

Agenda Item (5) (b) (1)
April 7/20 Board Meeting

Summary Report, Analysis, and Insights Gained From February 11/20 CAFII Meeting With The AMF

On Applicability Of The Regulation respecting Alternative Distribution Methods

To Credit Card-Embedded Insurance Benefits

Background

CAFII met with AMF officials in Quebec City on 11 February, 2020 to discuss the apparent AMF position that the Regulation respecting Alternative Distribution Methods (RADM) applies to credit card-embedded insurance benefits.

Participants

From the AMF

Mario Beaudoin, Directeur des pratiques de distribution alternatives en assurance (Director of Alternative Distribution Practices in Insurance)—reports to Louise Gauthier – who reports to Frédéric Pérodeau

Isabelle Berthiaume, Directrice de la surveillance prudentielle des assureurs (Director of Prudential Supervision of Insurers) – reports to Nathalie Sirois – who reports to Patrick Déry
Sharon Boucher, Analyst on Mario Beaudoin's team—took notes at the meeting

From CAFII

Isabelle Choquette, Desjardins Financial Security
Alain Camirand, TD Insurance
Karyn Kasperski, RBC Insurance
Rob Dobbins, Assurant
Martin Boyle, BMO Insurance (on the phone)
Brendan Wycks, CAFII
Keith Martin, CAFII

Key Takeaways

- The AMF's view is that any and all forms of insurance offered or otherwise provided to Quebec consumers have to be regulated. Insurance must either be offered through licensed agents, or be subject to the Regulation respecting Alternative Distribution Methods (RADM). **As a result, it is the view of the AMF that credit card-embedded insurance benefits are subject to the provisions of the RADM.**
- The AMF is aware that there are "challenges" in terms of credit card-embedded coverages and "how to make it fit" into the RADM, and the AMF wants to be "flexible" in how the RADM applies to this product. However, all the provisions of the RADM must apply.

- The AMF did say that the long-term solution is to look at possible modifications to the Regulation, but such changes take a long time and Mr. Beaudoin did not think that was something that would happen in the near future.
- When asked if the AMF could indicate that it would not enforce the RADM for this product, Mario Beaudoin said the AMF could not do that.
- When asked if a delay could be provided in the application of the RADM for this product, Mario Beaudoin said the AMF could not do that.
- The AMF said that the RADM unfortunately does not include “carve out” or waiver provisions which would allow the AMF to make exceptions to or interpretations with respect to the applicability of the Regulation, which removes any possibility of the AMF providing an exception to the application of the Regulation in this case.
- The AMF was asked to issue an official statement to the industry to communicate its position that the RADM does indeed apply to credit card-embedded insurance benefits. Mario Beaudoin said that the AMF was in a period of “open discussion on this emerging issue” with the industry on this issue and therefore would not provide such a written statement until those discussions have produced results.
- Mario Beaudoin asked CAFII/the industry to provide its views on how the RADM’s application to credit card-embedded insurance benefits can be implemented, stressing that “creative solutions” are always possible. He asked CAFII to respond fairly quickly to this request for compliance action suggestions and related timelines, perhaps within a month (subsequently altered to “six to eight weeks” when CAFII representatives did not respond favourably to his initial suggestion). Without agreeing to anything, CAFII responded that a one-month timeline would definitely not be possible, but we could provide, within a reasonably prompt timeframe, our timelines for responding to this AMF request.

Detailed Summary

After Keith Martin delivered a CAFII Opening Statement on why our Association believes that the RADM is not applicable to credit card-embedded insurance benefits, Mario Beaudoin said that the AMF was aware of this issue, knew that it had caused considerable “background noise,” and added that it had been the subject of considerable internal discussion at the AMF. However, at the end of the day, Mr. Beaudoin asserted all forms and types of insurance which are offered or otherwise provided to Quebec consumers must be regulated, either by being offered by a licensed agent, or by being subject to the Regulation respecting Alternative Distribution Methods. **For credit card-embedded insurance benefits, the AMF’s view is that the RADM fully applies.**

But Mr. Beaudoin then added that while he “could not make promises,” the AMF realized that there were some real challenges in applying some of the provisions of the RADM to credit card-embedded insurance benefits. The AMF was open, he said, to the industry’s making some interpretation proposals as to how the Regulation applies to credit card-embedded insurance benefits, to its offering creative solutions, and to its recommending some adjustments to the application of the RADM to this product line.

It is important to emphasize, in the interests of avoiding repetition, that this was a consistent theme from Mr. Beaudoin throughout the meeting: “we realize that the RADM is challenging to apply to credit card-embedded insurance benefits, but apply it does. We invite you to suggest to us some creative ways to comply with the Regulation for these products.” He said “I am not making an ultimatum,” but he also said that the AMF would not agree to not enforce the RADM for credit card-embedded insurance benefits.

But while the theme of “flexibility” was a consistent one in Mr. Beaudoin’s comments, he also reiterated a number of times that the Regulation does not have a “carve out” or waiver that would allow the AMF to provide an exception or exemption from the RADM; that the Regulation in its entirety applies in the case of credit card-embedded insurance benefits; and that the Fact Sheet and a Product Summary must be provided to consumers at point of sale (i.e. when the consumer is applying for/securing a credit card). Mr. Beaudoin did say that these disclosure documents could be provided on a website, so long as the customer was asked if he/she agreed to not have them provided at the time that he/she is applying for or considering a particular credit card. However, the customer must be informed of these disclosure documents before they are approved for or granted a credit card with embedded insurance benefits. Customers, he said, need to know what they are buying before the sale is made.

Mr. Beaudoin said that he believes that customers have the right to cancel insurance. Given his statement as well about how there are no exceptions or carve out provisions in the Regulation, this implies that he believes customers should be able to cancel credit card-embedded insurance coverages, even though we repeated that they could not.

Mr. Beaudoin also say the potential for other segments to manipulate the system if the regulations did not apply to embedded insurance, for example other financial services could be embedded with other products to avoid regulatory burden and oversight.

Mr. Beaudoin said that the Product Summary was a disclosure document which industry players would be producing themselves, and in this document there could perhaps be content which explains how a customer should interpret the Fact Sheet in the case of credit card-embedded insurance benefits. For example, where the Fact Sheet indicates that if a consumer cancels the insurance, his/her premium will be refunded, the Product Summary could state that the premium refund would be zero because the customer did not pay any premium for their credit card-embedded insurance benefits.

The AMF did say that the long-term solution is to look at possible modifications to the Regulation, but such changes take a long time and Mr. Beaudoin did not think that was something that would happen in the near future. Mr. Beaudoin laughed that ten years ago he was told that the new regime on alternative distribution would be introduced, and every year after that its implementation was expected to be imminent; regulatory and legislative changes do not occur quickly and so alternative solutions need to be found in the meantime.

Mr. Beaudoin said that the “good news” was that in the case of Authorized Insurance Products (which include travel insurance and the other types of insurance typically offered as a credit card-embedded benefit), federal legislation (federal Bank Act; and the Insurance Business (Banks and Bank Holding Companies) Regulations) provides for exceptions to the provincial prohibition on selling insurance without a license. And based on audits it has done, the AMF feels that CAFII members and the bancassurance industry meet these exceptions appropriately; and, as such, credit card-embedded insurance benefits are being offered legally in Quebec. He specifically said that recent AMF research has revealed that across Canada, there are about 300 different credit cards being offered with some form of embedded insurance benefit. The AMF has done a review of those 300 different credit cards to ensure their compliance with existing statutes, and that it was satisfied with the results.

Mr. Beaudoin made a reference to a personal situation which he said had alerted him to the importance of full disclosure and ensuring that customers understand what they are obtaining. The reference was to a relative who had died, and his surviving spouse then had to cancel her late husband’s credit card and obtain a new one for herself. That new credit card included travel insurance, but she was over 75 years of age and therefore not eligible for that embedded insurance benefit. Mr. Beaudoin asserted that it is critical for a credit card applicant to be aware of such exclusions and limitations, otherwise he/she may travel, get sick, and only then find out they are not eligible and not covered, leading to an undesirable situation all around, and precisely the sort of consumer outcome that the AMF wishes to avoid.

Keith Martin responded by saying that CAFII members make every effort to ensure that individuals are aware of what is and what is not covered under all forms of insurance that they provide to consumers, including explicit disclosures. CAFII member financial institutions, he said, are built on trust, and reputation is central and foundational to them. Mr. Martin added that disclosure, which is a key reason for which the AMF appears to feel that the RADM should apply to all insurance, including credit card-embedded insurance benefits, should not be an issue because all CAFII members who provide insurance have full disclosure on their websites of what the insurance covers, and its exclusions and limitations.

Mario Beaudoin countered this argument by saying that he recognized that such disclosure occurred, and therefore the existing disclosure by financial institutions was not far off from what the AMF expects with respect to the RADM’s applicability to credit card-embedded insurance benefits; it should not be so difficult therefore for CAFII members to comply with the AMF’s RADM-based expectations for this product line.

Keith Martin asked if the AMF could -- given that it seems clear that credit card-embedded insurance benefits were not contemplated and factored into the RADM’s design and provisions -- issue a Guidance stipulating that it would not enforce the RADM for this type of insurance. Mr. Beaudoin said that the AMF was not prepared to do that. Mario Beaudoin said that the AMF was in a period of “open discussion on this emerging issue” with the industry on this issue and therefore would not provide such a written statement until those discussions have produced results. The use of the term “emerging issue” is interesting and may suggest that the AMF missed this issue in the development of the Regulation, and is looking for the industry to backfill compliance.

Keith Martin then asked if the AMF could issue a Guidance stipulating that it would delay the RADM's application to credit card-embedded insurance benefits until a review/consultation with the industry around the RADM's application to this product line could be conducted. On this as well, Mr. Beaudoin said the AMF would not consider such a measure, for the same reasons.

Karyn Kasperski, RBC Insurance, intervened at this point, and made an impactful statement about an actual face-to-face, in-person scenario, at a financial institution branch, in which a consumer is seeking "to obtain credit" in the form of a credit card. In such a common scenario, she said, the request for and granting of credit is the primary focus of the discussion between the financial institution and the customer, but if that credit card comes with embedded insurance benefits, the AMF's insistence that the RADM applies would force the conversation to have to pivot to one about insurance, which would be confusing and not consumer-friendly because insurance is not at all what is motivating the customer to have the discussion with the financial institution in the first place.

Mr. Beaudoin said that the Regulation was in place and it was no easy matter to change it. He acknowledged that there were issues in its application to credit card-embedded insurance benefits. In an interesting statement, he said "it is hard to be flexible when you are holding a two-by-four." This could be interpreted as a threat, but it could equally be interpreted to mean that the Regulation is set in stone and difficult to modify.

As the discussion continued, Martin Boyle, who monitored and participated in the meeting via teleconference, said on two occasions that he felt it was important not to focus too much of the conversation on examples within the Regulation that may cause difficulties, but instead to focus on the central issue, which was that the RADM does not apply to credit card-embedded insurance benefits. Mr. Boyle further reiterated that it was important to address whether or not regulation –by limiting its scope to "offers"—actually captures embedded insurance. In both instances, Mr. Beaudoin simply said he believed it did and redirected the conversation to solutioning for examples of issues within the Product Summary and Fact Sheet. Mario Beaudoin repeatedly restated that the AMF's position is that the RADM does apply, and he focused conversation on the AMF's desire to have the industry come back with practical and creative solutions on how it can put the RADM's provisions and expectations into effect in the case of credit card-embedded insurance benefits.

At one point, Mr. Beaudoin said that if credit card-embedded insurance benefits were not covered by the Regulation, then it could be suggested that the customer was being obligated to take the embedded insurance benefits in order to get the credit card, and this could be viewed as "tied selling" which was illegal. He did not pursue this argument any further, however, and did not elaborate on it.

Brendan Wycks asked Mr. Beaudoin what would be the AMF's view if some industry players determined that complying with the RADM's provisions in the case of credit card-embedded insurance benefits would be too onerous; and they therefore decided that they would no longer include insurance benefits in the credit cards which they offer to Quebecers, which would create a situation in which Quebecers receive a lesser value proposition from their credit cards, for the exact same annual fee and other terms, as compared to consumer in other provinces and territories. Mr. Beaudoin replied that credit card issuers and their insurer partners could proceed as they wish; and that if that scenario does become an outcome due to the fact that the RADM must apply to all forms and types of insurance, so be it.

It was clear from statements made during the meeting that Mr. Beaudoin does not believe that the fact that the premium for credit card-embedded insurance benefits is paid by the financial institution to the insurer is a relevant consideration in terms of whether or not the RADM applies. In that connection, Rob Dobbins referred back to CAFII's Opening Statement about why the RADM should not apply to card-embedded insurance benefits, emphasizing that the premium is not paid by the cardholder; rather, it is paid by the credit card issuer/distributor to the insurer. This was important to reiterate because Mr. Beaudoin said at several points during the meeting that the cardholder must indirectly be paying for the premium, which is relevant to his position that the RADM applies. We strongly refuted this notion that cardholders were indirectly paying the premium. Separately, we also emphasized again that the wording of the AMF's Fact Sheet would be misleading and confusing for consumers with respect to credit card-embedded insurance benefits. Mr. Beaudoin did not comment on either point.

Alain Camirand said that even if creative solutions could be found around explaining the wording of the Fact Sheet with respect to credit card-embedded insurance benefits, at the end of the day that would not be a good outcome for consumers, who would be confused by the wording of the Fact Sheet and some of its statements, for example around cancellation, which simply did not apply in this case. While much of the discussion was around operational issues, and these were real, Mr. Camirand said that the bigger issue was that this direction would lead "to a bad customer experience." Mr. Beaudoin did not comment on that point.

Brendan Wycks asked if it would be possible for the AMF to issue an Addendum to the Fact Sheet which would clarify that some of its provisions were not relevant/applicable to credit card-embedded insurance benefits. In response, Mario Beaudoin expressed skepticism about the AMF's ability/willingness to alter the Fact Sheet, even via a clarifying Addendum, as it was mandated in the Regulation, but yet he invited CAFII/the industry to propose practical solutions for the AMF's consideration.

Mr. Beaudoin said at one point that by meeting with CAFII, whose members included the big banks and Desjardins, the AMF was covering the entire universe of the industry players impacted by this situation, and we explained that that was not the case, as there were other players—such as retailers with credit cards, Laurentian Bank of Canada, and American Express—which would be impacted by this file, and who were not currently CAFII members.

Body Language and Tone

The meeting was cordial, professional, and generated good dialogue and exchange of viewpoints. Mario Beaudoin was very much the lead discussant for the AMF, as the other two participants said virtually nothing. Mr. Beaudoin was clearly well-prepared, and familiar with the positions that CAFII was advancing. He was, as is his nature, very talkative, and very articulate. He was also very gracious and interactive, but unbending. It was clear that the key messages which the AMF intended to deliver to CAFII in the meeting had been pre-discussed and well-rehearsed.

Analysis

The AMF consulted on the development of the RADM for years; and in that time, CAFII has no recollection of the regulator ever indicating that the RADM would apply to credit card-embedded insurance benefits. The industry generally was always of the view that the RADM did not apply to this product line, but avoided drawing attention to the issue out of concern that doing so would lead to undesirable outcomes from the AMF.

The RADM is structured in a way that is problematic in terms of applying it to credit card-embedded insurance benefits. If the AMF had originally considered that the Regulation applied to these product lines, it would have developed the Regulation in a way that made its application to embedded insurance coverages practical. Therefore, it seems plausible that if the AMF had developed the RADM with the expectation that it would apply to credit card-embedded insurance benefits, it would have created a second, appropriately worded Fact Sheet, and made other customizing provisions.

So it is reasonable to interpret the current situation as something the AMF itself now views as problematic, and the regulator is now asking the industry to engage in helping solve the problem. An alternative interpretation is that the AMF may have wished to avoid raising the issue during the original consultations, therefore deferring it, and is now dealing with the consequences.

However, what cannot be disputed is that there was absolutely no consultation with the industry on this issue; and, setting aside for a moment the view that the RADM does not apply to this product line, the provisions of the RADM do not work in a practical way, and the AMF appears to now be asking the industry to find solutions to a seemingly intractable problem. Another explanation for the approach they are taking is that the AMF has been criticized for not having consulted the industry before they issued an enforcement letter on the recent “spousal issue.” They may be reaching out to industry for its views prior to engaging in enforcement, based on learnings from the “spousal issue” and their desire to proceed differently this time.

It is also important to keep in mind that the AMF has, at this time, refused to issue an official communique/declaration on its position that the RADM applies to credit card-embedded insurance benefits, its formal reasoning for this position, and its related expectations of the industry. There is no written Guidance for industry, and the Regulation itself does not explicitly reference credit card-embedded insurance benefits, nor is it structured in a way that provides for compliance in the case of this product line.

(A CAFII member who was at the meeting has offered a different interpretation on this matter, which is that if the AMF issued a formal guidance saying that the actual regulation applies to credit card-embedded insurance benefits, that would mean that compliance with such regulation is expected immediately. Since the AMF said it wants to work with industry to try to find creative solutions to the challenges in complying with the RADM for credit card-embedded insurance benefits, and in the interim the AMF has indicated that it is ready to wait before formally requiring industry to comply, the AMF position may be that it is preferable for the Industry to not have such "formal guidance" at this time.)

Whatever next step the CAFII Board decides to mandate on this issue, it is clear that the AMF recognizes that it has not structured the Regulation in a way that makes compliance for credit card-embedded benefits easy. While the AMF is being adamant about the applicability of the RADM to credit card-embedded insurance benefits, its position on the issue and the rationale for it are currently entirely verbal-only and not documented in any official manner. While it may be preferable to not have a "documented and official" position if we want to try and find a middle-ground, creative solution with the AMF, the lack of such documentation also produces its own difficulties for the industry, in particular if the view is that industry should challenge the AMF's current position on this matter.

CAFII Options for Next Steps

1. Do nothing and let the AMF take enforcement action on this issue, which CAFII/the industry will then challenge.
2. Submit a written request to the AMF that it issue an official written statement to the industry on its position on the RADM's applicability to credit card-embedded insurance benefits and the related rationale; and, in that submission, make the case as to why CAFII does not agree that the RADM applies and is exploring all options; and that we do not view it as appropriate to propose solutions to the AMF on how to make the RADM apply to this product.
3. Engage Norton Rose Fulbright to review our existing "CAFII Views/Arguments on Why The RADM Should Not Apply To Credit Card-Embedded Insurance Benefits" document and formally submit the refined finished product as a legal brief/ opinion to the AMF.
4. Engage Norton Rose Fulbright to review our existing "CAFII Views/Arguments on Why The RADM Should Not Apply To Credit Card-Embedded Insurance Benefits" document and produce a legal brief on why the RADM does not apply, but rather than submit that brief to the AMF in writing, request a follow-up meeting with very senior AMF officials at which our legal counsel will verbally present the legal brief.
5. Provide the AMF with our timelines to respond to its request that CAFII propose solutions as to how our members/the industry can comply with the RADM in the case of credit card-embedded insurance benefits; and, flowing from that timeline, the develop solutions which we feel will comply with the RADM while avoiding some of the seemingly built-in problems with its applicability to this product line. This is the approach that the AMF has requested and desires.

Appendix A

CAFII Opening Statement To The AMF

At 11 February, 2020 Meeting On RADM's Applicability To Credit Card-Embedded Insurance Benefits

Comments were made by Keith Martin in English, approximately 5 minutes duration

FIRST TWO PARAGRAPHS (IN ITALICS) WERE READ IN FRENCH

I would to thank you for agreeing to hold the meeting in English, it is much appreciated.

On behalf of my Co-Executive Director Brendan Wycks, and the members of CAFII, I would like to thank you for the opportunity to speak to you about credit card-embedded insurance benefits and our view that the provisions of the Regulation on Alternative Distribution Methods (RADM) do not apply.

CAFII and its members have been strongly supportive of the direction and general provisions of the new Regulation, and we believe that it achieves a good balance among the goals of upholding consumer protection, providing consumer choice, and fostering industry efficiency and effectiveness. Some provisions, such as the replacement of the Distribution Guide by a Product Summary produced by businesses in the industry, we believe will lead to much better consumer experiences and outcomes.

But we never envisioned that the insurance coverages which are often included with credit cards – coverages which are not sold, but rather included as an add-on benefit -- would be subject to the RADM.

We would like to start by offering some background on how credit card-embedded insurance benefits work.

A consumer has a multitude of choices around choosing a credit card. They can choose a no-fee card with embedded benefits or a fee-card with both a rewards offering and a variety of different embedded benefits. The fee and the rewards i.e. travel rewards, cash-back, points programs tend to be the most important factors affecting a consumer's decision as to which credit card to apply for, but in this highly competitive market, additional features and benefits are included in many credit cards to improve the value proposition for the consumer.

If the embedded benefits in any particular credit card are not attractive to the consumer, he or she has a multitude of other credit cards to choose from with other benefits and features, and he or she simply applies to secure a different card. But the consumer cannot pick and choose from among the embedded benefits in a particular credit card—those embedded benefits are part-and-parcel of the credit card, and the consumer can either accept them or choose not to accept that particular credit card. The benefits and features of any particular credit card cannot be modified in a piecemeal, cafeteria-style fashion.

The provision of embedded benefits to the consumer via a credit card, is not an offer of insurance. Applying for and securing a credit card is not contemplated by the RADM. The credit card is being applied for and selected by the consumer, with or without insurance and other embedded benefits. The insurance contract is between the credit card distributor, for example a bank, and the underwriter, an insurance company. The cardholder pays no premium for the embedded insurance benefits which he or she receives as part of the credit card's value proposition. The insurance premium is paid by the bank to the insurance company, and the bank absorbs that cost as an expense associated with what it wants to offer the cardholder in exchange for whatever revenue it expects to generate from the credit card.

Does the AMF have any questions about our comments on how credit card embedded benefits work?

At this point, we would like to ask the AMF if you view this product as being subject to the RADM.

Appendix B

Analysis of Meeting by Martin Boyle, BMO Insurance and EOC Chair

While Mario tried to position himself as open to consultation and offering flexibility to the industry, there are aspects of his approach that I am quite concerned with. The impression that I got was that he seemed to be looking for industry to make commitments and then the industry would be held to those commitments. I think the reason for this is that the regulatory framework does not in fact apply (or at least his position that it does is very weak). The reason for this is that he is unwilling to make any public/industry statements regarding AMF position (i.e., that regs apply to this type of distribution) until he has received input and ideas on making it compliant (i.e., industry commitments on making distribution compliant with the framework). Also, he was unwilling to make any public/industry statements on transition period, which was done in May 2019 for other aspects regulation. It really looks like he wants the industry to back itself into the regulatory framework because he does not have the authority.

I think we should definitely continue to push back on the applicability of the regulation. We should not begin making concessions and commitments until it is clear that regulatory framework actually applies. There is a difference between products that are provided and products that are offered. To me, the regulation is clear that it applies to offers.

Martin Boyle

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