

Agenda Item 5(c)(1)
April 12/22 Board Meeting

Outcomes Of February 17/22 CAFII Meeting With FCAC Staff Executives
Re Final Decisions/Position On Content Of FCAC's
Appropriate Products and Services Guideline For Banks and Authorized Foreign Banks

The FCAC reached out to CAFII on February 11/22 requesting a February 17/22 half-hour virtual meeting to share the FCAC's decisions/position on the final content of its Appropriate Products and Services Guideline for Banks and Authorized Foreign Banks; and, in particular, its response to the feedback points raised in CAFII's January 6/22 written submission on the draft Appropriateness Guideline.

Participating in the February 17/22 virtual meeting from the FCAC were Bradley Schnarr, Manager, Regulatory Guidance and Coordination, Supervision and Enforcement Branch; and Stephen Wild, Senior Research and Policy Officer, Supervision and Enforcement Branch. Brendan Wycks and Keith Martin dialogued with Messrs. Schnarr and Wild, on behalf of CAFII.

In the meeting, Messrs. Schnarr and Wild were cordial, engaged, and very open in their responses to CAFII's questions and comments.

Their opening comment was that while the FCAC had listened carefully to and understood CAFII's expressed concerns about the draft Guideline – as communicated in both our written submission and a January 14/22 virtual meeting, attended by approximately 15 CAFII representatives including Messrs. Wycks and Martin, which stemmed from an FCAC invitation to CAFII to present the highlights of the Association's written submission – the Agency had decided that the final version of the Guideline would remain largely unchanged from the consultation draft, save and except for what they referred to as some minor clarifications and housekeeping edits.

That said, they indicated that some of the minor changes that would be introduced in the final version of the Guideline were intended to address some of CAFII's feedback on the consultation draft.

More specifically, the clarifications and housekeeping edits to be made to the Appropriate Products and Services Guideline include the following:

- the ordering of the first six paragraphs will be changed to improve their logical flow and the understandability of the content.
- CAFII's expressed concern that adhering to the FCAC Appropriateness Guideline could potentially put CAFII members in an untenable situation and force them to be off-side provincial/territorial insurance licensing requirements would be addressed in two ways (in CAFII's considered view, the significance of these FCAC adjustments should not be downplayed, even though Messrs. Schnarr and Wild positioned them as "minor clarifications"), as follows:

First, Paragraph 6 will be amended to include wording to the following effect: “this Guideline should be read in the context of **all applicable laws and regulations**.” Those words, Messrs. Schnarr and Wild asserted, would make it clear that the FCAC understands that CAFII members must also comply with provincial/territorial regulatory requirements.

Second, Messrs. Schnarr and Wild advised that the FCAC does **not** have an expectation that determining the appropriateness of a financial or insurance product for a consumer must necessarily include a needs analysis or providing advice. That verbal clarification to CAFII (which will not be reflected in writing the Guideline), they asserted, should address our Association’s concern that it would not be permissible or possible for CAFII members to provide consumers with advice with respect to credit protection insurance, an Authorized Insurance Product under the federal Bank Act, due to provincial/territorial insurance licensing requirements.

- Paragraph 8 will be amended to include a motherhood statement about the importance of protecting vulnerable Canadians, which should address CAFII’s expressed concern about our members being able to continue offering simple and accessible insurance protection to lower and middle income Canadians who may not otherwise have any insurance coverage.
- the word “before” will be dropped in favour of consistent use of the word “when” throughout the Guideline, in a fix that will be made in direct response to this feedback point in CAFII’s written submission:

We note the following inconsistency: Clauses 10i and 10iii speak of an FRFI collecting information “before it offers or sells products or services to them” while Clause 19 says “A Bank’s Policies and Procedures should ensure that the bank conducts an appropriateness assessment when it offers or sells products or services to consumers.” We believe that the use of the term “when” is more appropriate than “before.”

- A number of sections of the Guideline will be “cleaned up” to ensure consistent and clear use of the term “Policies and Procedures” versus the more generic “policies and procedures” in direct response to this feedback point in CAFII’s written submission:

We note that Clause 2 in the document establishes “Policies and Procedures” as a defined term related to the appropriateness check performed with a customer as part of the offer or sale of a product. However, throughout the document there are also references to policies and procedures generally, interspersed with the use of upper case “Policies and Procedures” to denote the defined term. We recommend that the document maintain a constant and clear distinction between the twotypes of policies and procedures (i.e. “Policies and Procedures” related to the appropriateness checkat the time of the offer; and more general policies and procedures within an FRFI).

In a more general point about overall industry feedback on the draft Guideline, Messrs. Schnarr and Wild said that the FCAC had received several requests to add more prescriptive detail around what would satisfy the stated *Know Your Client* requirements, as well as on what would be required around staff training to meet the FCAC's expectations. However, the Agency decided not to accede to that request for more prescription as it wants the Guideline to remain principles-based. Messrs. Schnarr and Wild concurred with CAFII's observation that such a request for additional prescriptiveness was not contained in our Association's written submission or our verbal presentation of its highlights.

Next Steps and Implementation Considerations

Messrs. Schnarr and Wild indicated that the FCAC intends to release the final version of the Appropriate Products and Services Guideline during the week of February 21 to 25, 2022. However, that planned timing was contingent upon being able to secure release approval sign-offs from several approval authorities "whose schedules were very challenging."

There will be no sunset provision in the Appropriate Products and Services Guideline requiring its periodic review (unlike the Bank Act which has a sunset provision requiring that it be reviewed every five years), but Messrs. Schnarr and Wild advised that the FCAC does intend to review the Guideline from time to time.

On the question of compliance monitoring and supervision/enforcement with respect to the Appropriate Products and Services Guideline, Mr. Schnarr hesitated to commit to anything specific about whether compliance audits would occur, saying that this would all be worked out over time. He did say, however, that a new "Thematic Review Team" had recently been set up within the FCAC; that it was hiring a lot of new staff; and that it would likely take the lead on ensuring compliance with the Guideline. However, he also said that it was likely that, at least in the initial few years of implementation, any compliance reviews determined to be necessary would be conducted on an informal basis, as opposed to a structured and formal basis.

Messrs. Schnarr and Wild said there was nothing the FCAC could do about the legislated June 30, 2022 in-force date for the new federal Financial Consumer Protection Framework (FCPF), which included the Appropriate Products and Services Guideline for Banks and Authorized Foreign Banks. However, Mr. Schnarr emphasized that the FCAC was "a reasonable regulator" and that it would not use enforcement or penalties in the initial implementation period if a regulated entity was making demonstrable best efforts to comply with the Guideline. The Agency's preferred approach would be to work with a regulated entity during that initial implementation period to work out any issues, he concluded.