

Regulatory Update- CAFII Executive Operations Committee – October 30, 2012

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Federal

Guidance Issued on Electronic Commerce Protection Regulations

In October, the Canadian Radio-television and Telecommunications Commission (CRTC) issued Bulletin 2012-548 which sets out how industry can interpret the Electronic Commerce Protection regulations under *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23 (the Act). The regulations will come into force when section 6 to 11 and subsection 64(2) of the Act come into force.

The bulletin provides examples of what would be compliant practices under the regulations, including examples of what constitutes:

For Commercial Electronic Messages (CEM)

- Parties to identify in the CEM
- Mailing addresses of parties
- How the unsubscribe mechanism should work
- Meaning of “sought separately” with respect to requests for consent
- Oral consent – to be recorded or verifiable by an independent third party
- Written consent - includes paper and electronic writing

For Specified Functions of computer programs

- How to obtain consent and with what disclosure

The bulletin can be found at <http://www.crtc.gc.ca/eng/archive/2012/2012-548.htm>

Consultation on Changes to Regulations Amending the Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations (PCMLTFR)

Finance has issued revised proposed changes to the PCMLTFR . The previous version had proposed to remove an exemption from onerous customer due diligence that had been used by insurers. CAFII wrote two letters to Finance explaining the negative effect that removal of the exemption would have on business lines. The revised regulations no longer propose to remove the exemption.

The PCMLTF Act sets out obligations for reporting entities in four categories: customer identification, record keeping, internal compliance, and a mandatory system for reporting transactions. The Financial

Transactions and Reports Analysis Centre of Canada (FINTRAC) determines compliance with the PCMLTF Act. Reporting entities must do customer due diligence (CDD) to be able to identify a client, understand the client's background, occupation and how the client intends to use its relationship with the reporting entity, and monitor that client's activities, in order to be in a position to identify transactions that are suspicious and report them to FINTRAC. Reporting entities are required to undertake CDD activities when they conduct certain activities such as opening an account, or facilitating a transaction above a size threshold.

The Financial Action Task Force (FATF) has set international standards that member countries have agreed to adopt to fight money laundering and terrorist financing. The FATF identified a number of deficiencies for Canada in the CDD provisions of the PCMLTFR. Therefore, amendments to the PCMLTFR are necessary.

The following clarifications to the CDD provisions of the PCMLTFR are proposed:

- The term "business relationship" would be defined in the PCMLTFR. Reporting entities would be required to monitor business relationships on an ongoing basis, using a risk-based approach, and obtain information on the purpose of a business relationship when entering into a business relationship with a client.
- Enhanced CDD measures should be taken in respect of all high-risk clients and activities, and a list of enhanced measures from which reporting entities could choose would be added. The measures would include keeping client information up to date and conducting enhanced ongoing monitoring.
- Amendments would require reporting entities to obtain documentary evidence from the client that confirms the beneficial ownership information that they have obtained re all persons who own 25% or more of a corporation or entity.
- The PCMLTFR would be amended to clarify that there will be no exceptions to reporting entities' current obligation to conduct CDD measures in respect of any transaction or activity which gives rise to a suspicion of Money laundering/ terrorist financing. (ML/TF)

The proposed amendments do not introduce new administrative burden on reporting entities, but serve to resolve ambiguities in the PCMLTFR in order to align Canada's AML/ATF regime more closely with the FATF Recommendations.

The proposed regulatory amendments would come into force one year after final publication in the *Canada Gazette*. The Government is seeking comments as to the appropriateness of this timeframe. Upon coming into force of the proposed regulatory amendments, FINTRAC and OSFI would provide updated guidance.

The revised regulations were posted on October 13. Interested parties have 30 days to comment to the department of Finance. Given that CAFII issues have been dealt with in these regulations, the MAC committee recommends that no submission be made at this time but that CAFII follow up with a letter to Nick Burbidge after the regulations are final, to thank him for taking CAFII issues into account. The consultation can be found at

British Columbia

Changes to Restricted Licensing Regime for Motor Vehicle Dealers

On October 5th, the Insurance Council published Notice ICN 12-006 which sets out restrictions and conditions on Motor Vehicle dealers' restricted insurance licenses. These licensees will be restricted to offering only insurance products that are incidental to the sale of a motor vehicle. Products must be offered under the direct supervision of a named unrestricted general insurance agent. The licensed representative must obtain initial and continuing education, including a minimum of 1 hour annually on each product offered. All products offered must be reviewed and approved by Council. Council will meet with the underwriting insurer. If product features are changed, the product cannot be offered until reapproved by Council. Coverage of products must be less than \$15,000. Client disclosure requirements include the consumer's right to decline coverage, all premiums and fees charged. These disclosures must be in plain language prior to the purchase of insurance. The requirements were effective immediately.

Alberta

General Insurance Agent Licensing Changes Forthcoming

Alberta Council reports that revisions to the *Insurance Agents and Adjusters Regulation* have been finalized. The changes have been presented to the government who are expected to review it in the near future. The changes include removing the mandatory requirement to achieve a level 2 general agent's license within 3 years and calls for designated representatives to be responsible to ensure appropriate supervision of level 1 agents. The regulation also calls for having all categories of licence (adjusters, general and life) move to the same expiry date of June 30 each year.

Business Number Registration System and Electronic Licensing System Update

Council advises that they are continuing development of a national business number registration system and that a number of provinces have expressed interest in using it. A licensee would use a business number as an identifier which would assist in enhancing efficiency of the licensing process. The council hopes to be testing the business number system by Spring 2013.

Alberta has an electronic licensing system which the council is in the process of upgrading to be a web-based system. It would allow for ease of use of the backcheck system for criminal background checks. The system would work with the business number registration and ideally would allow for license applications to be completed online in 15-20 minutes.

Manitoba

Insurance Regulator to Merge with Securities Commission

The Financial Institutions Regulation Branch which oversees insurance companies, the Insurance Council, credit unions and co-operatives will be merging with the Manitoba Securities Commission which has responsibility for securities regulation, real estate agents and mortgage brokers. The Financial Institutions Regulation branch which had reported as a branch of the Ministry of Finance will become part of a “special operating agency” reporting through the Ministry of Finance. The Insurance group expects to move to the securities commission building. The effective date of merged operations was October 1, 2012.

Insurance Act Review Update

Superintendent Jim Scalena reports that the department is still in the process of drafting regulations which will be available for comment in early 2013. This will not be a full consultation but a circulation of regulations to those parties who are impacted ie industry associations, including CAFII. It may be that not all regulations are implemented at the same time , in particular, ISI may take longer than other areas. For Life and A&S sections, implementation will likely be for fall of 2013 with not as much lead time as industry requested.

ISI Regime Update

Council reports that there is no news that can be made public at this time as recommendations have been sent to government. Comments provided by industry in August 2012 have been taken into consideration in the recommendations.

Ontario

Unclaimed Intangible Property Consultation

Ontario has recently proposed a program to manage unclaimed assets for the benefit of Ontarians until property is claimed. Items such as amounts due under an insurance policy and unpaid wages are considered to be intangible property. The Ontario legislation will be founded on the Uniform Unclaimed Intangible Property Act. The consultation was very broad based and sought input on all aspects of handling unclaimed property. Input was due by October 12, 2012. The consultation can be found at http://www.attorneygeneral.jus.gov.on.ca/english/about/uipp_consultation-EN.pdf

FSCO Company Complaint Officer Days

FSCO is once again hosting the annual Company Complaint Officer Symposium for the Property and casualty Insurance sector at Hotel Novotel in North York on Monday November 19 from 8 an to 12 noon. The focus will be on an exchange of information regarding anti-fraud and market conduct activities. Participants are asked to confirm attendance by November 12, 2012.

The Company Complaint Officer Symposium will be held for the Life and Health Insurance sector on Friday morning November 23, 2012. The focus will be on an exchange of information between industry

and FSCO regarding anti-fraud activities and complaint case studies. Parties interested in attending should respond by November 16, 2012.

Quebec

AMF Index Launched

In October, the Autorité des marchés financiers (AMF) announced a new tool, the AMF Index, to measure the knowledge and behaviour of consumers of financial products and services in Québec. The index is intended to gauge the effectiveness of financial literacy awareness campaigns and is part of 2012-2017 Strategic Plan.

In spring 2012, the AMF launched an initial study on the level of financial awareness among Quebeckers on various topics including personal finance, credit management, investments, relationship with a representative, insurance products, level of awareness of financial fraud, and retirement management and planning. The 2012 AMF Index shows that the 1,500 individuals in charge of managing their household finances who responded to the survey obtained an average score of 58.5%. This means that Quebeckers are aware of and adopt over half of a set of knowledgeable behaviours which the AMF considers essential to efficiently manage personal finances, make informed financial decisions and prevent fraud.

Categories of respondents

Respondents fell into three categories - Knowledgeable, ambivalent or indifferent. Half of Quebeckers can be considered “knowledgeable,” i.e. they have good knowledge of behaviours that should be adopted and say they put this into practice. Knowledgeable consumers score higher in topics relating to investments and insurance. They tend to have interest in gaining more knowledge. Knowledgeable consumers are typically over age 54, are retired, have a university education, own their own home and earn an annual family income of over \$100,000. “Ambivalent” consumers, who represent 30% of the population, have good knowledge of behaviours that should be adopted but they do not regularly apply them. They tend to find it difficult to manage their finances and see themselves as aggressive investors. Ambivalent consumers are typically single, rent their home, are under age 55 and make their own financial decisions, but occasionally consult a representative. Although the representative is the most popular source of information for ambivalent consumers, a proportionately higher number of these consumers mention family and friends as a source of information. “Indifferent” consumers represent 20% of Quebeckers. They have a vague understanding of knowledgeable behaviours. They tend to find personal finance difficult and have no interest in learning more. Indifferent consumers are typically in the 18-24 or 75 or older age group, earn a modest income and have a low level of education.

Consumers Who Consult a Representative

The survey showed that Quebecers who have a relationship with a representative scored an average AMF Index of 61.6% compared with 49.7% for those who fail to do so. The AMF concluded that representatives seem to play a positive role in the adoption of knowledgeable behaviours.

Review of Insurance Distribution

The Finance Minister announced at the recent “Rendez-vous with the AMF” that the province would be undertaking a review of the *Act Respecting the Distribution of Financial Products and Services* (the Act) in accordance with clause 580 of the Act which states “The Minister must, on or before 1 October 2004, and every five years thereafter, report to the Government on the application of this Act and, if need be, on the advisability of maintaining it in force or amending it.” In November 2010, the AMF began a review of distribution of insurance other than through a representative (DWR) which is part of the Act. The consultation has resulted in planned changes to the distribution guide as well as other possible changes which have not yet been finalized. The AMF advised that there have been few if any changes to the previously circulated 2 page document but a revised draft will be provided to CAFII. The AMF has shared preliminary recommendations on further changes with the Finance department but any changes will be part of the overall review of the Act. The AMF does not anticipate any major changes to the representative distribution channel. Eric Stevenson will be coming to Toronto in mid-November to have contact with industry representatives. Dates will be provided for a CAFII meeting.

Internet Insurance Distribution

The AMF had a consultation in May 2012 on Internet distribution. The AMF also chairs the CCIR Ecommerce working group which had a consultation in April. The AMF will be focusing on the CCIR paper first (see CCIR below). For the AMF’s initiative, the AMF does not plan any further consultations. The next step will be a report to the government of recommended changes to address the Internet context. These changes will be part of the review of the *Act Respecting the Distribution of Financial Products and Services* noted above.

AMF Staff Update

No replacements have been identified for Nathalie Drouin and Patrick Dery.

Prince Edward Island

Credit Score Update

PEI confirms that it has drafted a bill which would prohibit the use of credit information for insurance rating and underwriting purposes. The next step planned is to post the bill for a 30 day consultation period. There is no date yet available for the consultation.

Canadian Council of Insurance Regulators

Webinar on Underserved Insurance Market

In September, the Canadian Association of Financial Institutions in Insurance (CAFII) made a presentation on the Underserved Insurance Market. The presentation was web-based and attended by over 40 participants from regulators offices coast to coast.

Ecommerce Consultation

The Ecommerce committee, chaired by the AMF, received 25 submissions in response to their consultation paper in Spring 2012. The CCIR will be drafting a position paper based on the input received. It is planned that the paper will be presented for approval to the CCIR at their January conference call meeting. When approved, the position paper will distributed to interested parties for a 30 day comment period.

International

Gender to be Banned as Insurance Variable in Europe

The European Court of Justice ruled in March 2011 that insurance pricing cannot take gender into account. The ruling comes into effect in December 2012. The Association of British Insurers (ABI) has published a document to advise consumers of the products affected by the ruling including auto insurance, life, critical illness and annuities as well as to advise that pricing will be affected. Women typically had lower rates for automobile insurance and for annuities but with gender –neutral pricing, this differential will not be maintained.

British Brokers Call for a Canadian-style Ban on Bank Sales of Insurance

In September 2012, the British Insurance Brokers' Association (BIBA) Chief Executive Eric Galbraith said that the Financial Services Authority should “explore the merits of adopting a similar approach to Canada where banks are prevented from directly selling general insurance products altogether. Advice is the area of the professional insurance broker and intermediary whose business is insurance and not a bank or other organisation whose main business is not insurance.”

Systemically Important Financial Institutions

The Basel Committee and the Financial Stability Board (FSB) have developed a policy framework for systemically important financial institutions. In November, 2011, a group of 29 banks were identified as globally Systemically Important Banks (G- SIBs). (No Canadian banks were on the list.) Final rules were adopted for dealing with these banks. In October 2012, the Basel committee set out a framework for how national regulators will identify and deal with Domestic Systemically Important Banks (D-SIBs). D-SIBs will be required to have higher loss absorbency (HLA) requirements. This would entail increasing their capital levels and thus costs. The Basel committee recommends that D-SIBS be required by their national regulators to comply with G-SIB principles beginning in January 2016.

In 2012, the International Association of Insurance Supervisors (IAIS) issued for public consultation a proposed assessment methodology to identify Global Systemically Important Insurers (G-SIIs). These are insurers whose distress or disorderly failure, because of their size, complexity and interconnectedness, would cause significant disruption to the global financial system and economic activity. A list of G-SIIs will be released in April 2013. On October 17, 2012 the IAIS published a policy framework for G-SIIs for a 2 month comment period ending December 16, 2012. The policy measures include enhanced supervision, effective resolution (eg crisis management, recovery plans, plans for separating non-insurance from traditional insurance activities, portfolio transfers, and recognition of existing policyholder protection plans.) and HLA capacity. The IAIS has also recently published Insurance Core Principles (ICPs). ICPs apply to all insurers and insurance groups, regardless of size or systemic importance. Policy measures on G-SIIs will apply only to designated G-SIIs and will be appropriate for the risks that G-SIIs pose to the financial system. The consultation paper can be found at <http://www.iaisweb.org/index.cfm?pageID=967>