

29 April, 2022

Mr. Mark White, CEO; and
Financial Services Regulatory Authority of Ontario
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Toronto, Ontario
M2N 6S6
mark.white@fsrao.ca; and
<https://www.fsrao.ca/engagement-and-consultations/seeking-input-proposed-principles-based-regulation-approach-guidance#comment>

RE: CAFII Feedback on FSRA's Proposed Principles-Based Regulation Approach Guidance

Dear Mr. White:

The Canadian Association of Financial Institutions in Insurance (CAFII) thanks the Financial Services Regulatory Authority (FSRA) of Ontario for the opportunity to provide comments on FSRA's *Proposed Principles-Based Regulation Approach Guidance*.

CAFII strongly supports a principles-based regulatory (PBR) approach. PBR produces the desired regulatory outcomes by engaging regulated entities directly in the regulator's objectives; and by rooting the regulatory regime in a strong foundation of dialogue and the pursuit of common objectives, it is more effective at achieving the desired outcomes than is a rules-based approach.

PBR is also better aligned with a regulatory regime designed around fair treatment of customers (FTC), as it optimally balances FTC with fostering and supporting industry innovation. As well, PBR is fully consistent with the increasingly prevalent recognition that the most important element in achieving FTC is focusing on the corporate culture of regulated entities.

In that regard, CAFII concurs with FSRA's assertion that "PBR is a regulatory and supervisory approach used by leading financial services regulators around the world. In addition to being an effective and efficient way to regulate and supervise regulated entities and individuals . . .," and that it facilitates a regulator's ability to

- *respond more quickly to technological changes, consumer and beneficiary needs, and disruptions in the financial services landscape;*
- *more effectively focus on desired regulatory outcomes and objectives to be achieved; and*
- *reduce regulatory burden through a more flexible regulatory approach, which allows regulated entities to determine how to best achieve adherence with outcomes based on their size, complexity, and risk profile. (page 2)*

Our Association supports FSRA's PBR framework principles, as we believe that they set out the key elements for successful regulatory outcomes. Critical elements include an outcomes-focused and risk-based approach, along with a collaborative and transparent-by-design operating model so that regulated entities can provide input and feedback and be fully trusting and confident partners in the process.

We concur that a customer-centric approach is central to successful PBR; and we applaud FSRA's complementary emphasis on fostering and supporting industry innovation, which will be critical to Ontario's ability to continue to thrive, remain the economic engine and heartland of Canada, and sustain a growing population and evolving society.

We also agree with FSRA's observation that supervisory and enforcement powers are necessary elements in a regulator's toolkit, and that without such powers the ability to implement and maintain a PBR approach could be undermined.

However, in that connection, one area of concern for our Association relates to the best way for FSRA to develop and utilize its enforcement powers. While CAFII has continuously supported FSRA's having Rule-making authority, viewing it as a positive development, we do have some concern about the process followed around the first Rule which FSRA has developed and implemented under its Rule-making authority, the Unfair or Deceptive Acts or Practices (UDAP) Rule.

The UDAP Rule contains measures which CAFII supports, but we are concerned about the fact that as FSRA's precedent-setting, first such Rule, it is very unique relative to pre-existing, parallel regulatory provisions in other provincial/territorial jurisdictions. We are troubled by the fact that this uniqueness undermines the objective of regulatory harmonization, something critically important to CAFII members which operate in an insurance environment which sees them accountable to 17 different provincial, territorial, and federal insurance regulators.

CAFII members, which are mainly the insurance arms of Schedule I Canadian banks and their insurer/underwriter partners, operate across the country in the life and health insurance sector; and, as such, they are provincially/territorially regulated. However, as federally regulated financial institutions (FRFIs), banks, some credit unions, and many insurers are also subject to federal regulation, including by the Financial Consumer Agency of Canada (Canada) and the Office of the Superintendent of Financial Institutions (OSFI).

Due to the fact that our Association's members are subject to both federal and provincial/territorial regulation, CAFII constantly requests of regulators that they harmonize their expectations of regulated entities to the maximum extent possible.

Often, regulators in different provinces introduce regulatory requirements which have the exact same intent as existing requirements in another province or federally, but yet which differ slightly in the details of how those expectations are defined, or are to be implemented and/or reported on by regulated entities.

In such cases, regulated entities have to allocate significant resources to deciphering and adjusting to the nuanced differences from jurisdiction to jurisdiction. This time-consuming, costly, and attention-sapping "exception management" process diverts resources away from the essential consumer protection aspects of regulators' expectations.

In CAFII's view, it is always preferable that – before proceeding to develop and implement a new Rule -- a regulator should ask why a contemplated Rule is preferred to a Guideline, and also ask whether a contemplated Rule can be harmonized, in its design and development phase, with existing regulatory expectations in other jurisdictions; or, better yet, developed through a national co-ordinating body such as the Canadian Council of Insurance Regulators (CCIR) or the Canadian Insurance Services Regulatory Organisations (CISRO), as appropriate, and adopted thereafter by provincial/territorial regulators as their own. We regard that as the optimal approach, one which was deployed in the development of CCIR/CISRO's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers," which was subsequently adopted, unaltered, by many provincial/territorial regulators including FSRA.

On a go-forward basis, CAFII strongly encourages FSRA, in situations akin to the UDAP Rule, to lead an initiative at CCIR and/or CISRO to develop one national Guideline/Guidance on the matter at hand. That Guideline/Guidance would be developed on a harmonized, national basis similar to the manner in which the "Guidance: Conduct of Insurance Business and Fair Treatment of Customers" was jointly developed by CCIR and CISRO, with shared, multi-jurisdiction compliance monitoring mechanisms built-in which give the Guidance the force and effect of a national Rule.

That said, CAFII applauds FSRA for discussing and airing some of the key issues around the intersection and complementarity between PBR and Rule-making via a panel session in the Authority's excellent Exchange mini-conference on 27 January, 2022. CAFII's keen interest in that topic has resulted in our organizing an upcoming CAFII webinar on 3 May, 2022 on "*Principles-Based Regulation (PBR); The Emergence of Rule-Making Authority; and How They Work Together: A Complementary, Harmonious Fit Or 'Dynamic Tension' For Canada's Insurance Regulators?*" in which we will have Dr. Cristie Ford, who participated in the FSRA panel on PBR, along with leading insurance law expert Stuart Carruthers of Stikeman Elliott as our co-panelists. We have invited FSRA staff executives to attend this webinar, and we look forward to examining this important topic in more detail on 3 May.

CAFII thanks FSRA again for the opportunity to provide feedback on your consultation on *Proposed Principles-Based Regulation Approach Guidance*, and we look forward to continuing our dialogue with you on this critically important matter. We also express our appreciation for FSRA's continuing to "walk the talk" on its commitment to open and transparent communication and consultation. Should you require further information from CAFII or wish to meet with representatives from our Association on this or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647-460-7725.

Sincerely,

Rob Dobbins
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 credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection 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 which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Insurance; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; Canadian Tire Bank; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.