cafii acifa
The Canadian Association of Financial Institutions in Insurance | L'association canadienne des institutions financières en assurance

200-411 Richmond Street E, Toronto, ON M5A 3S5
(416) 494-9224 (416) 967-6320
info@cafii.com www.cafii.com

8 December, 2021

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la cité, tour Cominar
2640, boulevard Laurier, 3ième étage
Québec (Québec) G1V 5C1
Fax: 418-525-9512
E-mail: consultation-en-cours@lautorite.qc.ca

c.c. Mr. Éric Jacob, Superintendent, Client Services and Distribution Oversight
Mr. Patrick Déry, Superintendent, Solvency
Ms. Louise Gauthier, Senior Director, Distribution Policies
Mr. Mario Beaudoin, Director, Alternative Insurance Distribution Practices

Re: CAFII Feedback On AMF's Draft Regulation respecting Complaints Handling and Dispute Resolution in the Financial Sector

Dear Mr. Lebel:

CAFII thanks the AMF for the opportunity to provide feedback comments on the Autorité's Draft Regulation respecting Complaints Handling and Dispute Resolution in the Financial Sector. Our Association strongly supports a fair, convenient, and transparent complaints handling and dispute resolution process, one which ensures that customers have readily accessible and responsive avenues available to them to address and resolve concerns, complaints, and disputes.

Opening Comments

We note that

> *The Draft Regulation is intended to harmonize and strengthen the fair processing of complaints in Québec's financial sector. It includes requirements drawn from national and international FTC (fair treatment of customers) principles and was drafted taking into account input from various AMF advisory committees and the comments of multiple financial sector stakeholders.*

We also note that the purpose of the Regulation is summarized as follows:

> *The Draft Regulation establishes a common set of rules and practices to be followed by financial institutions, financial intermediaries and credit assessment agents in processing complaints and resolving disputes. These rules and practices also cover the keeping of complaint records and the sending of such records to the AMF for examination. The Draft Regulation would also prohibit certain practices.*

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

The Draft Regulation identifies the elements to be included in a financial intermediary's complaint processing and dispute resolution policy.

Finally, it sets out the monetary administrative penalties that may be imposed on financial institutions or credit assessment agents by the AMF in the event of non-compliance with the Regulation's provisions applicable to their practices.

CAFII strongly supports the above-noted statements on the Draft Regulation's purpose and intent.

That said, we have concerns about the Draft Regulation which arise from its level of prescriptiveness – thus straying from principles-based regulation – in a number of instances.

CAFII member companies are financial institutions and insurers which have long had robust and comprehensive complaints and dispute resolution processes in place. From that perspective, our Association believes that regulators should communicate their expectations through broad principles, and leave to individual regulated entities the mechanics and details of how the consumer outcomes associated with those principles will be achieved. Such a principles-based approach is, in our view, more efficient and effective than a prescriptive approach because it avoids a situation in which a regulator is dictating to businesses how to manage the details of their operations.

General Comments and Observations

CAFII strongly believes that the insurance and financial services ecosystem in Québec, and indeed throughout Canada, is best served by a regulatory system that is harmonized to the maximum degree possible across provincial/territorial and federal jurisdictions. With this Regulation, as drafted, Québec will be introducing a novel and unique set of rules that is, in many respects, distinctly different from those utilized in other provinces, territories, and the federally regulated financial sector. In particular, the AMF's Draft Regulation is inconsistent with new complaints handling principles and expectations recently introduced in federal Bill C-86 and the associated Financial Consumer Protection Framework (FCPF)-related Regulations issued by the Financial Consumer Agency of Canada (FCAC).

Our Association's members are national institutions with policies and procedures designed to be followed throughout all of Canada. The practical implications of the AMF's introduction of a Regulation on Complaints Handling that includes distinctly different and unharmonized elements is that financial institutions which choose to operate in Québec will have to dedicate considerable financial and other resources to dealing with Québec's unique provisions, resources which otherwise could have been devoted to meeting the insurance needs and wants of Québec consumers. The end result is a more costly and inefficient system, and one which we do not believe will deliver offsetting, salutary benefits in terms of enhanced consumer protection.

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

One other general, thematic point – elaborated upon in the specific feedback below – which want to highlight is that the Draft Regulation seems to be very oriented towards and supportive of paper-based complaints processes. It would therefore be beneficial to adjust the wording throughout the document to remove that bias and orientation; and instead to reflect the fact that complaints are often made, and often resolved, verbally or electronically; and, similarly, to clarify that digital means of communication are fully acceptable in complaints handling and dispute resolution processes.

Feedback on Specific Clauses and Provisions

- We are very concerned about the requirement in Clause 11 that regulated entities provide a "complaint drafting assistance service" for any person expressing a need for it. We support the concept that complaints processes must be simple and accessible, and that institutions need to ensure the fair treatment of customers. However, to ask a company to assist a customer in drafting a complaint – a complaint that is about and will be directed to that company itself -- produces, in our view, a clear conflict-of-interest. In practice, such a drafting assistance service would be extremely difficult to structure, resource, and implement. In our view, such a drafting assistance service for vulnerable or otherwise disadvantaged consumers would be much more appropriately offered by the AMF itself. That approach would avoid the conflict-of-interest challenge, and would be more efficient than having regulated entities each have to develop such an assistance service themselves.

- We strongly disagree with the requirement set out in Clause 14 that a regulated entity must continue to manage a complaint through its existing processes even when a "complainant files an application or motion pertaining to elements of the complaint with a court or adjudicative body." In our view, doing that would be entirely inconsistent with appropriate legal and good governance expectations. We believe that once a complainant decides to take his/her complaint or dispute to a court or adjudicative body, he/she has opted out of the company's internal complaint handling process; and therefore, the internal complaint process must be terminated and the file closed.

- With respect to clauses 27, 28, and 29 on monetary penalties, we note that the AMF is giving itself the latitude to impose penalties for even very minor and trivial administrative errors. In our view, that would constitute regulatory over-reach and be inconsistent with the AMF's expressed commitments to principles-based regulation and burden reduction.

- The definition of "complaint" **set out in clause 3 as** *"… any dissatisfaction or reproach in respect of a service or product offered by a financial institution or financial intermediary"* is very broad and sweeping; and thereby could capture very minor issues that a customer does not intend to bring forward as a "complaint." In some instances, a customer verbally mentions, typically on the phone or in-person, a minor point of dissatisfaction – which the customer him/herself characterizes as a "quibble" and which he/she just wants the company to be aware of – and the customer expressly states that he/she is not filing an official complaint about the issue, nor does he/she expect to receive any follow-up or response about it.

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

- We recommend that clause 4 should reference existing AMF and CCIR/CISRO regulatory expectations around the fair treatment of customers, including those outlined in the AMF's Sound Commercial Practices Guideline; and, to the extent practicable, clause 4's wording should align with those expectations.

- The Draft Regulation indicates that the term "ombudsperson" should not be used for an internal function where the person with that title is an employee of the institution. However, in clause 5, the Draft Regulation sets out expectations that "complaints officers" in companies "…are able, in carrying out their respective functions, to act with independence and avoid any situation in which they would be in a conflict of interest." If the draft Regulation views an internal company staff member with the title "ombudsperson" as not being capable of being objective, then it is difficult to understand how a "complaints officer" would not be viewed as having the same challenges, since he or she would also be a company employee.

- In Section 7, it may not always be reasonable to expect the staff person responsible for processing complaints to have "detailed knowledge of the products and services offered by the financial intermediary," because there may be cases – particularly in large financial institutions/intermediaries – where there is a centralized complaints team and its complaints handling specialists rely on expertise from various areas of the business to be able to deal with complaints that arise related to particular areas of the business.

- We recommend that the language in clause 10 should be modified in order to clarify whether or not the following interpretation is correct: the analysis referred to in clause 10 is not expected to be published or publicly released; rather, the mandated analysis is intended to be an internal effort by financial institutions and intermediaries, the goal of which is to determine if there are any systemic issues that are the root causes of complaints.

- In Chapter II, which applies to financial intermediaries, we note that such companies can vary significantly in size and sophistication. The "one size fits all" prescriptive regulatory expectations set out in this Chapter may be quite challenging for smaller financial intermediary companies to comply with.

- With respect to clause 12, some complaints are quite simple to resolve while others that become escalated (Level 3 complaints) can be very complicated. A 60-day resolution deadline could be quite challenging to meet with respect to more complicated, escalated complaints. It is also not clear to CAFII whether the 60-day deadline includes the time required for the heretofore-called "internal ombudperson" process to be utilized (which will now be an escalation that is managed by an internal "complaints officer").

- We believe that use of the word 'enlightened' in "to allow the complainant the opportunity to seek advice for the purpose of making an enlightened decision" is an improper use of that word in English; and the intent would be better captured by using the word 'informed' instead.

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

- With respect to clause 15, there are some complaints where multiple issues are raised, including a variety of complaints that may not be related or even all directed at the same company. If a company receiving a complaint has to resolve it in coordination with another company, such as a business partner (an example being an insurance distributor receiving a complaint that also involves its insurance underwriter), it is reasonable to expect that the company receiving the complaint would advise the complainant that he/she needs to file the complaint with the other company him/herself, and to provide the other company's contact information. It should be specified, however, that if the complainant is filing a multiple issues complaint which includes concerns about another company – which concerns the company receiving the complaint cannot address and resolve because they are not connected to them – then the receiving company should not be expected to provide any information about the 'not applicable' aspect(s) of the complaint in response to the complainant.

- In clause 16, we recommend avoiding the use of "any" in subsection (3); and instead the Regulation should specify a pertinent threshold, because not every communication with the customer needs to be captured.

- In clause 16, instead of using the term "precise form" which does not carry sufficient meaning in English, we recommend the use of "clear, accurate, and not misleading" instead.

- Clause 18 is an example of a very prescriptive provision that goes into great detail about how a company must manage the complaints it receives, as opposed to remaining principles-based and setting out the regulator's customer protection-focused expectations/outcomes. We are assuming that "its federation" refers to the two Quebec Chambres which the AMF oversees; and we recommend that that lack of clarity be addressed in the next version of the Regulation. We are also assuming that "complaints register" is intended to mean a compendium or log of all individual complaints managed by the company receiving the complaint; and we recommend that that lack of clarity also be addressed in the next version of the Regulation.

- It is our view that a Level 1 complaint that is immediately remedied by the company to the complainant's satisfaction should not be subject to clause 19. We believe that specifying this exemption would bring the Quebec/AMF Regulation into harmony with the definition of a Level 1 complaint set out in CCIR's Annual Statement on Market Conduct.

- With respect to clause 20, we recommend that when the Regulation references another document or Regulation, the relevant clauses/provisions should be included and directly spelled out, rather than forcing the reader/user to locate and reference the separate document. The meaning of the term "written form" is not clear, and we recommend that the next version of the Regulation provide clarity that it is not intended to mean exclusively "paper-based," but rather also includes digital and electronic means of communication. Overall, this clause is another example of a very prescriptive approach which abandons principles-based regulation.

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

- In clause 21, subsection 5, we recommend that the Draft Regulation be amended to spell out that an electronic signature—or simply a signature block in an email message —is sufficient; and that "signature" does not mean exclusively a paper-based, wet signature. We also recommend that for complaints referred to the AMF (or a federation, which we assume is a Quebec Chambre), the Regulation should specify a deadline for its response to the complainant.

- As drafted, the Regulation is unclear as to the AMF's expectations about how detailed a "summary of the complaint received" needs to be. As well, we recommend that for the English version of the Regulation, instead of using the term "offer," which in English can imply a financial settlement, the term "resolution" should be used, because some complaints may be satisfactorily resolved without any financial settlement. We also recommend saying "…has accepted the offer to resolve the complaint**, if applicable**."

- In clause 23, we recommend spelling out what the AMF's expectations are with respect to the term "among other elements." It would also be beneficial for the Regulation to recognize explicitly that not all complaints are made in writing, as some are delivered verbally only; and the process of responding to such verbal-only complaints often also entails verbal-only communication.

- Clause 24 is too narrow in its framing, as it does not reflect the fact that complaints may be made verbally, for example through a call centre representative.

In conclusion, CAFII again thanks the AMF for the opportunity to offer our comments on the Draft Regulation respecting Complaint Processing and Dispute Resolution in the Financial Sector. Should you require further information from CAFII or wish to meet with representatives from our Association on this submission or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647-460-7725.

Sincerely,

Rob Dobbins
Board Secretary and Chair, Executive Operations Committee

200-411 Richmond Street E, Toronto, ON M5A 3S5
☎ (416) 494-9224 🖷 (416) 967-6320
info@cafii.com www.cafii.com

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Insurance; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; Canadian Tire Bank; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.