

## **Framework for Cooperative Market Conduct Supervision in Canada**

**November 2015**

## 1 Purpose

The Framework for Cooperative Market Conduct Supervision in Canada (“Cooperative Framework”) is intended to provide further clarity regarding the Canadian Council of Insurance Regulators (“CCIR”) members’ commitment to greater collaboration and information sharing in the oversight of market conduct risk in the insurance industry. As such, it identifies the basis and purpose of that commitment and provides a high-level overview of processes and practices intended to support and implement more collaborative and cooperative supervisory activities pertaining to market conduct. It identifies the key components that are being developed and implemented and consolidates CCIR’s policies and materials related to the increased collaboration and information sharing.

Each supervisory authority is expected to adopt the Cooperative Framework in a manner that is appropriate for their jurisdiction and market. This may include enhancing the existing regulatory framework within a jurisdiction to ensure alignment with the principles and regulatory objectives of the Cooperative Framework.

The Cooperative Framework is not intended to impact or alter existing obligations and requirements affecting regulated entities.

## 2 Introduction

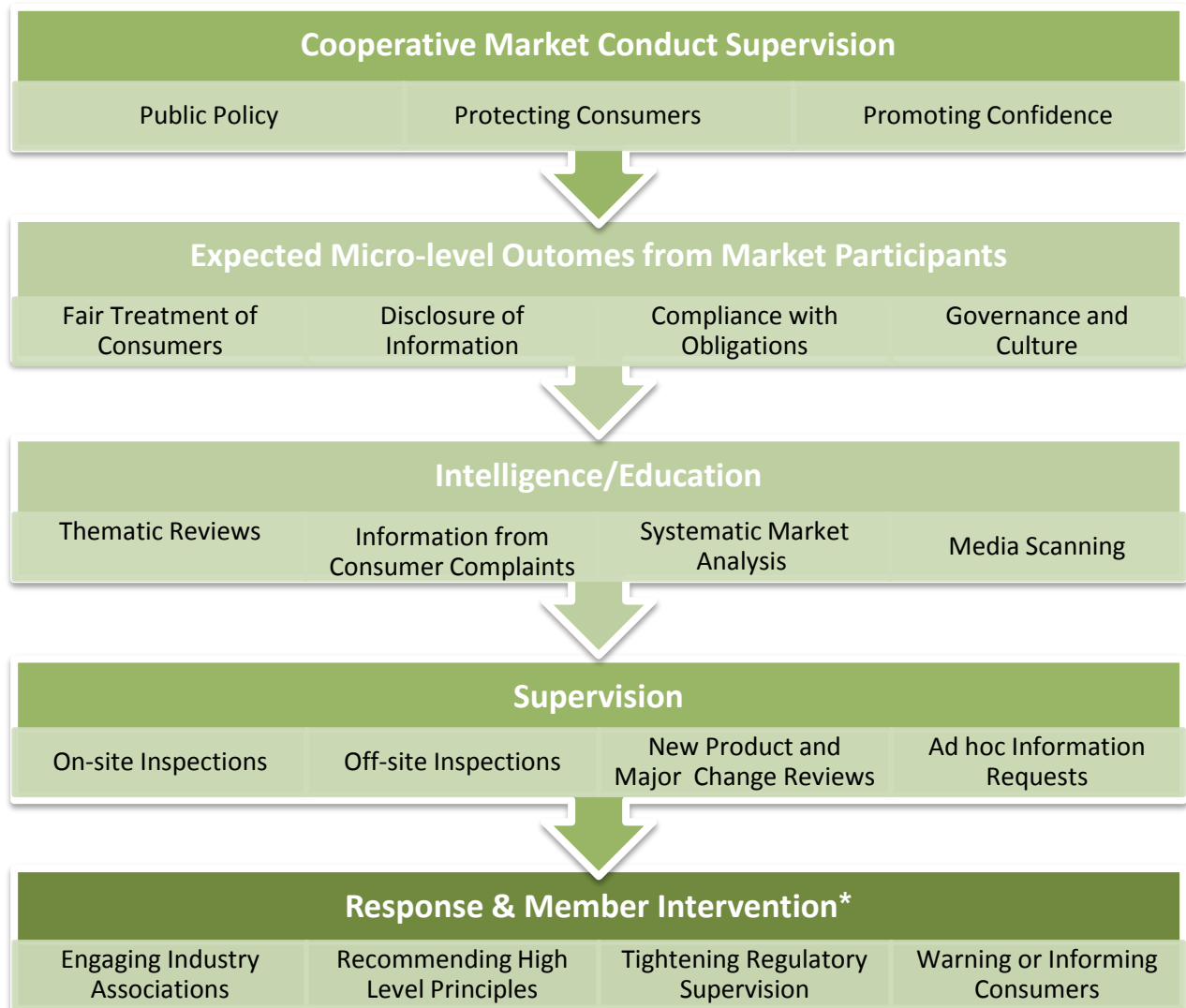
This Cooperative Framework reflects the evolution of market conduct supervision. This evolution has been brought about both through increasing expectations by consumers around the protection they receive, and through a heightened awareness of its importance to the stability of the financial system of proactively protecting consumers from unfair or abusive business practices.

In Canada, the supervision of market conduct practices is the exclusive authority of the provinces and territories. Supervisory authorities in each province and territory—the members of CCIR—are mandated within their respective jurisdictions to supervise the conduct of business of insurers and intermediaries to ensure compliance with laws and regulations, protect consumers from unfair or abusive business practices and work toward the overall fair treatment of consumers throughout the entire lifecycle of an insurance product.

CCIR members have made a commitment to observing, where reasonable, the Insurance Core Principles (“ICPs”) of the International Association of Insurance Supervisors (“IAIS”), which include fostering cooperation, promoting communication and information exchange and facilitating enhanced coordination. This commitment, combined with growing complexity in the insurance market place, has re-emphasized the importance of working together for CCIR members and is expected to result in improved use of regulatory resources, better identification of market conduct issues and more proactive regulatory responses as well as similar levels of consumer protection across provinces and territories.

This Cooperative Framework has been developed to reflect the evolution of market conduct supervision and define an approach to that supervision that is both robust and effective but does not impose an undue burden on market participants. Below is an illustration representing CCIR's vision of cooperative market conduct supervision.

### Cooperative Market Conduct Supervisory Framework



\*Regulatory action and intervention is within the exclusive authority of the provincial and territorial supervisor where the business is conducted. Any intervention or regulatory action taken will be performed by CCIR members and not the CCIR itself.

## 2.1 Insurance Core Principles

In 2011, revised ICPs were adopted by the IAIS.<sup>1</sup> The ICPs represent a globally accepted foundation for effective insurance regulation and identify the requirements for a supervisory framework to provide a fair, safe and financially stable insurance sector and adequate consumer protection. ICPs also emphasize fostering cooperation, promoting communication and information exchange and facilitating enhanced coordination.

Of particular importance to the CCIR members are ICP 18 and 19, which specifically address the supervision of market conduct and intermediaries and ICP 25, which focuses on cooperative supervision.

**ICP 18 Intermediaries** – The supervisor sets and enforces requirements for the conduct of insurance intermediaries, to ensure that they conduct business in a professional and transparent manner.

**ICP 19 Conduct of Business** – The supervisor sets requirements for the conduct of the business of insurance to ensure customers are treated fairly, both before a contract is entered into and through to the point at which all obligations under a contract have been satisfied.

**ICP 25 Supervisory Cooperation and Coordination** – The supervisor cooperates and coordinates with other relevant supervisors and authorities subject to confidentiality requirements.

## 2.2 Implementation of the Memorandum of Understanding

The foundation document behind this Cooperative Framework is 2015's [Memorandum of Understanding and Protocol on Cooperation and the Exchange of Information](#) ("MOU") which establishes the protocol for exchanges of information as part of the cooperative approach to supervision. The MOU also confirms the signatories' commitment to coordinated market conduct supervision, particularly for regulated entities that are active in more than one province or territory.

This Cooperative Framework identifies at a high level how the information exchanges under the MOU will contribute to the development of annual Cooperative Supervisory Plans, the types of information and market intelligence that will be relied upon in developing the plans and CCIR's approach to implementing those plans.

## 3 Annual Cooperative Market Conduct Supervisory Plans

Each year, CCIR members develop market conduct supervisory plans within their respective jurisdictions. The supervisory plans identify their commitments to proactively address market conduct risk and include

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<sup>1</sup> IAIS Website (<http://iaisweb.org/index.cfm?event=getPage&nodeId=25227>)

both entity specific and thematic reviews. These supervisory plans will represent the cornerstone for coordinated regulatory activity under the Cooperative Framework.

CCIR members will meet to discuss their jurisdictions' supervisory plans to identify areas of mutual concern and opportunities for collaboration to achieve the commitments outlined in their plans. When an opportunity for collaboration and cooperation has been identified, a cooperative market conduct supervisory plan ("Cooperative Supervisory Plan") will be drafted for members to conduct coordinated supervisory activities. The Cooperative Supervisory Plans will establish priorities, resourcing requirements, participating jurisdictions, as well as reporting and accountability criteria (refer to *Appendix 1* for information regarding the process to develop and approve *Cooperative Supervisory Plans*).

### ICP 25 - Supervisory Cooperation and Coordination

The supervisor cooperates and coordinates with other relevant supervisors and authorities subject to confidentiality requirements.

Supervisory authorities will be cognizant of the number of reviews being conducted, resources available and efforts of individual jurisdictions when developing Cooperative Supervisory Plans in order to avoid placing strain on regulatory resources.

## 3.1 Cooperative Reviews

In order to provide supervisory authorities with a more informed understanding of the market conduct risks and the conduct of regulated entities, CCIR members will cooperate to conduct thematic and entity-specific reviews together.

### 3.1.1 Entity-Specific Reviews

Most entity-specific reviews will be determined and scheduled based on a series of factors, including size and market conduct risk weighting. For the reviews that are chosen, supervisory authorities will work together to perform the entity specific supervision (e.g. on-site and off-site). This would normally be led by the jurisdiction where the insurer has its head office ("home regulator") (unless otherwise agreed among CCIR members).

Cooperative entity-specific reviews may include a review of the insurers' market conduct policies, procedures and practices. The scope of these reviews will reflect the home regulator's expectations and may include, but will not be limited to, systematic assessments of compliance with insurer and intermediary codes of conduct; strategic plans; policies and procedures; and internal controls with respect to market conduct risks (refer to *Appendix 2* - for information regarding entity-specific reviews).

### 3.1.2 Thematic Reviews

Thematic reviews will be used to address emerging market conduct risks. They can involve on-site or off-site supervisory activity and may target specific types of insurers, insurance businesses, or business functions. The areas of focus for thematic reviews may include the sale of certain types of insurance products and particular distribution models and methods.

## 3.2 Risk Assessment and Planning

It is important to look beyond individual entities as risks are often industry wide. To conduct adequate risk assessment and planning on a national basis greater collaboration among CCIR members is crucial. To accomplish this, CCIR will collect data and utilize market analysis to identify and prioritize market conduct risks, underlying trends within the sector and areas requiring coordinated supervisory focus. The information collected will provide the necessary context and insight for decisions regarding annual Cooperative Supervisory Plans.

### 3.2.1 Systematic Market Analysis

CCIR members will identify the information and areas that need to be monitored and analyzed on an ongoing basis to allow CCIR to proactively identify market conduct risks. To that end, CCIR has developed the *Annual Market Conduct Statement*, which will be used by every CCIR member to gather information from regulated entities on their market conduct policies and practices (refer to *Appendix 3* for information on the *Annual Market Conduct Statement*).

CCIR members will work with the CCIR Secretariat to provide analytical and support services for the market conduct analysis. Information from a variety of areas and sources will be utilized in the analysis, including the *Annual Market Conduct Statement*, general economy, market participants, business mix, forecasted issues and trends, information from consumer agencies, Ombudservices, the media and other external sources.

### 3.2.2 Consumer Complaints Statistics

Consumer complaints may be used as an indicator of broader market conduct issues. Supervisory authorities can use complaint investigations and individual issue reviews generated from them to identify broader concerns and trends in insurer market conduct risk.

As a result, the Cooperative Framework intends to leverage the insights obtained through the complaint investigations and individual issue reviews to provide signatories with information on trends and patterns outside of their province or territory. Signatories will therefore be expected to share, on request, the results of their consumer complaint analysis so that other supervisory authorities may benefit from the results of that analysis.

#### ICP 19 Conduct of Business

19.0.6 Effective assessment of the quality of conduct of insurance business to a large extent requires supervisory consideration of policies, processes and procedures that apply to selling insurance products to customers and servicing these policies...

Consumer complaint analysis will include complaints received by the supervisory authorities as well as those received by insurers. The National Complaint Reporting System will also be used to provide additional data and information regarding consumer complaints (refer to *Appendix 4* for information regarding the *National Complaint Reporting System*).

### 3.2.3 New Products and Major Product Changes

Regulated entities have been requested to voluntarily inform their supervisory authorities of any new products or major changes in products or operations (e.g. new products, new underwriting criteria, changes in distribution methods, etc.). Supervisory authorities are also interested in the governance processes at each stage of the product life cycle, accountability and improvements in the fair treatment of consumers with respect to the products being introduced or improved. CCIR's request for this proactive disclosure was made for information gathering purposes, however, it also enables supervisors to consider the risks these new products or changes may pose to consumers.

## 4 Conclusion

The combination of joint planning and participation in market analysis, entity specific supervision and thematic reviews will align Canada's market conduct supervision with international best practices to enhance consumer protection.

Protecting consumers and ensuring they are treated fairly by market participants is the essence of government policy and law pertaining to market conduct in insurance. Indeed market conduct regulation aims to prevent (and manage when prevention is not entirely possible) the dangers that arise from a regulated entity conducting its business in ways that are unfair to consumers or undermine the integrity of the business of insurance and public confidence in the insurance sector as a whole.

This Cooperative Framework is the first step towards strengthening cooperative market conduct supervision in Canada. Continuing on the work CCIR has accomplished in the past, we strive to build on the foundation and work collaboratively with our regulatory partners to continue increase and leverage regulatory capacity nationally to ensure a competitive industry in which consumers are all treated fairly.

## 5 GLOSSARY

“CCIR” – inter-jurisdictional association of insurance regulators mandated to facilitate and promote an efficient and effective insurance regulatory system in Canada to serve the public interest

“CCIR Secretariat” – CCIR staff providing policy and operational support services for CCIR and the Supervisors.

“Fair Treatment of Consumers” – requirement of Regulated Entities to act with due skill, care and diligence when dealing with consumers throughout all phases of the insurance product cycle.

“Market Conduct” – encompasses any product or service relationship between the insurance industry (insurers or intermediaries) and the public, specifically the risks to customers that arise if an insurer or intermediary fails to treat customers fairly, and includes the terms “conduct of business” and “commercial practices” as used in some jurisdictions.

“Outcomes-oriented Regulation or Supervision” – the attainment of specific supervisory outcomes (i.e., public policy objectives and goals). It emphasizes the results of the regulated activity rather than the process. Desired supervisory outcomes include micro-level outcomes (i.e., fair treatment of consumers, disclosures of information and good governance) and systemic level outcomes (i.e., stable marketplace, proactive identification of issues, fair dispute resolution).

“Regulated Entity” – a licensed or unlicensed business, individual or natural person conducting the business of insurance over which a Supervisor exercises or intends to exercise regulatory authority, including but not limited to, an insurance company, a fraternal benefit society, reciprocal insurance exchange, reinsurer, insurance or reinsurance group, insurance intermediary or other regulated insurance entity.

“Regulation” - includes the legislation, regulations and published guidance from the provincial and territorial supervisors that a) address market conduct issues and b) establish and confer responsibilities and powers upon the various supervisors.

“Risk-based Regulation” – directing supervisory efforts to the most significant issues that either have the greatest potential for consumer harm or that could weaken public confidence if left unchecked. In a risk-based approach, supervisors are expected to prioritize issues based on their potential impact or risk to achievement of desired supervisory outcomes.

“Supervision” – actions supervisors engage in carrying out their responsibilities.

“Supervisor” or “Supervisory Authority” – the Superintendent of Insurance or Financial Services and their staff in each province or territory.



#### **APPENDIX 1:**

##### **Development of CCIR's Annual Cooperative Market Conduct Supervisory Plan**

**\*To be provided by the Operating Protocol Working Group upon completion**

#### **APPENDIX 2:**

##### **Framework for Entity Specific Supervisory Reviews**

**\*To be provided by the Operating Protocol Working Group upon completion**

#### **APPENDIX 3:**

##### **Annual Market Conduct Statement**

**\*To be provided by the Market Intelligence Data Gathering and Analytics Working Group upon completion**

#### **APPENDIX 4:**

##### **National Complaint Reporting System**

**\*To be provided by the Complaint Reporting System Working Group upon completion**