

Regulatory Update – CAFII Executive Operations Committee, May 19, 2017

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Federal/National

Financial Consumer Agency of Canada (FCAC)

Commissioner Calls For New Consumer Protection Advisory Committee Volunteers

On May 1/17, Lucie Tedesco, Commissioner of the Financial Consumer Agency of Canada (FCAC), issued a call for volunteer applicants for a new Consumer Protection Advisory Committee (CPAC) which will play a key role by supporting the Commissioner in carrying out the Agency's financial consumer protection mandate.

Committee members will help protect consumers by informing FCAC's supervision work, research initiatives, and the development of consumer education material. In addition, members will share their perspectives on marketplace trends and emerging issues, concerns regarding the delivery of financial services, and how changes in the financial services sector are impacting Canadians.

The CPAC will have up to 12 members, who will be selected by Ms. Tedesco. The FCAC is seeking candidates from the public, non-profit and private sectors. The Commissioner will consider the roles, experience and knowledge of applicants in selecting members of the Committee. The Commissioner also reserves the right to select a member who, in her view, has expertise or represents interests that may help advance the Committee's work. Membership selection will be open and transparent, representative of Canada's diversity, and merit-based.

Applicants and the organizations they represent should be able to demonstrate the importance they accord to financial consumer protection issues and the identification and evaluation of trends and emerging issues. Members should be senior representatives of organizations and/or experts in their field related to the financial industry, active in the financial sector and have significant influence within their sector. Members are required to actively participate in the Committee's activities.

The Committee will meet at least twice per year and may, at the discretion of the Chair, hold additional meetings. In-person participation is preferred; however, conference call facilities will be made available if required. Membership on the Committee is for renewable, two-year terms. The Commissioner will determine whether members are renewed.

Interested individuals may apply online until 11:59 p.m. on June 30, 2017.

Canadian Council of Insurance Regulators (CCIR)

Northwest Territories Signs Onto MOU Re Co-operative Framework

In an April 24/17 meeting, CCIR Policy Managers M. Boyle and S. Jacobs advised CAFII that the Northwest Territories had recently signed the Council's Memorandum of Understanding related to its Framework for Co-operative Market Conduct Supervision.

As well, Newfoundland is in the late stages of its review and approval process and should be signing the MOU in the very near future. That will leave only the Yukon as a non-signatory among the 13 provincial/regional jurisdictions in the country; and it is currently going through some staff changes in terms of its insurance supervision roles. Jonathan Parker is the new Superintendent of Insurance for the Yukon.

CCIR Approves New 2017-2020 Strategic Plan; Targets Early June Release

CCIR approved a penultimate draft of its new 2017-2020 Strategic Plan during the its April 6-7/17 Spring meeting. The target release date for the new Plan is early June.

M. Boyle and S. Jacobs offered to meet with CAFII after the new Strategic Plan's release to provide elaboration and clarification, and answer any questions. It was agreed that that meeting should take place after June 22/17 – the date of CCIR's Summer teleconference meeting – as deferring until then would allow for a wider range of updates to be provided.

CCIR To Resume October/November Timing For Annual Stakeholder Meetings

On April 24/17, CCIR Policy Managers M. Boyle and S. Jacobs advised CAFII that the Council will be continuing its Annual Stakeholder Meetings, but will revert to an October or November timing for them rather than the January and December timing that was used most recently.

CCIR Re-Appoints Executive Committee Members; Adds Third Vice-Chair

At its April 6-7/17 Spring meeting, CCIR made the following Executive Committee re-appointments for a two-year term: Patrick Dery; Chair; Brian Mills, Vice-Chair; and Robert Bradley, Vice-Chair; and Scott Moore was added as a third Vice-Chair.

CCIR To Share Aggregated Annual Statement On Market Conduct Results With Industry

On April 24/17, M. Boyle advised CAFII that CCIR plans to share an aggregated results report from the first year of the Annual Statement on Market Conduct with participating insurers and industry Associations, likely in the third or fourth quarter of 2017.

CAFII has also learned that there will only be grammatical changes made to the Annual Statement for its Year 2. Informal consultations on those changes would be conducted during the summer of 2017. Thereafter, CCIR has committed to a more fulsome review of the Annual Statement for its Year 3.

Travel Health Insurance Association (THiA)

THiA Progressing On Travel Insurance Bill Of Rights and Responsibilities

Will McAleer, President of the Travel Health Insurance Association (THiA), reported in its Winter 2017 quarterly newsletter that the Association's in-development Travel Insurance Bill of Rights and Responsibilities (BofRs) had been reviewed and refined by the Executive Committee and would be showcased to the membership, along with a comprehensive communications plan, at the THiA Annual Conference, which was held April 30 to May 3/17 in Las Vegas.

"Our intention is to outline ways that you and your organizations can participate in the promotion of this exciting new initiative, such that we can show both regulators and the public our support for the programs we offer to Canadian travelers," McAleer said in his President's Message.

(At this time, no further news about the BofRs has been published on the THiA website, in either the public or members-only sections.)

Earlier, at THiA's AGM on September 27/16, the then-current draft of the BofRs was unveiled as follows:

Know Your Health, Know Your Policy, Know Your Trip, Know Your Rights

You Have The Right To

1. *A No Obligation Purchase: your travel insurance provider will allow you a '10-day free look.'*

2. *Be Informed: you will receive your policy documentation and confirmation of coverage outlining the policy terms and conditions, whether you purchased in-person, over the phone, or online.*
3. *Request Clarification: you may ask questions about the travel insurance you have purchased.*
4. *Review and Modify Medical Screening: you will receive a copy of the answers you provided on the medical questionnaire prior to the start of your policy.*
5. *Receive World-wide Assistance and Toll-free Support: you will have 24/7 access to the help you need, when you need it, from your travel insurance provider.*
6. *Fair and Prompt Claims Handling: you will have a timely and transparent communication process.*
7. *Escalate and Appeal: you may challenge decisions and request additional reviews with new information.*
8. *Confidentiality: your personal information will be protected in all dealings with your travel insurance provider.*
9. *Know Your Insurer: your policy will clearly identify the underwriter of your travel insurance and the process to file and resolve complaints.*
10. *Your Preferred Language: you may transact and correspond about all components of your travel insurance in English or French.*

You Have The Responsibility To

1. *Provide Accurate Information: you must complete the travel insurance application accurately.*
2. *Understand Your Purchase: you should read and understand your policy wording.*
3. *Travel With Proof of Insurance: you should have your policy number and emergency assistance contact information easily accessible.*
4. *Notify Your Travel Insurance Provider: you must provide prompt and timely communication when a claim situation arises and provide all requested documentation related to your claim, including all receipts.*

In addition to the BofRs itself, THiA is developing a 'Seal of Approval' icon which will be made available to members to use on their corporate websites, policy documentation, and promotional materials. THiA has indicated that to be able to use the 'Seal of Approval,' member companies will need to make sure that their policies and practices are in line with the BofRs; and in the near-term that process will be entirely self-managed.

British Columbia

Judge Dismisses Application To Certify Class Action Against Banks

In a judgment handed down on March 28/17, the Honourable Mr. Justice J. Macintosh dismissed an application by Ms. Harpreet Kaur Sekhon to have a class action certified against Royal Bank of Canada, Toronto Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal, and Bank of Nova Scotia related to their credit card balance protection insurance (BPI).

The class definition proposed by Ms. Sekhon and her lawyers evolved over the course of a six-day hearing and ended up as *"this action is brought on behalf of members of a class consisting of the Plaintiff and all persons who, while residing in the Province of British Columbia, were enrolled in Credit Protection by telephone by the Defendant Banks and who paid monthly premiums and/or fees for Credit Protection, or such other class and/or subclass definitions or class periods as the Court may ultimately decide on the motion for certification."*

Key elements of the judge's dismissal decision included the following:

“The Plaintiff could not point to anything that contravenes any law in the voluminous documentary evidence the Banks filed, showing their BPI policies, procedures, and protocols. . . . Given my finding that it was permissible for the Certificates of Insurance to be sent after the enrollment phone calls, no claim by a potential plaintiff can get off the ground without an examination of that individual’s enrollment phone call and his or her other knowledge about BPI. In the result, there is nothing common about the claims of the members in any potential plaintiff group.

It is not a common issue whether thousands of Canadians have enrolled by phone with the Banks to obtain BPI coverage, and have paid for that coverage. That is common ground.

There is a further level of individuality when any potential BPI claims is examined. The five Banks each have their own BPI program. While there are many common points in the five programs, there are also enough differences that it would be relevant to know which Bank a particular complainant dealt with. Similarly, each of the five programs changes from time to time.

The application for certification fails to satisfy the requirements in s. 4(1)(b)-(e) of the Class Proceedings Act. The central point of the case is the absence of “commonality” as discussed in the case law addressing s. 4(1)(c) of the Act. Every potential class member, no matter how the class was defined, would need to advance a case which was almost entirely specific to that customer.”

In his judgement, Mr. Justice Macintosh did, however, make one backhanded slap at the defendants, as follows: *“I sympathize with the Plaintiff. From reviewing the Sekhon and Barbero phone transcripts . . . , I expect that Bank representatives, not infrequently, are, or at least have been, overly aggressive and persistent in selling BPI to their customers, many of whom phoned their Banks only to activate their credit cards. But in my view, that is not enough to make a finding of commonality so as to bring this application within the ambit of s. 4(1)(c) of the Act.”*

Alberta

CAFII Provides Feedback on AIC’s Internal Definitions of Credit-Related Insurance

In a May 19/17 response to CAFII’s “Feedback on Definitions of Credit-Related Insurance Authorized for Sale Under a Restricted Insurance Agent’s Certificate in Alberta,” J. Abram, CEO of the Alberta Insurance Council, wrote to B. Wycks as follows: “Thanks, Brendan. I appreciate your quick response on this issue and value your feedback. I will place this matter before the LIC at their next meeting and will let you know the outcome.”

Earlier on May 19/17, B. Wycks had made the following submission to Ms. Abram on behalf of CAFII:

“In follow-up to our recent discussion at the CLHIA Conference in London where we shared our views on this matter with you verbally, I’m now pleased to communicate in writing CAFII’s views on the definitions of the four types of Credit-Related Insurance authorized for sale under a Restricted Insurance Agent’s Certificate, in keeping with section 454 of the Alberta Insurance Act, as set out on page 2 of your December 22, 2016 letter to us.

After review and due diligence at both Association-wide and individual member company levels, I can confirm that CAFII

- *has no issues with the definition of Creditors’ Critical Illness Insurance which the Life Insurance Council recently approved, following input from industry stakeholders; but*

- *shares the concerns recently identified by CLHIA with respect to the definitions of Creditors' Disability Insurance, Creditors' Life Insurance, and Creditors' Loss of Employment Insurance which were set out on page 2 of your December 22/16 letter.*

More specifically, we concur with CLHIA – as itemized in its document “Industry feedback on December 2016 Creditor’s Group Insurance Definitions – that

- *the language “pays off” could be read as a guaranteed payment. Similarly, the language “pays off the loan” could be read as payment for the entire outstanding loan amount;*
- *the terms "person" or "debtor" would be preferable to the term "borrower" that is used in the AIC definitions, as they are more commonly used in legislation; and*
- *the term "beneficiary" is more commonly used in individual insurance and has certain policy-holder rights associated with it that do not extend to CGI products. In addition, using "beneficiary" to describe the creditor could exclude an important exemption for farm, fishery and ranch lines of credit under the Insurance Business (Banks and Bank Holding Companies) Regulations, where the insurance monies may be paid to parties other than the creditor.*

It is our understanding that the definitions of Creditors' Disability, Creditors' Life, and Creditors' Loss of Employment Insurance have been used for internal reference purposes within the AIC for a number of years; and the Life Council wanted to integrate the new CI definition with them into a comprehensive package that could be shared publicly.

However, we agree with CLHIA that those previously existing internal definitions, if shared publicly via the AIC website or other public channels, could cause misunderstanding and confusion among consumers.

That said, given that the three long-standing definitions have been working well for internal reference purposes at the AIC, CAFII would support the following solution which we believe that CLHIA has also proposed for your consideration: on your website and/or in other public channels, publish only the list of types of Credit-Related Insurance that are authorized for sale under a Restricted Insurance Agent's Certificate, without any accompanying definitions. That simple solution would allow the three long-standing definitions, along with the new definition of Creditors' Critical Illness Insurance, to continue to be used for internal purposes at the AIC.

Should the Council determine that it definitely must publish the definitions of the types of Credit-Related Insurance for public information, then CAFII strongly recommends that the definitions of Creditors' Disability, Creditors' Life, and Creditors' Loss of Employment Insurance be reviewed and revised in accordance with the comments provided in CLHIA's document “Industry feedback on December 2016 Creditor’s Group Insurance Definitions.”

Saskatchewan

Retiring IBAS Executive Director Reminisces On Wins Against Banks In Insurance

Retiring after 25 years as Executive Director of the Insurance Brokers Association of Saskatchewan, Ernie Gaschler said the following in his farewell column to IBAS members in the Spring 2017 issue of the Association's Saskatchewan Broker magazine:

“IBAS’ political effectiveness has been legendary when it comes to keeping the banks from selling insurance through their branches and websites. Protecting the public interest at the point where credit is granted is a message that’s resonated well with governments at both the national and provincial levels and should continue to do so in the future.”

Gaschler's parting comments also include a reminiscence that when he first became Executive Director of IBAS in 1992, for a number of years he also served in the dual role of General Manager of the relatively new Insurance Councils of Saskatchewan. "Although managing both provided a few challenges, there weren't many conflicts since the benefit of a fair and consistent regulatory regime served the best interests of industry and the public equally well," he opines.

Interestingly, the Spring issue of Saskatchewan Broker does not contain any mention of Finance Minister Kevin Doherty's imposition of a 6% provincial sales tax on most types of insurance premiums including home and auto premiums; nor any mention of IBAS initiatives either before or after the Minister's announcement of that PST measure in his March 22/17 provincial budget.

Manitoba

Insurance Council To Launch 2017-18 RIA Licence Renewal Period Shortly

The Insurance Council of Manitoba (ICM) has published a Notice on its website advising that the period for online renewal of Restricted Insurance Agent (RIA) licences for 2017-18 will open shortly. An email notice will be sent to an RIA's Designated Official as soon as that occurs.

The ICM recommends that RIAs renew their licences immediately after receiving the notification email indicating that its licensing portal is ready to accept RIA renewals. That's because if issues occur with an RIA entity's renewal application, and the license ends up not being issued prior to the July 1 renewal deadline, the entity and its employees will not be licensed or authorized to conduct insurance business in Manitoba after the current licence has expired.

The Notice also advises that amendments to an organization's name cannot be completed via the online licence renewal process; but rather must be submitted to the ICM in paper format. A new, fully completed application – including required documentation and an amendment fee of \$70 – is required to complete an amendment to an organization's name. In that connection, the Notice warns that under Section 391 of the Insurance Act of Manitoba, a licensee can only hold out in the manner in which it has been licensed by the ICM.

Ontario

FSCO To Launch Life Insurance Industry Working Group

On April 21/17, Heather Driver, Director, Licensing Branch in FSCO's Licensing and Market Conduct Division, wrote to CAFII and four other industry Associations in the life and health insurance sector, with an invitation to appoint up to two representatives to the Commission's new Life Insurance Industry Working Group (LII Working Group).

The purpose of the LII Working Group will be to provide a forum to discuss operational policy issues and regulatory matters pertaining to the life insurance industry.

Ms. Driver, who will chair the LII Working Group, indicated that it will include participants from FSCO, the Ontario Ministry of Finance, and the following life insurance industry Associations: Advocis; Independent Financial Brokers (IFB); Canadian Association of independent Life Brokerage Agencies (CAILBA); Canadian Life and Health Insurance Association (CLHIA); Canadian Association of Financial Institutions in Insurance (CAFII).

Discussions at this forum are intended to be open and candid, so no minutes will be taken at the meetings. Although discussions are not intended to be confidential, there may be occasions upon which members are privy to confidential materials and may be asked to sign non-disclosure agreements.

The LII Working Group will meet three to four times per year and face-to-face meetings are being recommended for the first few meetings.

CAFI has determined that Co-Executive Director K. Martin and one member representative from the Association's Licensing Efficiency Issues Committee will be its representatives on FSCO's LII Working Group.

FSCO has now confirmed that the first meeting of the LII Working Group will take place on May 30/17.

Quebec

AMF Creates Fintech Lab

On April 27/17, the AMF announced that it was creating a Fintech Lab to explore the current and potential applications of new technologies among regulated entities (including market infrastructures) or in connection with its regulatory activities. The Lab will be accessible to all AMF staff who contribute to the various projects of the Fintech Working Group.

The Fintech Lab's mandate is to study new technologies rather than the business models that are based on them. It will therefore serve as a think tank, equipped with exploration tools, whose purpose is to provide the AMF with the knowledge it requires to fully carry out its role as a regulator in an increasingly digital environment.

In connection with its new Fintech Lab, the AMF also announced that it had signed a partnership agreement with R3, an innovation firm focused on building platforms and applications for the financial sector. R3 has established a consortium of financial institutions for developing and applying blockchain technology in the financial services industry.

R3 invited regulators to join the consortium in order to address the regulatory issues of the new technologies adopted by these institutions. By joining the consortium, the AMF will be able to gain access to relevant information about projects undertaken by other regulators, enter into project partnerships and develop its own initiatives in a more timely manner through the contributions of other members.

Finance Minister Says Integrating Chambres Into AMF Would Be Desirable

In a Quebec National Assembly Committee on Public Finance debate on May 2/17, Finance Minister Carlos Leitão confirmed that he is considering integrating the province's self-regulatory organization for financial advisors – the Chambre de la sécurité financière; and the Chambre de l'assurance de dommages (an SRO for general insurance agents, brokers and adjusters) – with the Quebec's financial sector regulator, the Autorité des marchés financiers. (AMF).

"We want to make the AMF more effective as a regulator. It would be desirable that this integration happens... The objective is not to cause turmoil to save money. We want the AMF to provide a better framework and give it the latitude it needs to carry out its role," said the Minister.

Louis Morisset, President and CEO of the AMF, was in attendance during the debate. He said the regulator is ready to take on this integration if the government decides on this path.

Finance Minister Non-Committal About Consultations Around Omnibus Bill

In a Quebec National Assembly Committee on Public Finance debate on May 2/17, an Opposition MNA asked Finance Minister Carlos Leitão if the government intends to hold consultations related to the long-awaited Omnibus Bill aimed at modernizing the province's financial services sector, once the Bill is tabled?

Minister Leitão replied "there has already been a great deal of consultation and we received many submissions. The positions of various industry bodies are well-known. We'll see. The industry has been amply consulted. There won't be any big surprises in this Bill."

International

United Kingdom

Payment Protection Insurance Dominant Cause Of Complaints By Consumers

Financial services firms in the UK received more than three million complaints and paid £1.9 billion in consumer redress in the second half of 2016, according to new data released on April 26/17 by the the UK's Financial Conduct Authority (FCA).

Payment protection insurance (PPI) was the product that drew the most complaints, accounting for almost 900,000, and accounted for £1.6 billion or 84 percent of the redress paid to consumers in the second half of 2016, according to the FCA's report, which is based on the complaints that firms reported under new complaint-handling rules that took effect in June 2016.

The new data on industry complaints are more informative because they provide greater insight into the products that consumers complain about, and they show the number of complaints against size of the business, the FCA's report states.

"Greater transparency of complaints information will enable consumers looking to invest or buy products to be better informed about the products that have caused concern for other consumers," the report notes.

Research, Thought Leadership, and Innovation

KPMG Acquires Online Fintech Match-Up Firm

Netherlands-based KPMG International has acquired Matchi, a firm that provides an online platform to match financial services institutions with financial technology (fintech) companies. Through the Matchi platform, firms such as banks and insurance companies, can access a database that features more than 700 fintech solutions and more than 2,500 fintech companies.

"[The Matchi platform] is designed to identify, match and enable collaboration with the most innovative fintechs and solutions to address issues being faced by financial institutions," says Ian Pollari, global co-leader of fintech at KPMG International, in a statement.

Companies included in the database are first vetted. In Canada, there are about 22 fintech firms represented in the database and eight financial services institutions currently signed on to the service, says Andrée Gage, national manager of communications at KPMG MSLP, in an email.