

DRAFT--Summary of the Regulatory Requirements on CAFII Members Regarding Complaints and Dispute Resolution

Background

There are multiple different regulatory expectations around complaints and dispute resolution that CAFII members need to comply with. There are challenges that CAFII members face in adhering to these different requirements, with different definitions of complaints and different procedures and time-lines for responding to complaints. This document is meant to be a primer on the different requirements to provide context for a Board discussion on these requirements and how different members are managing this process.

CCIR/CISRO

The CCIR/CISRO approach to complaints is a Guidance outlined in the Conduct of Insurance Business and Fair Treatment of Customers, which was released in 2018.

6.11 Complaints Handling and Dispute Resolution

CCIR and CISRO expect complaints to be examined diligently and fairly, using a simple and accessible procedure.

The complaint examination and dispute resolution processes are key indicators for assessing organizational performance regarding the fair treatment of Customers.

A complaint can be defined as an expression of dissatisfaction about the service or product provided by an Insurer or Intermediary. It may involve, but is differentiated from, a claim (unless relating to the administration of the claim process) and does not include a simple request for information.

Expectations to achieve this outcome (Insurers and Intermediaries)

- Establish policies and procedures to deal with received complaints in a fair manner. These include keeping a record of each complaint and the measures taken for its resolution.
- Respond to complaints without unnecessary delay; complainants are kept informed about the handling of their complaints.
- Analyze the complaints received to identify trends and recurring risks. Analysis of what leads to individual complaints can help them to identify and to correct common root causes.
- Provide clear, transparent and easy to understand information about independent dispute resolution processes.

As well, CCIR/CISRO have an Annual Statement on Market Conduct survey which requires annual disclosure of the escalated complaints that insurers have managed each year.

For more information: <https://www.ccir-ccrra.org/Documents/View/3450>

In the fall of 2023 CCIR indicated that it was looking at a new definition of complaints and capturing additional complaint reporting requirements. CAFII wrote a letter disagreeing with this approach and indicating how it would be inconsistent with the current CCIR complaints approach and onerous. CCIR has not moved forward to date on this initiative and we continue to monitor this situation carefully.

AMF

The AMF released on February 15, 2024 the final version of the Regulation respecting complaint processing and dispute resolution in the financial sector. This is a regulation not a guideline, with monetary penalties for failure to comply. There were some features of the original Regulation, including more prescriptive requirements, the requirement for a customer drafting service, and a 10 day timeline for resolving simple complaints, that industry pushed back on and which were modified in the final version of the regulation.

For Quebec transactions, members now need to have a different approach to complaints, including a different definition of complaints:

3. For the purposes of this Regulation, “complaint” means any reproach or dissatisfaction in respect of a service or product offered by a financial institution or a financial intermediary where the reproach or dissatisfaction is communicated by a person who is a member of the clientele of the financial institution or financial intermediary and a final response is expected.

It also means any reproach or dissatisfaction in respect of a practice of a credit assessment agent where the reproach or dissatisfaction is communicated by any person concerned by a record that the credit assessment agent holds.

A final response is expected when the complainant’s communication explicitly or implicitly implies that action must be taken to address the complaint.

The following are not considered complaints:

- (1) a request made for information or materials in respect of an offered product or service;
- (2) a request for access or rectification made in accordance with the Act respecting the protection of personal information in the private sector (chapter P-39.1);
- (3) a claim for an indemnity or any other insurance claim;
- (4) a request for correction of a clerical error or mistake in calculation; and
- (5) communication of a comment or feedback.

The Quebec regulation has different approaches to complaints that are settled by the front line in 20 days or less, which do not require being reported to the AMF. The Regulation is in-force on July 1, 2025, giving industry over a year to implement it.

The Regulation can be found at:

<https://lautorite.gc.ca/fileadmin/lautorite/reglementation/traitement-plaintes/2024-02-15/2024fev15-r-traitement-plaintes-secteur-financier-final-en.PDF>

FCAC

The FCAC published a final “Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks” on January 27, 2022 with an in-force date of June 30, 2022. The FCAC Guideline references Section 627.02 of the *Bank Act* for its definition of a complaint:

complaint means dissatisfaction, whether justified or not, expressed to an institution with respect to

- (a) a product or service in Canada that is offered, sold or provided by the institution; or
- (b) the manner in which a product or service in Canada is offered, sold or provided by the institution. (*plainte*)

An important concession made from drafts of the Guidance was to recognize that there was no “one size fits all” for complaints:

1.6 FCAC recognizes that Banks may tailor their complaint-handling Policies and Procedures to align with the nature, size and complexity of their business, distribution channels, and products and services.

The FCAC establishes its own timelines for dealing with complaints:

30. To be considered timely, the timeframe for referral should not exceed 14 calendar days from the date on which the complaint is first communicated to the Bank.

There are also reporting requirements that are contained in the Regulatory reporting guide for banks and authorized foreign banks:

Banks must submit a record of each complaint received (directly or referred to them) by a designated officer or employee to FCAC within 60 days after the end of each quarter, as outlined in the Bank Act and FCPF Regulations. The content of the record to be submitted to FCAC is outlined in section 627.44 of the Bank Act.

The full Guideline can be found here:

<https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/complaint-handling-procedures-banks.html>

On November 23, 2023 the FCAC released a consultation on a new “*Guideline on Complaint-Handling Procedures for Trust and Loan Companies and Insurance Companies*” to which CAFII made a written submission stating that the Guideline was unnecessary, would result in duplicative effort, and exceeded the FCAC’s authority as insurance was exclusively within provincial jurisdiction. We have learned that similar arguments about jurisdiction were also made by FSRA and CCIR. Since the Guideline was released for consultation, the Commissioner of the FCAC Judith Robertson left the organization and no further information has been received from the FCAC about the Guideline.

CAFII Presses on Harmonization

CAFII has consistently made the case to the different regulatory authorities that harmonization is a fundamentally important criterion. In our December 11, 2021 submission to the FCAC around its approach to a new regime for complaints, for example, we wrote

On a separate very important matter, CAFII strongly believes that the insurance and financial ecosystem in Canada is best served by a regulatory system that is harmonized to the maximum degree across provincial/territorial and federal jurisdictions.

As you may be aware, CAFII’s members—which comprise federally regulated financial institutions (FRFIs) that distribute credit protection insurance (CPI) and travel insurance across the country as Authorized Insurance Products, along with their insurer underwriter partners—are subject to both federal and provincial regulatory frameworks that govern the offering of CPI and travel insurance.

Given that dual regulatory framework reality, it is our strong belief that major benefits would be achieved for both consumer protection and industry efficiency throughout Canada if the FCAC’s Guideline on Complaints Handling could be as consistent and harmonized as possible with corresponding provincial/territorial guidance.

We therefore encourage the FCAC to engage with, and possible become an observer participant at the meetings of, the Canadian Council of Insurance Regulators (CCIR), the national co-ordinating body of the provincial/territorial insurance supervisory authorities.

Having a patchwork of different regulations and guidelines in federal and provincial/territorial jurisdictions across the country results in inefficiencies, and causes financial institutions to have to focus on exception management rather than dedicating the optimal level of resources to meeting both consumers’ needs and wants and regulators’ objectives around fair treatment of customers.

Improvements to Complaints Regulations Through Industry Engagement

While the desire for a harmonized approach has not been achieved, industry engagement with regulatory authorities has produced improvements to some of the regulatory requirements. In Quebec, the AMF has modified its regime so that reporting is now only required for complaints that are not resolved in 20 days, an increase over the original timeline of 10 days that CAFII requested. The FCAC was asked to recognize that there is not a “one-size fits all” approach to regulation, and in response the final guidance included the following modified language:

*FCAC recognizes that banks may tailor their complaint-handling policies and procedures to align with the nature, size and complexity of their business, distribution channels, and products and services.
(Clause 6.)*

Costs to CAFII Members Due to Multiple Complaints Regimes

There are costs to companies that need to comply with multiple different complaints regimes. One approach some companies have taken is to have a national approach with the “highest requirements” applied generally, but in practice this raises its own challenges. What component of the complaints regime should be used for the national approach? Is it definitions, timelines, reporting requirements, or something else? Or should each component be used for a national approach that is “highest requirements”? Some components of the complaints regimes, like timelines for responding to customers, are prescriptive and need to be used for that jurisdiction alone. There is no simple solution to managing multiple complaints regimes and this an administrative burden and an additional cost to companies.