

CAFII Analysis of Original October 2021 Proposed Revised Version versus November 2022 Updated/Final Version of AMF's "Sound Commercial Practices Guideline"

Background Information

The AMF published a proposed draft of a new Sound Commercial Practices Guideline—which is the AMF term for its own Quebec-specific Fair Treatment of Customers Guideline—in October 2021 (updating the original 2013 document) for consultation and industry feedback. CAFII made a written submission on that draft to the AMF on 28 January, 2022.

More recently, the AMF published on its website an updated/revised and final new version of its Sound Commercial Practices Guideline in November 2022.

Attached to this analysis are:

- the original October 2021 proposed revised Guideline (consultation document);
- the updated/final and new November 2022 Sound Commercial Practices Guideline;
- an 8 December, 2022 Notice announcing the AMF's official release of the updated/final and new Sound Commercial Practices Guideline, which is a synopsis of the major revision themes addressed in the updated Guideline, and worth a read as it speaks to some important themes which the industry has been advocating for with the AMF;
- CAFII's 28 January, 2022 written submission to the AMF on the original October 2021 proposed revised Guideline (English and French versions; however, only the French version was submitted to the AMF).
- A 'Document Comparison' file which shows all the changes made by the AMF in the updated/revised and final new version of the Guideline (November 2022) as compared to the original proposed revised version (October 2021).

Analysis

In its 8 December, 2022, the AMF says it was "sensitized" to certain thematic concerns raised in industry stakeholder feedback submissions:

- *Shift away from the principles-based prudential approach;*
- *Increased compliance burden;*
- *Harmonization with the CCIR and CISRO Guidance;*
- *Division of responsibilities between financial institutions and intermediaries.*

However, in its response to these concerns, the AMF is mostly defensive and attempts to refute the feedback provided, with the exception of the point about the division of responsibilities between financial institutions and intermediaries, which it says caused it to completely rework Sections 3 and 4 of the Sound Commercial Practices Guideline.

Original October 2021 Proposed Revised Sound Commercial Practices Guideline	CAFII Comments from its Written Submission <i>(Note: taken from the English version, while the submission was sent in French only)</i>	Updated/Final and New November 2022 Sound Commercial Practices Guideline	Comparison/Analysis
	<p>We note that the original Sound Commercial Practices Guideline (2013) was a 13 page document, and the updated version is much more detailed at 23 pages.</p> <p>Germane to the document's level of detail and resulting overall length, CAFII strongly believes that market conduct-based regulations and guidelines should outline regulators' consumer outcome expectations but not get into prescriptive details as to how to achieve those outcomes.</p> <p>By adding significantly more prescriptive content to the updated Sound Commercial Practices Guideline, the AMF has moved away from principles-based regulation and into specifying for regulated entities – the companies which have the direct business experience of dealing with consumers in the marketplace and with managing customer relationships – how they must act, in certain specific ways. That is altogether different from setting out the AMF's consumer outcome expectations as the regulator, and leaving it to regulated entities to determine the best ways and means to achieve your expectations. In CAFII's view, a largely prescriptive regulatory approach will result in increased regulatory burden and industry inefficiencies, while not providing any offsetting consumer protection benefits.</p>		<p>The AMF acknowledges in its 8 December, 2022 Notice that industry is concerned about the AMF being overly prescriptive: "The AMF was sensitized to the fact that the draft update of the <i>Sound Commercial Practices Guideline</i> (the "Guideline") was more prescriptive than the previous version and included a number of requirements." The AMF has, in fact, shortened the updated/revised and final version of the document to 17 pages, and removed many prescriptive comments, but by no means all.</p>
<u>Section 6.7</u>	In that connection, we note that Section 6.7 of	<u>Section 5.7</u>	The AMF has reworked this section to remove a

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The institution's policies, procedures and controls should ensure that the product offered is suitable for the client.	<p>the updated Sound Commercial Practices Guideline on "Offering a product to a client" sets out an expectation that <i>"The institution's policies, procedures and controls should ensure that the product offered is suitable for the client."</i> (page 17)</p> <p>With respect to product suitability/appropriateness, it is CAFII's position that if a customer is 'eligible' for enrolment in CPI (a form of group insurance), then that insurance coverage is 'appropriate' to be offered to that individual. However, as noted above, due to insurance licensing regime requirements in Quebec (and other provinces/territories), a financial institution representative offering CPI cannot provide advice to nor perform a comprehensive suitability or needs analysis for the customer.</p>	The deposit institution's policies, processes, procedures and controls should ensure that the product that is offered is appropriate for the client, having regard for their circumstances, including their financial needs.	reference to "suitable" and substituted the term requested by CAFII, "appropriate," which is an important concession.
<p>Section 6.2 Notify the client of any significant change that occurs regarding previously disclosed conflicts of interest</p>	<p>On a separate but important matter, our Association has concerns with the prescriptive nature of two particular clauses in the updated Guideline, the first of which is "Notify the client of any significant change that occurs regarding previously disclosed conflicts of interest."</p> <p>It is our view that tracking and reporting to clients on changes to historical, previously disclosed conflicts of interest is of far less consumer protection value than having the necessary</p>	<p>Section 5.2 Notify the client of any significant change that occurs regarding the previously disclosed conflict of interest</p>	The AMF has left this sentence unchanged (it changed "conflicts of interest" to "conflict of interest").

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	<p>procedures and controls in place to ensure that current/existing conflicts of interests are managed properly.</p> <p>The prescribed new “Notify the client” requirement will create a new regulatory burden upon the industry; and further, it will likely create confusion among consumers as to why they are receiving an update to a previously disclosed conflict of interest, without any offsetting enhancement to consumer protection that would outweigh the confusion created.</p>		
<p>Section 6.2 Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for assessing the extent of the harm that may be caused to the client by a such a conflict of interest.</p>	<p>In a similar vein, in our view, the following clause is very prescriptive and would impose additional regulatory burden upon the industry, without providing any offsetting consumer protection benefits:</p> <p><i>Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for assessing the extent of the harm that may be caused to the client by such a conflict of interest.</i></p> <p>We note that in footnote 10, the AMF seems to diminish and mitigate somewhat the impact of this new prescriptive requirement, by stating the following:</p> <p><i>For example, if the harm to the client is insignificant, the financial institution could record the information in a more general manner, such as by category or type, rather</i></p>	<p>Section 5.2 Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for illustrating the extent of the harm that may be caused to the client by asuch a conflict of interest.</p>	<p>The AMF has left this section unchanged. Furthermore, it removed a helpful Footnote 10, which stated: “For example, if the harm to the client is insignificant, the financial institution could record the information in a more general manner, such as by category or type, rather than recording each case and the way it was handled.”</p> <p>It is unclear how industry can implement this expectation in practice. There is also a typo that was in the original document and which remains in the final version: “...by a such a conflict of interest.”</p>

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	<p><i>than recording each case and the way it was handled.</i></p> <p>CAFI members have millions of interactions each year with customers. Requiring regulated entities to document each conflict of interest situation in detail will not provide any additional consumer protection benefits, but will simply promote ‘process and reporting’ over ‘appropriate business culture and practices.’</p> <p>We believe that if the processes, procedures, controls, and training essential to protecting consumers are in place, it should not be necessary to require regulated entities to perform this newly prescribed ‘busy work,’ especially when any enhanced contribution to consumer protection is suspect.</p> <p>There was no such requirement in the original 2013 Sound Commercial Practices Guideline; and we believe that the original approach is much more effective, where the AMF expected industry to have in place the following:</p> <p><i>mechanisms and controls to identify and deal with any departure from the institution’s strategies, policies and procedures, any conflicts of interest or any other situation likely to interfere with fair treatment of consumers (page 9).</i></p> <p>We strongly encourage to AMF to reconsider Section 6.2 – Handling conflicts of interest in the updated Guideline,</p>		

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	taking into account the practical implications of the new prescriptive requirement; and to return to a principles-based approach on this matter.		
<p>Section 5.9</p> <p>Expectations to achieve this outcome</p> <p>Clients are informed when filing a claim of the main steps in the claims examination process and of the formalities and expected timeframes, which may be extended in exceptional cases²⁶</p> <p>Clients are updated on their claim's status in a timely and appropriate manner</p> <p>Additional requests for information from the institution related to the examination of claims are commensurate with the perils covered and do not hinder or delay the examination process</p> <p>When the claims examination process cannot be completed within the expected timeframe, clients are told why additional time is required and when the process will be completed</p> <p>Claim-determinative factors (e.g., depreciation, negligence) and, when applicable, the reasons why the claim was wholly or partially denied are carefully and clearly explained to clients. Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision</p> <p>The decision review takes into account the legitimate interests of the client. It is a simple process without any red tape</p> <p>Clients are informed that they may contact the complaint processing department if they are dissatisfied with the way their</p>	<p>On the subject of Claims Examination and Settlement, we note that the AMF sets out the expectation that <i>"Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision."</i> (page 20)</p> <p>We ask the AMF to clarify and confirm that "in writing" is not intended to be limited to paper-based communication; and that communicating with customers digitally or by other electronic means will constitute compliance with this expectation.</p>	<p>Section 5.9</p> <p>Expectations to achieve this outcome</p> <p>When filing a claim, the client is informed of the main steps in the examination of the claim and of the expected timeframes for settlement of the claim²⁵</p> <p>The client is informed in a timely and appropriate manner of the claim's status</p> <p>Additional requests for information from the institution related to the examination of a claim are commensurate with the perils covered and do not hinder or delay the examination process</p> <p>The client is informed, when the claim cannot be examined within the expected timeframe, why additional time is required and when the process will be completed</p> <p>Claim-determinative factors (e.g., depreciation, negligence) and, when applicable, the reasons why the claim was wholly or partially denied are</p>	<p>This section was completely reworked, and the reference to "in writing" was removed.</p>

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<p>claim has been handled</p> <p>Insurance contract provisions are interpreted in a consistent manner</p> <p>The claims examination and settlement process is free of conflicts of interest</p> <p>Staff responsible for claims examination and settlement:</p> <p>Are familiar and comply with the institution's claims examination and settlement process. They are able to provide appropriate information to clients and properly assist them in making a claim and throughout the examination process</p> <p>Possess the necessary competencies depending on the type of product</p>		<p>carefully and clearly explained to the client. Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision</p> <p>Claim decisions take clients' interests into account and are made in an objective and consistent manner</p> <p>The claim decision review process is simple, without any red tape</p> <p>Clients are informed that they may contact the complaint processing and dispute resolution department if they are dissatisfied with the way their claim has been handled</p> <p>Staff responsible for claims examination and settlement:</p> <p>Are familiar and comply with the institution's claims examination and settlement process. They are able to provide appropriate information to clients and properly assist them in making a claim and throughout the examination process</p> <p>Possess the necessary competencies depending on the type of product</p>	