



July 4, 2018

Mr. Brendan Wycks
Executive Director
Canadian Association of Financial Institutions in Insurance (CAFII)
21 St. Clair Ave. West, Suite 802
Toronto ON M4T 1L9

Brendan.wycks@cafii.com

Dear Mr. Wycks:

Re: Guidance – Conduct of Insurance Business and Fair Treatment of Customers

On May 3, 2018, the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO) released a draft joint Guidance on Fair Treatment of Customers (proposed guidance) for a 45-day public consultation, which ended on June 18, 2018.

CCIR and CISRO thank your organization for reviewing and providing valuable written comments on our proposed guidance. We have carefully analyzed all comments received and would like to meet with you to provide feedback on the main issues raised as well as to get clarification and ensure that we understand your comments.

We invite your organization to participate in an in-person meeting to be held at the offices of the Financial Services Commission of Ontario, located at 5160 Yonge Street, 17th floor boardroom, Toronto, Ontario. Your meeting is scheduled for Wednesday, July 18, 2018 at 2:00 pm to 2:45 pm.

Please contact Tony Toy, Policy Manager at Tony.Toy@fSCO.gov.on.ca or by phone at 416-590-7257, as soon as possible, to confirm your organization's availability for the allocated date and time.

Prior to the meeting, we will provide you with a summary of the comments received along with the issues we would like to discuss with you.

We greatly appreciate your organization's contribution and look forward to meeting with you.

Sincerely yours,

Original signed by

Louise Gauthier
Co-Chair
Fair Treatment of Customers Working Group
Canadian Council of Insurance Regulators

Ron Fullan
Co-Chair
Fair Treatment of Customers Working Group
Canadian Insurance Services Regulatory Organizations

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**CCIR/CISRO FTC Guidance
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1. Harmonization

Overall, commenters are very receptive to the Canadian Council of Insurance Regulators (“CCIR”) and Canadian Insurance Services Regulatory Organizations’ (“CISRO”) collaborative approach in the development of a common set of expectations pertaining to the conduct of business to ensure the fair treatment of customers (“FTC”). Commenters generally found the proposed CCIR/CISRO Guidance on Conduct of Insurance Business and Fair Treatment of Customers (the “proposed Guidance”) to be aligned with International Association of Insurance Supervisors’ (“IAIS”) Insurance Core Principle 19 and current requirements in Canada.

However, commenters believe that customers will be best served by a national approach which would provide them with similar rights and expectations regardless of where they live in Canada. In this regard, they find that the document does not contain a firm commitment from regulators to put in place rules of conduct related to FTC that are consistent with CCIR and CISRO’s expectations. Commenters call for consistency in the development of future local instruments (i.e., Financial Services Commission of Ontario’s proposed guidance, Québec Sound Commercial Practices Guideline) with the proposed Guidance.

Moreover, regulators are encouraged to support harmonization amongst the financial services industries (namely, the securities and the banking sectors) to avoid regulatory arbitrage.

2. Proportionality and Multiple Audits

Commenters support a risk-based approach which allows for flexibility in implementing supervisory and oversight requirements to achieve the desired outcomes. CCIR and CISRO take note of the comments on increased efficiency and efficacy through joint audit or common audit questionnaires.

Furthermore, as supervisory responsibilities over distribution was discussed, it was said that insurers cannot be expected to supervise a business partner’s conduct to the same degree as a regulator with legislative authority.

3. Principles-based vs Prescriptive, Rules-based Approach

Commenters are generally comfortable with and support the proposed Guidance’s principles-based approach, rather than a prescriptive, rules-based one. For many commenters, the document is positioned at a high level, while still providing sufficient detail and clarity to ensure its usefulness.

However, other commenters claim for clarification, precision and details on how to implement the described expectations.

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4. Right Balance Between Roles and Responsibilities of Insurers and Intermediaries

CCIR and CISRO requested comments on this central issue. For many, the proposed Guidance appears to imply that insurers are directly responsible for the actions of independent and separately regulated intermediaries. There are limits to an insurer's ability to monitor an intermediary's actions and ensure that consumers are treated fairly throughout all stages of the insurance product life-cycle. Insurers cannot be expected to supervise a business partner's conduct to the same degree as a regulator with legislative authority. The insurer's responsibility to supervise its distribution channels could not replace regulator surveillance.

CCIR and CISRO acknowledge the comments. Discussions are already engaged with insurers and intermediaries' stakeholders on the question of advisor oversight. This issue will be discussed at a further stage after the adoption of the proposed Guidance. CCIR and CISRO will then evaluate whether the Guidance needs to be detailed.

5. Definitions

Commenters are of the view that definitions of the terms «Intermediary», «Distribution Firm», «Agent Firms» should be revised. Those later two terms appear unclear, uncommonly used and Québec-centric. Without further revision, some are of the view that there is a risk that certain entities could consider themselves as exempted.

There is support for the use of a broader definition of the term «Intermediary» closely aligned with the one used by IAIS.

At the stakeholder meetings, CCIR and CISRO will seek for further input on this issue. Participants will be asked to identify the clear risks that the current definitions present and which avenue seems preferable.

6. Outsourcing Versus Relationships Between Insurers and Intermediaries

Some stakeholders mention that there is overlap between those two sections. They are of the view that the scope of the Outsourcing section should be limited to outsourced activities that could ultimately impact a client. One stakeholder wonders if the proposed Guidance intends to extend beyond the distribution of insurance.

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7. Access to Independent Advice and Conflicts of Interest

A consumer's advocate is of the view that regulators should develop different licences reflecting if, whether or not, an intermediary can sell the products of one insurer or multiple insurers. In his opinion, current disclosure requirements are not working and often do not occur.

It is also said by other commenters that regulators will need to monitor industry trends of mergers and acquisitions because of their impacts on access to independent advice.

8. Incentives Management

For consumers' advocates, incentives should be aligned with conduct risk. Related processes should include, at a minimum, non-financial assessment criteria (such as the quality of risk management, degree of compliance with applicable rules and broader conduct objectives of the firm, including FTC outcomes) into individual performance management and compensation plans at all levels of the organization and as part of the broader governance and risk management framework. Such processes should be supported by ongoing programs including formal training courses that reinforce appropriate standards of behavior.

CCIR and CISRO currently monitor national/international as well as other financial sectors' regulatory developments (as those of the Canadian Securities Administrators) on incentives management. This issue will be considered in the second phase of their mandate.