



REQUEST FOR PROPOSAL

LAW FIRM TO MANAGE SPECIAL PROJECT

ON

CREDIT CARD BALANCE PROTECTION INSURANCE

FOR

CANADIAN ASSOCIATION OF FINANCIAL

INSTITUTIONS IN INSURANCE (CAFII)

JANUARY 2019

CAFII Request for Proposal for Law Firm to Manage Special Project on Credit Card Balance Protection Insurance

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CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS IN INSURANCE

REQUEST FOR PROPOSAL FOR LAW FIRM TO MANAGE SPECIAL PROJECT ON CREDIT CARD BALANCE PROTECTION INSURANCE

EXECUTIVE SUMMARY

The Canadian Association of Financial Institutions in Insurance (CAFII) is currently seeking proposals from law firms to manage a special project on credit card balance protection insurance (CCBPI).

Credit Card Balance Protection Insurance (CCBPI) has been identified by some regulators, including the Financial Consumer Agency of Canada (FCAC), as a “problematic” product. There are signals that Canadian insurance regulators may focus increased attention on this product. There has also been heightened media focus on this product recently, for example the 9 November, 2018 CBC Marketplace story on CCBPI.

It is important for the industry to be prepared for such developments, to be able to articulate and provide evidence of the consumer value proposition of this product, and potentially to make enhancements to the product to strengthen the industry’s case that it is listening and responding to concerns from regulators and consumer groups.

CAFII is the industry Association most directly focused on CCBPI and intends to play a leadership role in promoting the interests of the industry around this product. CAFII needs to put itself and its Members in a position of poised readiness to present positive information about the product to regulators, media, consumer groups, and other stakeholders.

This RFP, in its entirety, provides a detailed explanation of the nature and purpose of this special project. In summary, however, CAFII, on behalf of its Members, seeks to identify the concerns that CCBPI has elicited from regulators and consumer advocacy groups in other countries and compare them to the situation in Canada; to identify where the situation is the same or different in Canada, and what are the risks and opportunities this presents for the Canadian industry; and from those findings, to determine what aspects of CCBPI could be reformed, either at an industry or proprietary level, and make recommendations on those opportunities.

We seek a law firm with a national and international insurance and financial services regulatory presence who can manage this entire process, which may include outsourcing certain components to research, strategy, or other consulting firms, as appropriate. **The reason that we have chosen to seek a law firm to manage this process is our overarching desire to have a competition law lens oversee the entire process, to ensure that at no time would CAFII and its Members inadvertently stray into conversations or actions that are prohibited under the Competition Act or be otherwise inappropriate.**

Clarification questions on this RFP can be sent directly to CAFII Co-Executive Director Keith Martin at keith.martin@cafii.com. All questions will be collected into one document and a consolidated document with all the answers will be sent to all organizations who indicate that they will be participating in this RFP. The identity of the organization posing a question will not be disclosed. The deadline for submitting clarification questions is **5:00 PM, Tuesday, 22 January, 2019**; and CAFII will distribute a consolidated response document by **Tuesday, 29 January, 2019**.

The deadline for submission of proposals is **5:00 PM, Thursday, 14 February, 2019**. Each firm submitting an RFP response will then be invited to present their proposal in a meeting with a Selection Committee of the CAFII Board of Directors. We anticipate that presentation meetings will occur on **Thursday, 21 February, 2019**. Proposals should be submitted electronically through an email sent to keith.martin@cafii.com.

INTRODUCTION AND BACKGROUND ON CAFII

The Canadian Association of Financial Institutions in Financial Services

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer travel, life, health, property and casualty, and creditor's group insurance across Canada. In particular, creditor's group insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express, Assurant, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.

TIMELINES

CAFII has identified the following timelines for this RFP:

January 11, 2019 – Distribution of NDA; after signed NDA is received, firm will be sent RFP

January 22, 2019 (5:00P PM)—Deadline for submission of RFP clarification questions

January 29, 2019—CAFII circulates consolidated responses document to answer RFP clarification questions

February 14, 2019 (5:00 PM) – Deadline for RFP Submissions

February 21, 2019 – Presentations by respondent firms to CAFII Board of Directors

Post February 21, 2019 – CAFII's Selection Decision Announced

7 Weeks Following Selection Decision—Deadline for Submission of final outputs with winning firm presenting to Board of Directors on 16 April, 2019

CONFIDENTIALITY AND ACCESS TO MATERIALS

All data and information which firms participating in this RFP gather from CAFII or its Members must be managed in a strictly confidential manner and be maintained on computer programs in a secure and encrypted manner. All firms bidding on this RFP are to have pre-signed an NDA. Any third-party firms the bidding firm seeks to engage in this RFP, and with whom it shares any information contained in the RFP, is expected to sign an NDA with the bidding firm prior to any information being shared with that third-party.

DETAILED REQUIREMENTS

Competition Law Lens Throughout the Process

Because part of the CCBPI discussions which CAFII Members may engage in includes the consumer value proposition of the product and potential enhancements to it, and because we must remain fully compliant with Canada's Competition Act, we seek to retain the services of a firm with recognized expertise in both competition law and insurance law, which can advise us of the areas of permissible discussion and those which must be avoided. Initially, CAFII will provide background on the types of activities we seek to engage in, to obtain general competition law advice. However, if we ultimately decide to pursue discussions among Members of the Association in areas of potential sensitivity from a competition law perspective, it would be advisable that we do so with the involvement of a competition lawyer so as to ensure, and be able to document, that no inappropriate discussions inadvertently take place. For this reason, we will also seek to have the law firm manage the entire process including outsourcing to special expertise firms to be engaged with respect to some of the outputs we seek.

As part of the proposal to us, please identify which remuneration model you recommend for the competition law lens (for example: retainer, billing for actual time, or lump-sum based on expected effort for overall project). Please indicate your expectations around remuneration

(paid up front, paid upon completion of project, portion paid up front and remainder paid upon completion etc.)

Understand Similarities and Differences Between Canada and Other Markets; and the Consumer Value Proposition of CAFII Members' CCBPI

As a key output of this special project, CAFII seeks an internationally-focused comparative research project. This is not intended to be technical or legalistic analysis. Rather, we are trying to compare Canada to four jurisdictions, in particular: Australia, U.K., U.S., and Ireland, along the following dimensions: what was it about CCBPI that upset regulators and consumer groups in these jurisdictions?; with respect to those issues that upset regulators and consumer groups in those countries, what is the same here in Canada? What is different here in Canada? What can we change here (possible reforms, some at an industry level, some proprietary)?

More specifically, following is an illustrative, and not exclusive, list of some of the questions that a research program might be able to address:

- What features of CCBPI most concerned regulators in Australia, the UK, the US, and Ireland?
- How are those features of CCBPI different, or similar, in the Canadian marketplace?
- What is the consumer value proposition of the product in Canada? What are the major benefits to consumers as CCBPI is currently structured in this country?
- What are the major criticisms levied at the product in Canada by regulators, media, and consumer groups?
- How does the product differ among different CAFII Members? (This could be a table showing, based on public information, how each product differs in terms of price, exclusions, limitations, eligibility, claims approach (what is paid out if a claim is made) etc.)
- What features of the Canadian CCBPI marketplace are different from the environment in other jurisdictions (such as the regulatory environment, controls, compliance, training, adherence to the fair treatment of customers, etc.)?
- What is the CCBPI loss ratio in other jurisdictions? What indications are there in Australia, the UK, the US, and Ireland of what regulators and consumer groups consider a minimum acceptable loss ratio for this type of insurance product?
- What are the similarities and differences in the CCBPI regulatory environment in Canada versus those in the four other jurisdictions?
- What are the differences and similarities between Canadian business culture and support for the fair treatment of customers, relative to the four other jurisdictions?
- What are the similarities and differences around CCBPI controls / training / monitoring / sales incentives in Canada relative to those in the four other jurisdictions?

Criticisms of CCBPI

By way of further clarity on the issues that the research should explore, following are some of the complaints that have been made about CCBPI:

- Aggressive/high-pressure sales tactics;
- Consumers enrolled in the product without express consent;
- CCBPI typically offers bundled insurance coverages, parts of which the customer may not be eligible for e.g. a retiree signs up for a bundled package which includes job loss insurance;
- FIs enrol consumers who are not eligible (for example, job loss coverage for unemployed people);
- Not clear on pre-existing conditions / exemptions / exclusions;
- Too many exemptions / exclusions;
- “Post-claims underwriting” with a high percentage of claims denials;
- Difficulty to make a claim – high claims denial rate;
- Too expensive / low loss ratio;
- Profit machine for banks;
- Consumers not aware of free look period;
- Free look period used as leverage in a high-pressure sales process
- Employees incented to sell product/have sales targets, resulting in a conflict of interest.

Decision about Firm that Conducts the Comparative Research Project

We will leave it to the firms bidding on this RFP to determine whether they wish to conduct the comparative research project using internal resources, or would outsource to an outside company with expertise in this area. If the latter, we expect to be engaged in the effort and seek to have the selected law firm provide competition law lens oversight throughout the process. For illustrative purposes only, following are examples of firms that we believe could have the required expertise to conduct this comparative research project.

Table One—Potential Firms to Conduct Research and Offer Strategic Advice

<u>Legal Firms</u>	<u>PR/GR Firms</u>	<u>Consultancy/Strategy/Research Firms</u>
Torys	Hill + Knowlton Strategies Canada	KPMG
Fasken	Fleishman Hilliard Public Relations	McKinsey & Company
Stikeman Elliott	Ipsos	E&Y
Blakes		PWC
BLG		Deloitte Consulting
		Boston Consulting Group
		Bain & Company

Research Methodology

We will leave it to the firms bidding on this RFP to determine what is the methodology to answer these questions, but we believe that among the methods are:

- Review of public documents;
- Review of website information;

- Academic and government studies;
- Other publicly available documents;
- Interviews with experts including CAFII Members, business people in the other jurisdictions, and experts within the law firm itself or outsourced firms who have knowledge of these matters.

Research Effort and Price Ranges

CAFII is seeking the research output, and the strategic recommendations as outlined in the next section, within 60 days of the granting of the contract. As there could be a variety of different types of reports depending on the complexity and depth of analysis, we are open to bidding firms providing cost ranges based on the depth of the analysis—for example, a 25-page report with limited analysis at price A, a 50-page report with more detailed analysis at price B, etc.

Final Report to Include Strategic Recommendations Including Possible Reforms and Enhancements to the CCBPI Product

A key objective of this research is to identify where there may be risks for the Canadian CCBPI product and the industry which offers it. Another objective is to identify where the criticisms and concerns levied in other jurisdictions may not be relevant and applicable here. Out of these research findings, we also seek **expert strategic recommendations** on what are the risks and opportunities for the Canadian industry, including possible reforms that could demonstrate that the industry is being proactive and responsive to the concerns of insurance regulators and consumer advocacy groups. Some of these reforms could be at an industry level (for example, one option would be Guidelines similar in nature to CLHIA Guidelines); others might be changes made at a proprietary level within individual companies. **In all cases, it is critical that this component of the effort include a competition law lens that ensures that all discussions, and any actions taken, fully comply with obligations under the Competition Act.**

ENGAGEMENT OF THE WIDER INDUSTRY

This section of the RFP is for background information purposes only. If coming out of this Special Project, there are reforms contemplated to CCBPI, there are non-members of CAFII whom we may wish to engage in the industry-wide reforms opportunity. This will be a consideration that CAFII will discuss with its Members. The non-members of CAFII players include Canadian Tire Financial, PC Financial, Walmart Bank, Rogers Bank, HBC, Sears, and Chubb Insurance. As well, as this project moves forward, CAFII would need to find a way to keep the Canadian Bankers Association (CBA) and the Canadian Life and Health Insurance Association (CLHIA) informed of developments.

POSSIBLE PHASE II OF THE SPECIAL PROJECT ON CCBPI

After considering the output of Phase I of this project, CAFII and its Members may consider a Phase II which would involve an RFP to engage a government relations / public relations firm which would develop a GR/PR campaign based on our findings in Phase I, including any reforms that may be made at an industry or proprietary level. This will only be decided upon after the

completion of Phase I, but if we do proceed with a Phase II, a competition law firm would also be engaged as part of that effort.

ADDITIONAL WORK COMING OUT OF THIS SPECIAL PROJECT

It is possible that individual CAFII Members will seek the involvement of a competition law firm to guide them through any proprietary CCBPI reforms they may engage in coming out of this industry Association-led special project on CCBPI.

PROPOSAL SUBMISSION—REQUIRED CONTENT

Review all of the detailed requirements as outlined above and provide a written submission detailing how your organization is able to meet or exceed these requirements, including pricing for each of the services required and any and all additional costs you would charge for.

Provide details around how your firm would structure this process and the required outputs, and detail the costs associated with each component part as well as the overall cost.

Provide details on what components of this special project you would outsource and the process for such outsourcing.

CAFII EVALUATION CRITERIA

<u>Criteria</u>	<u>Weight</u>
Firm has demonstrated a thorough, comprehensive, credible understanding of the project; has demonstrated that it has the required expertise and experience within the firm to lead the project; and has proposed an efficient and effective process for managing the project	45%
Firm's price is competitive	25%
Firm has a solid outsourcing plan to supplement its own expertise, as appropriate	15%
<p>Firm has demonstrated knowledge of CAFII and its Members, including being an Associate of CAFII, so that CAFII time and effort required for orientation and assistance in climbing learning curve will be minimal.</p> <p><u>Specifically:</u></p> <p>CAFII Associates get 3 automatic points in this category</p> <p>All bidding firms are assessed on "demonstrated knowledge of CAFII and its Members," with a maximum possible score on this dimension of 12 points</p>	15%

APPENDIX A

Non-Disclosure Agreement

Competition Laws. WINNING FIRM represents and warrants that it is familiar with, has complied with, and will comply, in all respects, with applicable competition laws including the provisions of Canada's Competition Act and will implement appropriate policies, conduct appropriate training of its employees and directors, and adopt appropriate processes for meetings and documentation to ensure that it and they will remain compliant.

Third-Parties. All firms bidding on this RFP are to have pre-signed an NDA. Any third-party firms the bidding firm seeks to engage in this RFP, and with whom it shares any information contained in the RFP, is expected to sign an NDA with the bidding firm prior to any information being shared with that third-party.

General Provisions. WINNING FIRM agrees and undertakes to maintain in strict confidence any data or information provided by CAFII and CAFII Members ("Confidential Information") by virtue of the Initiative, to restrict access to the Confidential Information only to those employees engaged in the Initiative and who have a need to know for the purposes described herein to the exclusion of any other employees who do not provide services in connection with the Initiative, and use the Confidential Information for no other purposes than those set out herein (except if required otherwise by applicable laws, court or governmental agency). Moreover, WINNING FIRM agrees to not use or attempt to use the Confidential Information in any way that would be in violation of any applicable law or in any manner that could be deemed anticompetitive. WINNING FIRM will be liable for any failure by its employees to comply with the terms of this agreement.

All Confidential Information will remain the exclusive property of the applicable disclosing party, and WINNING FIRM will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided in this agreement.

WINNING FIRM will not use Confidential Information for any purpose other than evaluation and implementation of the Initiative. WINNING FIRM will not disclose, make available to, or provide or permit access to or use of any Confidential Information, by a third party except as permitted by this agreement. WINNING FIRM agrees that it will establish safeguards to ensure that all data is uniquely identified as to the Initiative participant to whom it belongs and all Confidential Information will be secure from unauthorized access and/or use.

In the event of any actual or suspected security breach involving Confidential Information WINNING FIRM will immediately notify CAFII and CAFII Members, immediately allocate

required resources to address and cure the breach and implement all reasonable mechanisms to mitigate the risk and prevent future occurrences, including cooperating in all reasonable respects with CAFII and CAFII Members to minimize the impact of the security breach or loss and any damage resulting therefrom.

Upon written request from CAFII or a CAFII Member, WINNING FIRM will promptly return or destroy, and verify in writing its destruction of all material, in any form, embodying a disclosing party's Confidential Information.

This agreement will be governed by and construed in accordance with the laws in force in the Province of Ontario, and the parties attorn to the nonexclusive jurisdiction of the courts of Ontario.

Confidentiality and Data Privacy. Each party shall protect all confidential information which the other party provides to it (whether orally, in writing or in any other form) against unauthorized access, use, disclosure, destruction, loss or alteration using at least the same degree of care that a party uses to protect its own confidential and/or proprietary information, but in no event less than a reasonable degree of care.

Each party's obligations will not apply to information: (i) already known to it at the time of disclosure; (ii) in the public domain or publicly available; (iii) available from a third party who is under no such obligation of confidentiality; or (iv) independently developed by it. Each party may disclose confidential information to its legal advisors to protect its own legitimate interests and to comply with any legal or regulatory requirements. If any court, regulatory authority, professional body or legal process requires the recipient to disclose information covered by this confidentiality obligation, then the recipient may make any such disclosure; provided that the recipient will, if permitted by law, advise the other party promptly of any such requirement and cooperate, at such other party's expense, in responding to it.

Irrespective of where WINNING FIRM receives or holds individually identifiable personal information ("Personal Data") on behalf of any of the other parties, WINNING FIRM confirms that, acting as data processor it will take appropriate technical, physical and organizational/administrative measures to protect that Personal Data against accidental or unlawful destruction or accidental loss or unauthorized alteration, disclosure or access. WINNING FIRM will only use that Personal Data for the purposes of providing services to the other parties or for other reasonable purposes which are related to the services WINNING FIRM provides, unless the parties instruct otherwise. The other parties and WINNING FIRM shall each comply with the provisions and obligations imposed on each of them by applicable data privacy legislation and regulations.

Limitation of Liability. If WINNING FIRM services do not conform to the requirements agreed between all parties, WINNING FIRM will be notified promptly and it shall re-perform any non-conforming services at no additional charge or, at WINNING FIRM option, refund the portion of the fees paid with respect to such services.

If re-performance of the services or refund of the applicable fees would not provide an adequate remedy for damages, the aggregate liability of WINNING FIRM and its employees, directors, officers, agents and subcontractors (the “related persons”) to the parties whether in contract, tort (including negligence), breach of statutory duty or otherwise for any losses arising from or in any way connected with our services shall not exceed in aggregate the greater of (a) \$250,000 or (b) the total amount of the fees paid to WINNING FIRM for the services provided pursuant to this agreement, unless otherwise agreed in writing. Nothing in these terms shall exclude or limit the liability of WINNING FIRM or its related persons in the case of: (a) death or personal injury resulting from our or our related person’s negligence; (b) willful misconduct; (c) fraud; or (d) other liability to the extent that the same may not be excluded or limited as a matter of law. In no event shall WINNING FIRM or any of its related persons or affiliates be liable for any incidental, special, punitive, or consequential damages of any kind (including, without limitation, loss of income, loss of profits, or other pecuniary loss).

Where WINNING FIRM are jointly liable with another party, WINNING FIRM shall to the extent permitted by law only be liable for those losses that correspond directly with its share of responsibility for the losses in question.

SIGNED BY REPRESENTATIVE OF WINNING FIRM