

***Agenda Item 5(b)(1)
July 20/21 EOC Meeting***

Action Plan, CAFII with AMF Regarding Regulation respecting Alternative Distribution Methods and Credit Card-Embedded Insurance Benefits Coming out of the Norton Rose Legal Opinion

Background Information

- CAFII has requested and been granted a three-month extension for posting Product Summaries and providing the AMF with an Action Plan, to 17 December 2021;
- A new Superintendent of Client Services and Distribution, Eric Jacob, has been appointed at the AMF and this may provide an opportunity to recalibrate the relationship;
- Mario Beaudoin has verbally told THIA President Richard Ollier that the AMF will not enforce providing the Fact Sheet to consumers in the short term, and will work with industry to make the Fact Sheet more appropriate for credit card-embedded insurance benefits by 1 May, 2022—but he will not put this in writing;
- CAFII members are still reluctant to provide consumers with a Fact Sheet that is incorrect and misleading;
- Norton Rose feels that there are very solid legal foundations for not providing consumers with the current version of the Fact Sheet.

Proposed Next Steps

- CAFII to reach out to Eric Jacob, requesting a one-hour “get acquainted” virtual (web platform) meeting as soon as possible, with Keith Martin and Brendan Wycks;
- At that meeting, we will share information about CAFII, about some recent initiatives like our digitization project, and will inquire about AMF priorities;
- CAFII will thank the AMF for the three-month extension;
- CAFII will tell Eric Jacob that CAFII’s members want to comply with the Regulation for credit card-embedded coverages, but are struggling with the requirement that a Fact Sheet be provided to consumers at time of offer, as that Fact Sheet contains false and misleading information;
- CAFII will share that to understand the options available to it CAFII has asked Norton Rose to provide a legal analysis of the RADM and credit card-embedded insurance benefits, and we would like to share some of the findings (see below for the arguments to be shared);
- CAFII will indicate that if the AMF would find it useful to get further information about the legal findings, we would be pleased to have Norton Rose develop a synopsis of some of the arguments and share those either in writing, through a presentation by Norton Rose to the AMF, or both;
- Conclude meeting.

Appendix A: Potential Legal Arguments to Share with the AMF

- Norton Rose has suggested that CAFII may argue that the AMF should decline to apply certain provisions of the RRADM to credit card-embedded insurance benefits in order (i) to ensure that the object of the RRADM is attained, (ii) to avoid absurd and impracticable consequences, and (iii) to adopt an interpretation of the RRADM that does not conflict with other legislation purporting to protect Quebec consumers.
- CAFII may request that the RRADM should be amended in order to either (i) adapt its provisions to the specific situation of credit card-embedded insurance benefits, or to (ii) grant the AMF with the discretionary power to exempt certain situations from its application. **Being a mere regulation, the RRADM may indeed be amended by the AMF:**

the RRADM is not a statute adopted by the Quebec legislative assembly, but a mere regulation adopted by the AMF pursuant to the provisions of the ARDFPS. The RRADM may thus be amended by the AMF via the adoption of an amending regulation.

The amending regulation may purport to either (i) adapt the provisions of the RRADM to the specific context of credit card-embedded insurance benefits, or (ii) provide the AMF with the power and discretion to exempt certain specific situations from the application of the RRADM.

- CAFII may also claim that certain provisions of the RRADM are simply inoperative when it comes to credit card-embedded insurance benefits since their application would conflict with (i) the Act respecting the distribution of financial products and services (**ARDFPS**) i.e. RRADM's parent legislation—specifically to not mislead consumers or provide false information:

In the present case, it is clear that the purpose of the RRADM is to protect consumers by ensuring that they receive true, sufficient and relevant information about the insurance coverage and their rights in that regard. In the Notice relating to the application of the Regulation respecting alternative distribution methods published by the AMF, the latter indeed makes the following remarks:

The premise of the regime governing distribution without a representative is that adequate, accurate and complete information is given to the client.

The Regulation provides that information be disclosed through more than one document. The information specific to distribution without a representative is provided in a fact sheet, the content of which is prescribed by the Authority. The information on the product offered, which helps the client make an informed decision about the product, is presented in a summary prepared by the insurer.

The strict application of the RRADM advanced by the AMF however defeats that purpose. As discussed above, the RRADM provides that the product summary that must be delivered to clients must inform them of their “right of cancellation, its duration and the procedures for exercising it” while the mandatory fact sheet that must also be delivered to clients informs them that they are allowed to “rescind the insurance contract, at no cost, within 10 days”.