

## Regulatory Update - CAFII Board of Directors, December 11, 2012

By Lawrie Savage & Associates Inc

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

#### Credit Union Conversion to Federal Charter

Draft regulations to allow credit unions to incorporate and continue federally were published in the Canada Gazette Vol. 146, No. 27 — July 7, 2012 for a 30 day consultation period. The regulations can be found at <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-07-07/html/reg4-eng.html>

By way of background- David Phillips, President and CEO of CUCC, advises that credit unions lobbied for the reforms of the *Bank Act* that would permit federal charters for credit unions. Credit unions are thus very supportive of the regulations and are anxious to see the section put in force. He advised that it may be several years before credit unions convert although one credit union in BC has announced its intention to do so. A federal charter has a number of implications that must be considered such as loss of the 100% deposit guarantee, higher capital requirements and lack of insurance distribution powers. Credit unions need to start planning for these matters. Mr. Phillips expects that credit unions are likely going to seek federal charters as multi-province operation will be necessary to allow for growth.

#### 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 revised regulations were posted on October 13. Interested parties had 30 days to comment to the department

of Finance. CAFII has drafted a follow up letter to Nick Burbidge to be sent after the regulations are final, to thank him for taking CAFII issues into account. The consultation can be found at

<http://www.gazette.gc.ca/rp-pr/p1/2012/2012-10-13/html/reg1-eng.html>

### Financial Literacy Month

November is Financial Literacy Month (FLM) in Canada. FLM brings together the resources, information, products and services developed by organizations across the country that help Canadians strengthen their financial literacy. The calendar of activities was on the Financial Consumer Agency of Canada website.

### **British Columbia**

#### Changes to Restricted Licensing Regime for Motor Vehicle Dealers

On October 5<sup>th</sup>, 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**

#### License Renewal to be July 1st Each Year for all Classes

The *Certificate Expiry, Penalties and Fees Regulation* has been amended to require licenses to run from July 1st of to June 30<sup>th</sup> for all classes (Life, General and Adjusters). The changes will be phased in beginning with the Life and Accident and Sickness agents in December of 2012, with holders receiving a certificate that will expire on June 30, 2014. In April 2013, Adjusters will be issued a certificate that will expire on June 30, 2014. Fees will be prorated accordingly and Continuing Education requirements remain at the current 15 hour requirement. **Alberta advises that restricted certificates will also have a June 30 expiry date. The transition date will be determined by whether the product aligns with General or Life and Sickness.** Complete details of the changes, a table of prorated fees and links to the regulation can be viewed on the Alberta Insurance Council website at [www.abcouncil.ab.ca](http://www.abcouncil.ab.ca)

#### New Probationary License / Changes to General Agent Licensing

The *Insurance Agents and Adjusters Regulation* has been amended and was effective November 7, 2012. Changes include:

- 1) A new Probationary Certificate to allow prospective new general insurance agents to try out the job prior to qualification. It is available on a 1 time basis only, is valid for 90 days and is subject to supervision.
- 2) Removal of the requirement to move to level 2 from level 1 within 3 years. Level 1 agents whose certificates were cancelled for failing to advance to Level 2 may be entitled to re-apply for the Level 1 certificate. Level 1 agents are subject to ongoing supervision.
- 3) Level 2 applicants will have to pass a single examination that covers both personal and commercial insurance.
- 4) A new level 3 certificate will be issued to the Designated Representative of an agency. All Level 2 certificate holders who are currently the Designated Representative of an agency will be issued a Level 3 certificate. Those wishing to become a Designated Representative must successfully pass a Management Examination in addition to meeting other requirements.

## **Saskatchewan**

### Financial and Consumer Affairs Authority Created

What was previously the Saskatchewan Financial Services Commission is now the Financial and Consumer Affairs Authority (FCAA). David Wild is Superintendent of Insurance and Ian McIntosh is Deputy Superintendent. The name change occurred on October 1, 2012.

## **Manitoba**

### 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.

### Insurance Regulator Merged with Securities Commission

The Financial Institutions Regulation Branch which oversees insurance companies, the Insurance Council, credit unions and co-operatives has merged 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 becomes 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.

## Ontario

### Proposed Administrative Monetary Penalties (AMP) Regulations

Budget Bill 55 amended the *Automobile Insurance Rate Stabilization Act, 2003*, *Compulsory Automobile Insurance Act*, and *Insurance Act* to provide the Superintendent of Financial Services with the authority to impose administrative penalties and provide the Lieutenant Governor in Council the power to make regulations under these Acts. The Ministry of Finance has posted to the Ontario Regulatory Registry a summary of three regulations under the above noted Acts. Amendments under the Acts would be proclaimed in force at the same time as the regulations. As with the mortgage broker regulations, **the Ministry of Finance advises that they will publish the names of those fined and the amounts fined, ie it will be public.**

According to the registry posting, the three sets of proposed AMP regulations may:

- Prescribe provisions of the Act or the regulations for the purposes of general or summary administrative penalties;
- Prescribe criteria the Superintendent is required or permitted to consider when imposing a general or summary administrative penalty;
- Prescribe the amount of a penalty, or the method for calculating the amount of a penalty, and prescribe different penalties or ranges of penalties for different types of contraventions or failures to comply and for different classes of persons;
- Authorize the Superintendent to determine the amount of a penalty, if the amount of the penalty or the method for calculating the amount of the penalty is not prescribed, and prescribe criteria the Superintendent is required or permitted to consider when determining this;
- Authorize a penalty to be imposed for each day or part of a day on which a contravention or failure to comply continues;
- Authorize higher penalties for a second or subsequent contravention or failure to comply by a person;
- Govern the manner of paying the penalties;
- Require that a penalty be paid before a specified deadline or before a deadline specified by the Superintendent;

- Authorize the imposition of late payment fees respecting penalties that are not paid before the deadline, including graduated late payment fees; and
- Prescribe lesser maximum administrative penalties and the requirements established under the Act to which the lesser maximum penalties apply.

CAFI met with the Ministry to do a technical review of the regulations. It was subject to a confidentiality agreement. Comments on the AMP regulations are due by **December 15, 2012**

#### Life Insurance Product Suitability Reviews to Commence

FSCO's 2012 Statement of Priorities set out as a priority to "undertake a market conduct review to determine how the life insurance industry is ensuring that consumers get appropriate information to make informed decisions when purchasing life insurance products. The focus of the review will be to understand and assess the processes life insurance agents use in making recommendations to consumers and the processes in place at life insurance companies when developing and distributing products." FSCO advises that this review will start as an information gathering process in 2013.

FSCO wants to assess suitability at point of sale (POS), and follow the application through to the insurer to determine how insurers validate suitability. FSCO will be looking at captive agents, independent agencies and the call center environment. They do not intend to contact consumers or policyholders directly at this time. FSCO would like access to companies' internal client satisfaction survey information to help determine level of suitability. FSCO will be starting with the agent side first. FSCO is modelling the exercise after the OSC which is doing a similar exercise. FSCO will do its field work in early 2013 and hopes to complete the review over the summer. The range of products includes travel health, term, whole life and seg funds. (ISI is not specifically included). FSCO noted that suitability is of interest to many countries and dovetails with IAIS Financial Sector Assessment Program (FSAP) which the CCIR will be working on this year.

#### **Quebec**

##### AMF Appointments

In November, the Autorité des marchés financiers (AMF) appointed Eric Stevenson to the position of Superintendent, Client Services and Distribution Oversight, which includes Distribution Policies and Compensation and Distribution Practices. Mr. Stevenson will also oversee the AMF's systems modernization and integration project (MISA, Modernisation et intégration des systèmes d'affaires), which will enhance its effectiveness and efficiency by delivering integrated, high performance information systems. Philippe Lebel was appointed to the position of Executive Director, Legal Affairs.

## 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*. 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 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. Internet distribution recommendations will be part of the review. Eric Stevenson met with CAFII in November to discuss these matters.

## New Consumer Insurance Guide

The AMF has produced a practical guide to answer consumer questions and to help consumers understand insurance. It focuses on two broad insurance classes: damage insurance, which includes automobile and home insurance, and insurance of persons, which includes life insurance. It is currently available in bookstores and on-line at [www.protegez-vous.ca/boutique](http://www.protegez-vous.ca/boutique).

## **Canadian Council of Insurance Regulators**

### Final MGA Paper released

At its fall meeting, CCIR adopted the final version of the position paper on the MGA distribution channel in the life insurance industry. It was given a new title - *Strengthening the Life MGA Distribution Channel*. The paper is otherwise the same as was released in March 2012. The paper does not apply to distribution of group products; it applies to MGA distribution of life, accident and sickness insurance and annuities. The paper contained four recommendations as follows:

- Insurer Relationship with MGAs - Insurers must have in place effective systems and controls whenever they use the services of an MGA
- Agent Supervision - Insurers should incorporate the principles in CLHIA Guideline G8 - *Screening Agents for Suitability and Reporting Unsuitable Agents* into all of their business across Canada, including any contracts involving the outsourcing of these functions to an MGA.
- Product Suitability- Regular market conduct reviews should be undertaken by regulators to determine if insurers and their agents are providing consumers with adequate information to make informed decisions, and suitable product recommendations.
- Information needs of regulators- Regulators will develop options and an action plan to make sure that adequate information on life agents and MGAs is obtained in a timely manner.

The paper also contained *Best Practices for Insurer-MGA Relationships* (core principles). Strategies for achieving each principle are included.

### Third Party Administrator (TPA) Regulation

The Agencies Regulation Committee (ARC) will commence a review of TPA regulation for group life, accident and sickness, creditor's group insurance, and travel insurance to determine potential risks to consumers.

### Review of Canada's Adherence to Insurance Core Principles

According to the CCIR fall meeting highlights, "The International Monetary Fund will be conducting a financial stability assessment of Canada in 2013 under the Financial Sector Assessment Program (FSAP). The FSAP will assess Canada's adherence with international standards and insurance core principles (ICPs) in the areas of insurance, banking, securities, payment/settlement systems and fiscal transparency. Federal and provincial regulators, including CCIR, are working together to assemble the necessary documentation for the review team."

### Credit Score Project Completed

At the fall meeting, CCIR approved the release of the Credit Scoring Working Group *Findings Report – Use of Credit Scores by Insurers* which summarizes the summer 2011 consultation which compiled research and facts surrounding credit-based insurance scores and how they are used. The report notes that the input was largely from 2 camps -brokers who are against the use of credit information and insurers who support continued use. It was felt that both groups produced little in the way of supporting evidence for their opinion. The CCIR will not be making recommendations or issuing a Position paper. The report can be found on the CCIR website.

### Webinar on Underserved Insurance Market

In September, CAFII made a presentation to CCIR on the Underserved Insurance Market. The presentation was web-based and attended by over 40 participants from regulators offices coast to coast.

### Electronic Commerce

The CCIR fall highlights report that the Electronic Commerce Committee (ECC) presented preliminary recommendations arising from its consultation earlier this year on Electronic Commerce in Insurance Products.

Topics for recommendations include:

- Consumer access to additional information/advice from a licensed intermediary when using electronic channels
- The role and regulation of comparison shopping sites
- Designating Beneficiaries through electronic means, and
- Termination of insurance by the insurer through electronic means.

The ECC will now proceed to prepare a Position Paper for consultation in 2013.

### CCIR to Become Involved with Dispute Resolution

The CCIR fall highlights notes that “the Joint Forum of Financial Market Regulators (JF) has asked CCIR to play a greater role in working with the two insurance Ombudservices - OmbudService for Life and Health Insurance (OLHI) and the General Insurance OmbudService (GIO) - in the interests of Canadian consumers. CCIR recognizes the importance of dispute resolution mechanisms for consumers and the role of regulators in providing some oversight. CCIR intends to engage representatives of OLHI and GIO as well as other members of the JF Dispute Resolution Committee to consider next steps.”

### Upcoming CCIR Meetings

CCIR will hold a winter conference call meeting on January 24, 2013. The CCIR Spring meeting will be held April 11 and 12, 2013 in Toronto. **The CCIR has agreed that they would like to have a function with CAFII, potentially on April 10, as part of the CAFII 15 year celebration.**

### **Canadian Insurance Services Regulatory Organizations (CISRO)**

#### New CISRO Website Launched

Stakeholders can be kept up to date on CISRO activities by visiting its website at <http://www.cisro-ocra.com/>

#### Life License Qualification Program (LLQP) Redesign

As announced in July 2012, a new national life training program is being developed. The CISRO project is being coordinated by the AMF. The program is to be ready by September 2015. Currently the LLQP does not include BC and Quebec but both provinces will be included in the new program.

### **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 organization 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.

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