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FIA & CUIA Review  
Policy & Legislation Division  
Ministry of Finance  
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**Subject:** Financial Institutions Act & Credit Union Incorporation Act Review

CAFII is pleased to provide the following input in response to the issues and questions raised in the Initial Public Consultation Paper that are relevant to our members' insurance-related activities. Our responses are offered from the perspective of insurers and distributors that:

- Offer creditor's group insurance and travel insurance in BC and across Canada;
- offer insurance solutions through alternate, non-traditional distribution channels such as direct mail, contact centres, and the internet; and
- for the most part, are federally incorporated and subject to both federal and provincial regulation

**Objectives of the Legislative and Regulatory Framework.**

CAFII supports the legislative and regulatory framework's key goal of maintaining stability and confidence in the financial services sector by reducing the risk of failures and providing consumer protection. We also believe that private corporations in a competitive environment can enhance British Columbia's economic vitality and spur innovation, and in that connection we applaud the recognition that it is important to reduce red tape and unnecessary regulations that hinder economic development.

We support harmonization of regulations and licensing requirements between provincial insurance regulators. This is a critical requirement for the industry, the absence of which leads to inefficiencies. We also support alignment with international regulatory best practices, such as IAIS Insurance Principles.

**Recommendation #1: Establish FICOM as a Crown agency.**

CAFII supports the establishment of FICOM as a Crown agency which would be authorized to operate as an independent government agency, accountable to the provincial legislature through the Minister of Finance. We support a funding model that gives FICOM greater independence, but we would express concern about a self-funding model if that model is based on the agency only being able to operate from revenues associated with fines. MORE WORDING TO BE ADDED – BRENDAN TO SEND TO KEITH

**Recommendation #3: The Commission will appoint the CEO and statutory decision makers of FICOM.**

Giving the Commission the power to appoint the CEO and statutory decision makers of FICOM will enhance the authority and effectiveness of FICOM and is a positive step.

**Recommendation #5: Provide FICOM with the authority to issue enforceable guidelines/rules. Guidelines/rules will require public consultation and Ministerial approval.**

We agree with the general thrust of this recommendation, but we feel details about the public consultation process and oversight rules are critical to the successful implementation of this recommendation. Where a substantive rule change is being contemplated in any jurisdiction, CAFII believes that best practice is to publish the proposed rule for stakeholder/public consultation before adoption, following which the relevant Minister can either consent to or reject the proposed rule. If FICOM is to be granted rule-making authority, it should be required by statute to engage in a meaningful consultation process whenever it uses that authority. It is also critically important to our members that new rules, regulations, and guidelines be given a sufficient timeline for implementation. This is particularly true where our members need to make process or system changes, which require investments of time and effort and the ability to test the changes to ensure that they are not going to adversely affect other processes or systems.

**Recommendation #10: Provide FICOM with clear authority to share information with the existing national insurance reporting database and/or the proposed new national market conduct database.**

With respect to national databases, CAFII has emphasized in the past to FICOM and the Insurance Council of BC the compelling need for an integrated national database to facilitate licensing and monitoring of insurance agents across all jurisdictions. A nationally integrated electronic licensing system could become the foundation for a system of mutual recognition for vetting of applications and for ongoing supervision. In that respect, we are pleased with the development by CCIR, under the auspices of the AMF, of an Annual Statement on Market Conduct, which our members participated in and whose continued evolution and enhancement we support.

**Recommendation #17: Do not amend the legislation to require financial institutions to make investments in financial literacy.**

We agree that the legislation should not be amended because this activity should be voluntary. However, we wish to emphasize that we also believe that a critical building block to enhancing the fair treatment of consumers is raising their level of financial literacy. Consumer education around financial literacy is a shared, multi-stakeholder responsibility and something in which CAFII members and other industry stakeholders are actively involved. While consumers are ultimately responsible for their purchase decisions, governments and regulators such as FICOM have an important role to play, alongside the industry, in providing education which can help consumers better understand the benefits and limitations of products and improve their financial literacy.

In that connection, we believe that in its communications, FICOM should emphasize, where appropriate, consumers' responsibilities with respect to financial and insurance products, in addition to their rights. CAFII members are committed to playing our part by ensuring that communications are easy to understand and, as the draft Guideline stipulates, written "in plain language wherever possible." Our members will continue to make efforts to ensure the ease of understanding of our communications, but we believe it is also important to emphasize that consumers need to read their policies, understand their features, and ask questions if there is anything they are uncertain about.

**Recommendation #43 : Provide FICOM with the authority to issue binding rules on records storage, with prior public consultation and Ministerial approval.**

CAFII does not believe that any legislative and/or regulatory changes are required in this area, as the current FIA contains provisions requiring insurers to maintain facilities that the Superintendent considers adequate for FICOM to be able to obtain access to records. As well, insurance industry

participants are required to comply with the province's Personal Information Protection Act (PIPA). PIPA's Part 9 – Care of Personal Information sets out requirements for the protection and retention of such information.

With respect to federally-incorporated insurers, they must also adhere to the Personal Information Protection and Electronic Documents Act (PIPEDA) and follow the rules set out in sections 260 to 270 of the Insurance Companies Act. Records can be outsourced but the Superintendent of OSFI can require records processing to be done in Canada if that is seen to be appropriate. OSFI Guideline B-10 sets out expectations for financial institutions related to outsourcing, including outsourcing to providers outside of Canada. Insurers are required to ensure that OSFI can readily access in Canada any records necessary to fulfill its mandate. If legislative changes are contemplated, we encourage consideration of OSFI's approach, with a view to adapting and incorporating the expectations in place at the federal level.

**Recommendation #44 : Expand the restricted licensing regime currently applied to travel agencies to other incidental insurance sales, similar to the approach used in Alberta, Saskatchewan and Manitoba.**

CAFII believes that BC's current system of insurance retailing and licensing exemptions is working well. However, if the province feels that additional legislation and/or regulations are required, CAFII members would be open to the introduction of an RIA/ISI regime and we would encourage BC to harmonize with the existing regimes in the other western provinces.

If properly and fairly implemented a Restricted Insurance Agent regime can be an effective tool for managing the sale of certain insurance products, including creditor group insurance and travel insurance. We welcome proper oversight of the marketplace; our members place a strong emphasis on the fair treatment of consumers, and dedicate significant resources to training staff and others acting on our behalf, and on controls and monitoring.

As a general principle, CAFII believes that the Insurance Council of BC should be "channel neutral." That is, the Council should be designed such that the interests of all distribution channels are well-served and the representatives of any particular channel are not in a position to make decisions which could negatively impact consumers' access to competing distribution channels. These principles in our view should be incorporated into any new Restricted Insurance Agent regime.

Critical to the successful implementation of such a regime is harmonization with the regimes in other provinces, and consistency across jurisdictions. A B.C. regime should be structured such that it is aligned with the principles of other existing regimes. A thorough consultation process with industry will help ensure that such a new regime is structured in a way that will produce the results that the recommendation seeks.

Should an RIA/ISI regime be established, care must be taken to ensure that the interests of RIA licence holders are well-served in terms of representation on Council and that the representatives of competing channels are not in a position to make decisions which could negatively impact consumers' access to alternate distribution channels. More specifically, because we are operating in a competitive marketplace, we would request that the administrators of an RIA regime have an Advisory Counsel on which our Association could have representation. This would permit us to clarify and provide input on issues that could affect our members, and would assist FICOM in ensuring that all the nuances of an issues are fully understood before a decision is taken.

**Recommendation #45: Provide FICOM with the authority to issue guidelines requiring insurers to provide more direct oversight of exempt sellers and/or sellers under a restricted licensing regime.**

CAFII believes that insurers already shoulder an appropriate level of responsibility for their exempt sellers and that the current system is working well for most such relationships.

All CAFII member client service representatives are required to undergo comprehensive and recurring product training to ensure that they provide consumers with accurate and reliable information. That training ensures that representatives offering insurance have the knowledge and skills to do their jobs and serve clients well. It also ensures that they act in accordance with the CBA Code of Conduct for Authorized Insurance Activities; the Bank Act; federal and provincial privacy legislation; and CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

CAFII members adhere to the market conduct and consumer protection provisions of the province's FIA, Insurance Act, and PIPA. In addition, the distribution of creditor insurance products is federally regulated in the case of most CAFII members. In that connection, consumers are well-protected through their compliance with the CBA Code of Conduct for Authorized Insurance Activities; and, in the case of all CAFII members, through their adherence to CLHIA Guidelines, including Guideline G7 Creditor's Group Insurance, G9 Direct Marketing, and G5 Travel Insurance.

CAFII members, whether insurers or distributors, have training of employees and others who act on the company's behalf; controls; monitoring; and other processes to ensure that the highest standards of ethical behaviour, fair treatment of consumers, and compliance with regulations—both the letter of the law as well as its spirit.

**Recommendation #47: Place restrictions on the sale of insurance products sold on a post-claims underwriting basis by exempt sellers and/or sellers under a restricted licensing regime.**

This recommendation appears to make assumptions that we believe are inaccurate. Underwriting refers to determining the risk involved in offering insurance to a potential policyholder, and then determining the premium appropriate to that risk. At the time of offering the insurance and the appropriate premium, there is a trade off between the amount of information gathered, and the simplicity of enrollment. Creditor Group Insurance products attempt to simplify the process by asking limited questions and avoiding where possible taking para-medical samples, and by enrolling the customer as part of a group policy, of which they are then a certificate-holder. At the time of a claim, the responses to the questions asked at time of enrollment need to be verified. This is not "post claims underwriting," but a claim adjudications process that all insurers would apply. Our members do not enroll members who are not eligible to make a claim, and a claim will be paid if the original questions during enrolment were answered truthfully.

The reference to "post claims underwriting" is a myth, perpetuated in some cases by competitors who seek to cast doubts on our products and offerings. It is our view that this recommendation is misguided and the restrictions contemplated unnecessary.

**Recommendation #48: Require insurers to treat consumer fairly; delegate authority to FICOM to develop a code of conduct for insurers and to develop rules based on the code.**

The CCIR is currently developing a Fair Treatment of Consumers Guideline, a process in which CAFII and its members are actively engaged. We support a Guideline on the Fair Treatment of Consumers, but consistency across jurisdictions is critically important to the efficiency of the industry. FICOM's proposal to consider aligning with a CCIR Guideline is very much in line with what we consider best practices, and is strongly supported by CAFII.

**Recommendation #51: Provide privilege for the self-assessment programs of financial institutions (insurance companies, credit unions, trust companies).**

CAFII feels that the benefits of implementing a compliance self-evaluative privilege outweigh the costs of limiting evidence available in court proceedings.

Legislating a self-evaluative privilege protection for insurers promotes open and transparent self-assessments by companies and ultimately contributes to consumer protection improvements that can be achieved through regulators' use of such assessments.

We would also point out that providing a self-evaluative privilege protection is a position recommended by CCIR that was adopted with minimal modifications by Alberta and Manitoba in their recent Insurance Act reviews. In addition, earlier this year, Saskatchewan legislated a self-evaluative privilege into its Insurance Act re-write that will come into force at the time of the new Act's proclamation.

**Recommendation #52: Allow FICOM to withhold information under the Freedom of Information and Protection of Privacy Act (FOIPPA) when it is provided by other regulators in confidence.**

We agree that where information is provided by other regulators in confidence, FICOM should have the option of withholding it.

**Recommendation #54: Expand the number of Insurance Council members appointed by the LGIC from eleven to thirteen by adding two additional independent agent representatives.**

We would support dropping, as least partially, the residency requirement for participation in the ICBC, so as to permit expert advice and input from those who conduct business in B.C., even if the chosen representative is not physically residing in the province.

**Recommendation #57: Draw on the CCIR's recommendations to put in place a flexible legal framework that enables insurers to offer their products online while protecting consumers.**

We support allowing consumers to have choice in a competitive marketplace. Choice includes that they have options to purchase insurance through a licensed broker, or to purchase it directly from an insurance company through whatever channel they prefer, depending on their preference. Consumers have much information available to them, including about the products of our members', and it is the consumer's right to decide what channel, level of advice, or method of purchase they prefer. We therefore support the overall thrust of this recommendation, while counselling against the use of the term "and making consumers aware of the importance of obtaining advice" which is a biased statement, favouring one purchase method over others. Consumers differ in their own level of knowledge, and some products may not require advice and can be purchased more cheaply directly and without the involvement of a commissioned agent. It is for the consumer to make that decision without the competitive marketplace being tilted by favouring one channel or method of purchase over another.

**Conclusion**

Thank you for the opportunity to share CAFII's comments and recommendations in this important legislative review. We look forward to being engaged with the Ministry in next steps on this process. Should you require further information from CAFII or wish to meet with our Association at any time as the review progresses, please contact Keith Martin, our Co-Executive Director, at [ketih.martin@cafii.com](mailto:ketih.martin@cafii.com) or 647.460.7725.

Sincerely,

Peter Thorn  
Board Secretary and Chair, Executive Operations Committee

## **About CAFII**

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, Canada Life Assurance, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and valeyo (formerly Canadian Premier Life Insurance Company).