

Agenda Item 5(b)(1)
June 8/21 Board Meeting

From: Duquette, Marc <marc.duquette@nortonrosefulbright.com>
Sent: May-21-21 12:20 PM
To: Keith Martin <Keith.Martin@cafii.com>
Cc: Dupoy, Dominic <dominic.dupoy@nortonrosefulbright.com>; Poisson, Pier-Olivier <pier-olivier.poisson@nortonrosefulbright.com>; Brendan Wycks <brendan.wycks@cafii.com>
Subject: RE: Follow up from CAFII

Dear Keith

Thank you for your letter below and for confirming our mandate.

I spoke with my colleagues and we wish to confirm that we will deliver the opinion within a four to five week timeframe. We have also noted the clarifications and instructions below and will adjust our deliverables accordingly.

As we progress forward, we may be in touch for further clarifications.

Have a great long weekend and enjoy Victoria Day.

Best regards,

Marc

Marc Duquette
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De : Keith Martin <Keith.Martin@cafii.com>
Envoyé : 20 mai 2021 15:51
À : Duquette, Marc <marc.duquette@nortonrosefulbright.com>
Cc : Dupoy, Dominic <dominic.dupoy@nortonrosefulbright.com>; Poisson, Pier-Olivier <pier-olivier.poisson@nortonrosefulbright.com>; Brendan Wycks <brendan.wycks@cafii.com>
Objet : RE: Follow up from CAFII

Hello Marc,

CAFII held a Special Purpose Board meeting yesterday; and the Board voted unanimously to proceed with your proposal of April 26, 2021.

Your proposal indicated that you will require four to five weeks to prepare and deliver the proposed legal opinion, so we ask that you confirm now that you can deliver the opinion to us in roughly that timeframe.

One item in the proposal that we are requesting greater clarity around is your inclusion of “reviewing the preceding regulatory regime,” at several places in the proposal.

Perhaps we have not understood your rationale for looking heavily at previous circumstances, but Brendan and I are not convinced that doing so would be a prudent use of your time and CAFII’s financial resources in this engagement – because our view is that it is solely the current AMF regulatory regime that is relevant to the issue at hand; and looking in detail at the predecessor regulatory regime would imply that the AMF does not have the right to change the regulatory regime as it sees fit, which we don’t believe is an argument that CAFII and the industry can legitimately make.

Our members had a particular interest in the concept that the AMF is fully permitted and able, whenever it wishes to do so, to amend Regulations within its purview – as distinct from legislation, which the RADM is not -- and so it is misleading for the AMF to argue that legislative changes are needed to modify how credit card-embedded insurance benefits are dealt with by the RADM.

Also, the CAFII Board would like Norton Rose to produce a CAFII-focused legal opinion in the form of a “continuum of legal arguments-based AMF challenge options” — for example, a “light push-back” approach, a “mid-range challenge approach,” and a “heavy/aggressive legal challenge” approach.

It is also critical to emphasize that the Board at this time is not actually fully persuaded that it can or should challenge the AMF legally, but it is interested in understanding the arguments which your legal opinion will contain and the options available to CAFII and its members. Part of the interest in this legal opinion is to provide CAFII and its members with the option of sharing the findings with the AMF, even if we do not formally challenge the AMF, in the interest of letting them know that we have legal options available to us and will consider that approach if the AMF continues to impose such onerous regulatory expectations on industry.

For your information, at this time CAFII will also be asking the AMF for a three-month extension of its stated 17 September, 2021 deadline for affected insurer compliance to 17 December, 2021; and we are not going to reference in our deadline extension request letter any legal research or challenge efforts being made in tandem by our Association. That letter will focus entirely and solely on the reasons for which we feel we need an extension.

In that connection, we also have underway a CAFII Working Group on how to comply with the AMF’s expectations. That Working Group is meeting weekly, and several members have said it is their intention to comply as best they can.

So the Norton Rose legal opinion which our Board is prepared to invest in, while important, may or may not lead to any action on our Association’s part. The opinion is viewed as quite valuable, but it will not negate our continuing our work on how affected members can comply with the expectations set out by the AMF.

Please do not hesitate to reach out to Brendan and me for any clarifications, and we both very much look forward to collaborating with you and your esteemed colleagues on this important initiative.

Warm personal regards,

--Keith

Keith Martin

Co-Executive Director / Co-Directeur général

Canadian Association of Financial Institutions in Insurance

L’association canadienne des institutions financières en assurance