kinds of policies Canadians own, CLHIA says that individual term accounts for 36% of all coverage (measured by face value), while universal life and whole life make up 14% and 10% respectively; group insurance accounts for 40% of the amount of protection in force.

Provincial

Alberta

Alberta Seeks CAFII Input On Definition of CGI Critical Illness To Be Adopted

On October 11/16, Joanne Abram, CEO of the Alberta Insurance Council, sent an official letter to CAFII to confirm the Life Insurance Council's recent decision with respect to the selling of critical illness insurance benefits under a Restricted Certificate of Authority. The letter reads as follows:

Further to the Alberta Insurance Council review into products distributed under Restricted Certificates of Authority, the Life Insurance Council thanks you for your submission regarding the sale of group critical illness insurance.

The LIC met on September 28, 2016 and has, subject to the acceptance of an appropriate definition, decided to specify that creditor group (CG) critical illness insurance coverage can be sold under a restricted Certificate of Authority for Credit Related Insurance in addition to CG life insurance, CG disability insurance, and CG loss of employment insurance.

To finalize this matter, the LCI has requested your input regarding the definition of creditor group critical illness to be adopted for the purposes of restricted licensing. We would ask that any submission regarding this definition be provided to Council no later than October 31, 2016.

Earlier, on September 28/16, Ms. Abram had communicated the following good news to B. Wycks via email: *the Life Insurance Council met this morning and have come to the decision to redefine Credit Related Insurance to include Creditor group (CG) Life, CG Disability, CG Critical Illness and loss of employment. I will be sending out a formal letter to advise you of such and to seek CAFII's input regarding the definition of creditor group critical illness to be adopted for the purposes of restricted licensing.*

Saskatchewan

FCAA Seeks Comments On Draft Insurance Regulations By December 2/16

On October 7/16, Saskatchewan's Financial Consumer Affairs Authority (FCAA) released its Insurance Regulations Consultation document, but took the unusual step of embargoing the document and making it confidential to one point person at each industry stakeholder/Association along with the stakeholder's legal counsel, unless the FCAA grants express permission for the document to be shared with other members of the organization.

B. Wycks requested and received permission from Jan Seibel, Legal Counsel at the FCAA, for the consultation document and the password required to open it to be shared with CAFII Market Conduct, EOC, and Board members. However, that permission was conditional upon him obtaining from each CAFII representative an indication that he/she is willing to comply with the embargo provisions which prohibit further distribution.

Ms. Seibel advised that the reason why the FCAA decided to embargo its consultation document is that the document has not yet been shared with the Cabinet of the Government of Saskatchewan; and the Cabinet will be the body that ultimately approves the Regulations and brings them into force.

The deadline for stakeholder response submissions is December 2/16; and the consultation document states that the FCAA is targeting having the revised Insurance Act and the related Regulations come into force at some point in April 2017.

Manitoba

Insurance Council Asks Government To Expand RIA Licence Parameters

On September 23/16, Erin Pearson, Executive Director of the Insurance Council of Manitoba (ICM), provided clarification to B. Wycks on the news, mentioned in the Council's 2015-16 Annual Report, that its Incidental Sales of Insurance (ISI) Committee had made recommendations to the Government for amendments to Regulation 389/87 to allow for other organizations and other types of insurance which were not prescribed in the original Restricted Insurance Agent regulatory framework.

Erin advised that *the ICM recognized prior to implementation of the RIA framework that the area of ISI is an emerging one, and that the framework which allows only organizations and insurance prescribed by the Regulation would result in an inability to react to changes in the marketplace in a timely manner.*

We have also recognized that while the framework incorporated the known entities/products, there was certainly a reasonable possibility that there were entities/products that were not identified. Specific instances of this came to light after the licensing regime was put in to place, and a new submission was made to the Government to allow increased flexibility to the process required to incorporate new entities and products – under specific conditions of course – to the licensing framework. This is still the “long term” goal, and discussions are continuing with the Government in this regard.

Short term – GAP products were sold in Manitoba by car dealerships until recently. This is not a product that was contemplated by the original regime in Manitoba, and it has since been incorporated by both the Alberta and Saskatchewan RIA regimes. The Superintendent of Insurance, with the support and input of ICM, is currently working on changes to the Regulations to allow the sale of GAP products in Manitoba through the RIA licensing structure. It is our understanding that this is a high priority issue for them and we expect to see draft Regulations fairly soon.

Insurance Council Announces Enhancements To Online Licensing Portal

On September 26/16, the ICM announced that a number of enhancements to its online licensing portal would be implemented in the near future. These enhancements will allow most licensing transactions to be completed in an online, paperless environment and enable licence holders to submit or update licensing information 24 hours a day, 7 days a week. Details and instructions for use of the upcoming enhancements will follow in the coming weeks and will be posted on the ICM website (www.icm.mb.ca).

The processes that will soon be available on the online portal include:

- apply as a new licence applicant
- apply for an amendment and/or reinstatement of a previously held licence
- upload required documents, such as the criminal record check or errors & omissions insurance
- enable the Authorizer (the Operating Agent/Designated Representative or Insurer) to review and submit their approval of the application
- track the real-time status of the application throughout the process
- register for a modular LLQP examination
- register for an Adjuster or General examination
- make payment via credit card.

Ontario

CAFII Responds To Terminology Input Request Re Life Agent/Insurer Relationship

On October 12/16, CAFII responded to a FSCO request for input, raised in an October 7/16 meeting on life agent compliance, with respect to the following question related to the optimal wording to be used on Licensing Link and in other FSCO communications with respect to the life insurance agent and insurer relationship: *is “represents” the proper term to be used with respect to life agents and their relationship with insurers? Or would “contracts with” or “sells the products of” – alternatives which have been recommended by other industry Associations -- be better and more appropriate terminology to use, which would be less likely to cause misunderstanding or confusion among agents and/or insurers Which wording option does CAFII recommend be used?*

CAFII's response indicated that *we share the concern that you indicated you've heard from other stakeholders about use of the word "represents" in this context, as it can imply an employer/employee relationship, rather than an agency relationship. There is a consensus among our members that the more appropriate terminology to use – which would help avoid any possible confusion or misunderstanding -- would be "sells the products of"; or, as an alternative, "has contracts with."*

FSCO System Enhancements To Improve Monitoring Of Life Agents' E&O Insurance

On October 7/16, a small group from CAFII met with representatives from the Licensing Branch of FSCO's Licensing and Market Conduct Division, at FSCO's request. The focus of FSCO's agenda was to provide an update on planned changes and initiatives pertaining to life insurance agent compliance, particularly with respect to agent and insurer responsibilities related to E&O insurance.

Given that both agents and insurers are responsible for ensuring that agents have valid E&O coverage in place at all times, FSCO advised that the following changes will be introduced to its Licensing Link system on November 1/16:

- whenever a life agent signs into Licensing Link and wants to update his/her profile information, it will be mandatory to complete/update information related to the insurance company(ies) he/she "represents" in order for any profile change to be registered and confirmed in the system. The agent will see only error messages if he/she doesn't provide or update the information on the insurance company(ies) he/she "represents"; and
- insurers will be able to see not only their sponsored agents, but also all other agents who say they represent that company and sell its products, along with E&O insurance coverage status of all such agents. FSCO will also be sending periodic e-mails to insurers with a list of their sponsored and unsponsored agents who don't have valid E&O coverage in place.

Advocis Fears FSRA Will Mean End To Principles-Based Regulation In Ontario

In a September 2016 Regulatory Bulletin, Advocis expressed concern about the recommendations made by the Expert Panel on the future mandates of FSCO, DICO, and the FST -- which would eliminate FSCO and fold its functions into a new Financial Services Regulatory Authority (FSRA).

The three-member Expert Panel appointed by the Ontario Ministry of Finance believes the province's financial services regulatory regime is not as effective as it should be and therefore recommended that the functions of several agencies be combined into a single, self-funded authority. The Panel released its final report on June 20/16, and Advocis is concerned that its recommendations may spell the end of principles-based insurance regulation in Ontario.

"FSCO's principles-based, outcomes-focused approach to regulation — carefully developed by the agency over decades of working with all industry stakeholders — could be swallowed up by the proposed FSRA, with the unfortunate consequence that FSCO's traditional principles-based approach could be replaced with a securities-style, rules-based model", reads the Bulletin. "This change could happen suddenly, by regulatory fiat, or it could occur slowly, by intra-agency cultural change. Such a shift in regulatory philosophy is not necessary. Nor is it suitable to the task of effectively regulating the provision of advice and products by the province's licensed life agents. No amount of rule-making, compliance sweeps, and guidance bulletins will eliminate bad behaviour or make mediocre people more competent."

In the Bulletin, Advocis asserts that life insurance agents and financial advisors should be treated like lawyers or social workers who have certain rights and duties. It also says that regulation without representation is unfair, inefficient, and a barrier to professionalism.

As a solution, Advocis promotes its preferred model for the future of life agent regulation in Ontario: that Advocis be designated as a self-governing Delegated Administrative Authority (DAA) with a code of professional conduct, mandatory membership, and a best interest duty incumbent upon its members.

Quebec

AMF Expects Omnibus Bill In Fall 2016 Or Winter 2017 Session

In CAFII's Industry Issues Dialogue with the AMF on October 4/16, AMF staff executives advised that they expect that the Ministry of Finance's tabling of an omnibus Bill -- which, among several thrusts, will seek to overhaul and modernize the province's Insurance Act and Distribution Act -- will occur in either the Fall 2016 or Winter 2017 session of the National Assembly.

AMF CEO Louis Morisset indicated that the omnibus Bill actually be several distinct Bills grouped together under one umbrella, including updates to the Act Respecting the AMF and the Financial Co-operatives Act. The AMF is particularly keen to see the omnibus Bill brought forward soon because modernizations to several pieces of legislation that govern the AMF's regulation of the financial services sector are key to its being able to do an effective job in the future.

In 2018 at the latest, Mr. Morisset advised, the International Monetary Fund will be visiting the AMF again for a follow-up Financial Sector Assessment Program (FSAP) review, and one of the things it will be looking at is the regulator's ability to make decisions and act without impediments and undue government control. That will require changes to the Act Respecting the AMF.

Phillipe Lebel, Director General of Legal Affairs, indicated that whistle-blower protection provisions are another key modernization which the regulator is looking for in the Act Respecting the AMF revisions.

Patrick Dery, Superintendent, Solvency, advised that the AMF needs the Government to incorporate flexibility into the laws it modernizes, so that they won't be obsolete in six months' time.

Eric Stevenson, Superintendent, Client Services and Distribution Oversight, indicated that the AMF has a fairly high degree of confidence that the Ministry of Finance will provide the flexibility needed in the updated laws for the AMF to be more nimble and able to adapt to changing market circumstances, without having to re-open legislation every two years.

Mr. Stevenson also indicated that the AMF is confident that the Government's coming legislative modernizations will support the electronic commerce orientations/proposals put forward in its April 2015 "Internet Insurance Offerings in Quebec" paper, and that they will confirm the permissibility of selling simple insurance products online without the necessary involvement of a licensed advisor.

Louise Gauthier, Senior Director, Distribution Policies and Compensation, advised that because there are direct linkages between internet insurance offerings and the province's Distribution Without Representation (DWR) regime, the AMF has decided to hold off on further work on overhauling its two-page Distribution Guide until the Distribution Act modernizations are brought forward. However, if a wait of several more months does not bear fruit and the omnibus Bill is not brought forward by the end of the Spring 2017 legislative session, then the AMF may re-activate the Distribution Guide project, under the auspices of the current Distribution Act.

Minister Of Finance To Give Luncheon Address At AMF's 2016 Rendez-Vous

Quebec Minister of Finance Carlos Leitaó will be the luncheon speaker at the AMF's 2016 Rendez-Vous, a one day conference on financial services regulatory issues, on November 14/16 in Montreal. In April of this year, in response to a question posed by an Opposition member during a legislative committee hearing, the Minister indicated that his Ministry would table an omnibus Bill to modernize Quebec's financial services sector, including the Insurance Act and the Distribution Act, likely before the end of 2016; and that there would be a public consultation period on the draft legislation.

Other features of this year's Rendez-Vous include:

- an opening address by Louis Morisset, AMF CEO; and
- a closing plenary session on "Impact of Climate Change on the Financial Community" moderated by Patrick Dery, Superintendent, Solvency at the AMF and current Chair of CCIR.

Cost for the Rendez-Vous event is \$95 and registration is available at <http://www.lautorite.qc.ca/fr/rdv-inscription-pro.html>.

New Brunswick

FCNB To Accept Only Online Licence Applications Effective November 1/16

On October 17/16, the Financial and Consumer Services Commission of New Brunswick announced that it had completed a software upgrade to its online insurance licensing portal <https://portal.fcnb.ca>. The upgrade enables insurers to review, in the portal, sponsorship requests for applicants seeking a licence as an agent or broker.

FCNB also announced that effective November 1/16, it will only accept online applications for agent, broker, adjuster, and damage appraiser licences. Paper applications submitted to the Superintendent that are incomplete as November 1 will not be processed and will be considered abandoned by the applicant. Applicants who have their paper applications abandoned and wish to reapply must do so through the online portal. Applicants who have submitted paper applications and have been notified that they must address deficiencies, are strongly encouraged to do so without delay and before November 1.

All insurers that sponsor agent, broker, adjuster, or damage appraiser licence applications should now have an Administrative User account established in the portal.