

Agenda Item 4(c)
October 29/19 EOC Meeting

Board-Mandated External Counsel Legal Opinion On AMF Directive To Cancel And Remove Existing/In-Force Credit Protection Insurance Coverage From Non-Debtor Spouses

From: Keith Martin <Keith.Martin@cafii.com>

Sent: October-16-19 1:21 PM

To: CAFII Board Members and Surrogates

Subject: Next Steps on CAFII Engaging a Quebec-Based Lawyer to Offer a Legal Opinion on the Cancellation of In-Force Certificates

Background

The CAFII Board has asked CAFII to engage a Quebec-based “heavy hitter” lawyer to challenge the AMF’s position that existing, in-force insurance policies that do not meet the interpretation of “spousal pecuniary interest” have to be cancelled over time.

Based on consultations with the Board and other CAFII members, we have concluded that the best external legal counsel to approach for this engagement is Marc Duquette, of Norton

Rose. <https://www.nortonrosefulbright.com/en-ca/people/120978>

Concerns Raised and Mitigating Actions Taken

There was concern expressed that such a legal opinion, especially if presented in written form to the AMF, could be discoverable. That issue was discussed with members, including their internal legal counsel, at a teleconference call on 16 October, 2019 from 12.00-12.30pm.

To mitigate against this risk, it was agreed that CAFII will ask the legal counsel for his views on the risks of moving forward on this initiative, the option of a Common Interest Privilege and Joint Defence Agreement, and his opinion on whether a written submission should be made to the AMF, or just a verbal submission. It was also noted that CAFII members (this distribution list) will be consulted as we move forward, including a review of any written documentation developed prior to it being shared externally in any way.

It was also agreed that we should not ask for legal counsel to develop arguments on the potential “legal implications” of cancelling existing policies. Instead, we will ask him to develop arguments along the following lines:

“The issue on which we will be seeking to have a legal opinion crafted is the legality/correctness of the legislative and regulatory interpretation underlying the AMF’s directive that affected credit protection insurers must cancel and remove existing/in-force spousal coverage from non-debtor spouses, where the creditor’s pecuniary interest in the life and/or health of the spouse cannot be demonstrated to the AMF’s satisfaction.”

There was also some discussion about whether we can make a compelling legal argument countering the AMF expectation that policies will be cancelled, without challenging the more fundamental issue of the AMF's general interpretation for demonstrating the pecuniary interest of a spouse. We will ask the legal counsel for his views on that. While the focus of this exercise is around cancellation of existing policies, we will also ask legal counsel to offer an opinion on the interpretation of the AMF of Section 76 with respect to this issue.

Next Steps

Given the sensitivity of the issues at hand, CAFII members will be consulted regularly as we move forward.

As a first step, please email me if you have any concerns with the general direction being proposed in this note by **Thursday, 17 October, at noon.**

If there are no concerns or show-stoppers, Marc Duquette will be approached with the general instructions noted above, and he will be asked to produce a proposal that indicates how he will address our questions, that includes his recommended approach, which identifies timelines, and which includes a preliminary quote.

After receiving that from Mr. Duquette, it will be circulated to those on this distribution list. A conference call will likely then be called to discuss that document.

If we then proceed, I would propose a teleconference call with Mr. Duquette and those on this distribution list, to discuss more fully the issues and possible legal arguments to be developed, and to provide him with additional background and context. Before any major decision is made, like providing the AMF with a submission either written or verbal, members on this distribution list will be consulted.

On the matter of language, I realize many members including their legal counsel may not be fluent in French; however, I believe that the written materials Mr. Duquette will produce will be largely in French. In those cases, I will send the original French documentation with a English translation that I will produce.

Any questions or concerns, please let me know.

--Keith

Keith Martin

Co-Executive Director / Co-Directeur général

Canadian Association of Financial Institutions in Insurance

L'association canadienne des institutions financières en assurance

keith.martin@cafii.com

T: 647.460.7725

www.cafii.com