

Date: Mon 2020-03-09 7:26 AM

From: Keith Martin <Keith.Martin@cafii.com>

Subject: Update to CAFII Board of Directors on Two-Prong Strategy in Response to AMF's Position That RADM Applies To Credit Card-Embedded Insurance Benefits

Dear CAFII Board (copy to EOC and CAFII Surrogates):

For your convenience, I have forwarded below the summary of the two-prong strategy that CAFII has been directed by the Board to move forward with.

Both prongs are well-advanced.

**Prong One—Legal Opinion from Norton Rose Fulbright (NRF)**

Prong One is a legal opinion from Norton Rose Fulbright. The legal proposal in response to our discussions with Norton Rose Fulbright, is attached (word document). You may wish to share the document with your internal legal counsel for their views. A memo on the content of the proposal from Brendan and me is also attached.

In summary, however, Marc Duquette of Norton Rose Fulbright has well-understood our preoccupations and has offered a credible plan. If we do not receive an extension for our response to the AMF past the current 27 March, 2020 deadline, he proposes to write to the AMF indicating that CAFII has every reason to be granted an extension to seek a legal opinion.

You will note that the proposal includes options and costs around a legal challenge if the AMF rejected our legal arguments. We asked NRF to provide that information so that it would be available to the Board, but this is not being contemplated at this time and is simply provided for informational purposes.

NRF estimates that the legal opinion effort would cost up to \$50K. There are some components of the proposal that we recommend asking them not to contemplate.

Specifically, Brendan and I recommend that we instruct NRF to narrow the scope of its proposed legal opinion for CAFII (fourth paragraph on p. 2) to just (i), and **not (ii)**. This is because we do not feel that we need NRF to do any work on *“(ii) assuming that it does (i.e. that the RADM does legally apply), how can its provisions practically apply to credit card-embedded insurance benefits”* because our CAFII Working Group is already tackling that contingency component.

Also, in the bullets laid out further down on p. 2 re what NRF specifically proposes to examine as part of its legal opinion for CAFII, given that we should instruct them to narrow their focus and not address (ii), then it probably also makes sense to instruct them **not to examine the following two proposed issues**:

- *preliminary analysis of the situation in the other Canadian provinces (the AMF really doesn't care about that and would likely dismiss arguments in this area out-of-hand, as the AMF is very much a Quebec-focused regulator which only pays lip service to pan-Canadian harmonization); and*

- *practical issues flowing from a potential application of the RADM to credit card-embedded insurance benefits and creative ways that may ease the AMF's concerns regarding the protection of Quebec consumers (already being tackled by CAFII's internal Working Group).*

**At this time, we will ask NRF to hold off on any further work until a Board meeting can be held to discuss the options.** Marc Duquette is not in the office the week of 9 March, so this will not really delay us.

### **Prong Two—Options around Attempting to Comply with RADM**

Prong two is to see whether and how CAFII members could comply with the Regulation respecting Alternative Distribution Methods (RADM) for embedded credit card insurance benefits. The members of the Working Group examining this issue are listed below. A one-hour meeting has been held at which much progress was made, and another two-hour meeting will take place on Friday, 13 March, after which we will be in a better position to determine when the Working Group will be read to present its findings to the Board.

### **Working Group Members Embedded Credit Card Coverages**

Scott Kirby, Chair  
 Martin Boyle, BMO Insurance  
 Isabelle Choquette, Desjardins  
 Charles André Roy, Desjardins  
 Mandy Rutten, CIBC  
 Michelle Butler, Scotiabank  
 Karyn Kasperski, RBC Insurance  
 Pete Thorn, TD Insurance  
 Monika Spudas, Manulife  
 Greg Shirley, Manulife  
 Tracey Torkopoulos, Assurant  
 Keith Martin, CAFII  
 Brendan Wycks, CAFII

### **Next Steps**

After Prong Two's work is more advanced, a one-hour Special Purpose Board Meeting will be called to review the Two Prongs, discuss the options, and provide direction on next steps. As well, by then we should have received a response from the AMF on our request for an extension of the deadline.

If the deadline is not extended, we will have to call a Board Meeting for the week of 16 March. If the deadline is extended, we may wait a little longer to further develop the options before holding the Board meeting.

Any questions or concerns, please let Brendan and me know.

### **Keith Martin**

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**Sent:** February 26, 2020 3:06 PM

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**Subject:** Update: Recommendation to CAFII Board of Directors on Next Steps In Response To AMF's Position That RADM Applies To Credit Card-Embedded Insurance Benefits

**Update: Recommendation to CAFII Board of Directors on Next Steps In Response To AMF's Position That RADM Applies To Credit Card-Embedded Insurance Benefits**

**CAFII Board of Directors (c.c. EOC Members and Surrogates):**

You are being asked, through this communiqué, to approve a recommended course of action for CAFII, developed by the Executive Operations Committee via an extensive discussion yesterday, with respect to the AMF's position that its Regulation respecting Alternative Distribution Methods (RADM) applies to credit card-embedded insurance benefits.

**Background**

On 11 February, 2020 CAFII met with Mario Beaudoin and two other AMF staff executives at the Autorité's office in Quebec City. A detailed report on that meeting, at which we received verbal confirmation that the AMF's view is that credit card-embedded insurance benefits are indeed subject to the RADM, was previously circulated to Board and EOC members (attached again here for convenient reference).

CAFII also subsequently received a follow-up letter from Mr. Beaudoin, on Friday, 21 February, 2020 (also attached here), in which he states the AMF's position, officially in writing for the first time, that "...these products are subject to the distribution without a representative regime. This position will not be debated." In the letter, Mr. Beaudoin also acknowledges that the industry has expressed concerns about the AMF's position that the RADM is applicable to credit card-embedded insurance benefits. He then says that "the AMF also wishes to hear the proposed solutions to these concerns" and asks CAFII to propose such solutions in writing by **27 March, 2020**.

**EOC Recommendation to CAFII Board on Next Steps In Response To AMF's Position That RADM Applies To Credit Card-Embedded Insurance Benefits**

The EOC held its regular monthly meeting (via teleconference this month) yesterday, 25 February, 2020, at which a sizeable chunk of time was spent discussing this file and what should be our Association's next steps.

It was agreed that it is premature to arrange a CAFII Board Special Purpose Teleconference Meeting on this matter just yet, as some important preliminary work needs to be done first to develop more concrete options, which can then be presented to the Board once they are more fully fleshed out.

The EOC has determined that CAFII should take a two-pronged approach to next steps on this AMF issue.

**Prong #1:** CAFII should engage with Marc Duquette at Norton Rose Fulbright immediately and have him review and provide legal commentary and advice on CAFII's "*Views and Arguments With Respect To The AMF's Position That The RADM Applies To Credit Card-Embedded Insurance Benefits*" document. (At the

11 February, 2020 meeting with the AMF, we indicated that credit card-embedded insurance benefits were not an offer of insurance, and that the premium was not paid by the credit card holder; and, as such, credit card-embedded benefits were not subject to the RADM—but we did not present detailed legal arguments to support our position, as the direction from the Board was that the 11 February, 2020 meeting should be treated as exploratory only, with its principal purpose being to gather information from the AMF.)

The EOC believes that CAFII is now in a position where we should ask Marc Duquette at Norton Rose Fulbright to review all the background context material on this issue, including Mr. Beaudoin's 21 February, 2020 letter, our report on the 11 February, 2020 meeting, and our *"Views and Arguments With Respect To The AMF's Position That The RADM Applies To Credit Card-Embedded Insurance Benefits"* document; and ask for his advice and counsel on the legal grounding for CAFII's position on this file, along with our legal options.

We will ask Mr. Duquette whether we should seek a meeting with the AMF to advance our legal views, as we did on the spousal coverage issue in December 2019, or whether a written legal submission is more advisable (noting that we have heard a concern from internal members' legal departments that written submissions may be discoverable.) We will also ask Mr. Duquette what are our options for a legal challenge or appeal if our position on this issue is rejected by the AMF.

**Prong #2:** Second, there is a view among EOC members that we should also take steps to explore how we can accommodate the AMF's request that we find solutions with respect to how credit card-embedded insurance benefits can be brought into compliance with the RADM's expectations and provisions. As a result, we are also proposing to immediately launch a special task-specific CAFII Working Group, which will include both EOC and non-EOC members (as some credit card experts from parent company financial institutions will likely join the group), which will be mandated with identifying and fleshing out (i) different options and approaches for how we could respond to the AMF on each of the specific requirements of the RADM regime and the expectation that credit card-embedded insurance benefits must be made to "fit" within it; and (ii) possible options around having credit card-embedded insurance benefits come into conformity with the RADM. When the options are fully fleshed out, this Working Group will also develop a plan and strategy for the Board's consideration.

When these two prongs of action have produced new information and options of substance, we will then arrange a CAFII Board Special Purpose Teleconference Meeting to allow the Board to review the options and provide strategic direction for our Association going forward.

Furthermore, the EOC is of the view that CAFII should ask the AMF for an extension to the 27 March deadline date set out in Mario Beaudoin's 21 February, 2020 letter for CAFII's response —Brendan and I are recommending **15 May, 2020**—to give our Association adequate time to formulate our position and responses on both prongs of action outlined above. As well, we recommend that we send the request for an extension to Mr. Beaudoin, but copy others at the AMF (Nathalie Sirois, Louise Gauthier, Patrick Dery, and Frédéric Pérodeau), as we do not want to be restricted to dealing with Mario Beaudoin alone on this issue.

Other than the proposed request to the AMF for a deadline extension, it is proposed that our Association have no material further contact with the AMF on this issue until after the CAFII Board has been consulted on strategy and process going forward, via the future Special Purpose Board Teleconference Meeting noted above.

### **Approval Requested**

**CAFII Directors: please respond to Keith Martin and Brendan Wycks to advise as to whether you are in agreement with the *EOC's Recommendation to CAFII Board on Next Steps In Response To AMF's Position That RADM Applies To Credit Card-Embedded Insurance Benefits* as set out above, or if you have any concerns, by end of day on Thursday, 27 February, 2020.** If there is Board support for the EOC's recommended plan of attack, we will initiate moving forward on both prongs of this plan on Friday, 28 February, 2020.

Thank you,

--Keith

### **Keith Martin**

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