

Agenda Item 5(d)

April 7/20 CAFII Board Teleconference Meeting

Background

CAFII meets regularly, and in principle quarterly, with the CCIR/CISRO Fair Treatment of Consumers Working Group (FTCWG) to discuss industry progress in implementing CCIR/CISRO's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers" (issued September 2018)

Participants

From CCIR/CISRO: In-Person

Louise Gauthier, Senior Director, Distribution Policies, Autorité des Marchés Financiers and Co-Chair of the FTCWG

Isabelle Berthiaume, Director, Prudential Insurance Supervision, Autorité des Marchés Financiers

Antoinette Maramieri, Head, Insurance, Financial Services Regulatory Authority of Ontario¹

Swati Agarwal, Senior Manager, Life Insurance Market Conduct, Financial Services Regulatory Authority of Ontario

Chris (Christine) Caldarelli, Senior Policy and Technical Lead at Financial Services Regulatory Authority (FSRA)²

Tim Mifflin, Insurance Market Conduct Division, Financial Services Regulatory Authority of Ontario (FSRA)³

April Stadnek, Director, Strategic Initiatives at Insurance Councils of Saskatchewan

Jennifer Calder, Deputy Superintendent of Insurance, Nova Scotia Finance and Treasury Board

Tony Toy, CCIR Policy Manager

From CCIR/CISRO: By Teleconference

Ron Fullan, Executive Director, Insurance Councils of Saskatchewan and Co-Chair of the FTCWG

Harry James, Senior Regulatory Advisor, BC Financial Services Authority

Veronique Martin, AMF

Robert Picard, Compliance Officer, Pensions and Insurance Division, FCNB

From CAFII: In-Person

Huma Pubani, TD Insurance

Brendan Wycks, CAFII

Keith Martin, CAFII

From CAFII: By Teleconference

Martin Boyle, BMO Insurance and EOC Chair

John Lewsen, BMO Insurance

¹ Anthonet Maramieri was previously the COO of the Alberta Insurance Council.

² Chris (Christine) Caldarelli advised that she had previously worked in Senior Counsel roles at TD Bank, Forester's, and Manulife Financial, during which time she had significant exposure to credit protection insurance products.

³ Tim Mifflin advised that he had previously worked at the Financial Services Authority (FSA), predecessor national regulator to the current Financial Conduct Authority (FCA) in the UK, and at Royal & Sun Alliance in the UK.

Greg Cairns, BMO Insurance
Dana Easthope, Canadian Premier Life Insurance
Shawna Sykes, Co-operators/CUMIS Services Inc.
Michelle Costello, CUMIS Services Inc.
Diane Quigley, CUMIS Services Inc.
Cassandra Litniansky, CUMIS Services Inc.
Isabelle Choquette, Desjardins Financial Security
Marie Nadeau, National Bank Insurance
Andrea Stuska, TD Insurance
Fay Coleman, TD Insurance
Vikram Malik, Sun Life Financial
Emily Brown, Sun Life Financial

Meeting Summary

In preparation for the 5 March, 2020 meeting with CAFII, Tony Toy, CCIR Policy Manager, had written CAFII to make the following request:

As initially discussed at the November 5, 2019 Stakeholder Dialogue and clarified by a subsequent email of December 10, 2019, the FTCWG is expecting to discuss the written CAFII submission re: incentives and compensation models currently used in the market.

Brendan Wycks subsequently discussed the matter of such a CAFII submission with several EOC members, who expressed concerns about it, including with respect to the granularity of the information requested, and the fact that the information requested was competitively sensitive and CAFII's compliance with the submission request could cause the Association to engage in activity that would be in violation of the Competition Act.

As a result, CAFII sought legal advice from Stikeman Elliott on the CCIR/CISRO FTCWG's submission request of CAFII, and then communicated the key elements of the law firm's legal advisory memo to Tony Toy, CCIR Secretariat. That response can be found in "Appendix A" to this Summary Note; but, in essence, Stikeman Elliot agreed that this was potentially not appropriate information for competitors to share, but that it might be possible to do so in an aggregated, anonymized fashion through a third party firm.

The FTCWG raised this issue at the beginning of the meeting, with Louise Gauthier emphasizing that the regulators were largely interested in understanding how incentives work in the industry. Ms. Gauthier said that these meetings were intended to be an exchange of ideas, to be a "safe place" to discuss issues, and were focused on policy, not supervisory matters.

Brendan Wycks gave some additional context about the concerns of CAFII members around the original ask for a submission on incentives, and the Working Group seemed receptive to the concerns of CAFII members, in particular around revealing information that could be commercially sensitive.

However, Ms. Gauthier said that the solution which would involve CAFII arranging for the requested information to be assembled in an aggregated, anonymized information through a third party firm would be perfectly fine.

She also advised that another Association, the Insurance Bureau of Canada (IBC), had surveyed its members to gather the requested information, and that the results of its efforts had provided very helpful information for the FTCWG. The purpose of undertaking such a survey would be to enable the FTCWG to better understand how the industry works, what its incentive programs are, and how conflicts of interest with respect to incentives are being managed and/or mitigated, Ms. Gauthier concluded.

CAFII responded that this modified understanding of the FTCWG's request was helpful, and we agreed to explore developing a survey of CAFII members which would allow our Association to provide the FTCWG with the desired information in a way that would avoid any concerns related to the Competition Act.

Discussion then turned to implementation of the CCIR/CISRO Fair Treatment of Customers (FTC) Guidance.

Huma Pabani of TD Insurance provided some information on how her company was implementing the Guidance, including revising policies and procedures documentation so that it was consistent with the Guidance, and incorporating FTC into all employee training.

Keith Martin noted that an ongoing challenge for CAFII members is that while they adhere to and are supportive of FTC principles, implementation of the Guidance is essentially about business culture, and that is something that is difficult to measure.

Ms. Gauthier noted that this was something that the Working Group was aware of, and that some thought had already been given to measures or Key Performance Indicators (KPIs) that could demonstrate adherence to FTC. Such proposed measures, once completed by the FTCWG, would be shared with the industry, and they should be regularly reported to companies' Board of Directors, Ms. Gauthier advised.

Ms. Gauthier said that a consultation document related to updating the AMF's Sound Commercial Practices Guideline of 2013 would soon be released; and that while the AMF would not simply be adopting the CCIR/CISRO Guidance document as the standard for the province of Quebec, the updated Sound Commercial Practices Guideline would be consistent with the CCIR/CISRO Guidance.

At Ms. Gauthier's request, Tim Mifflin of FSRA gave a presentation on the categories of industry sales incentives that the FTCWG is reviewing, in which he identified four categories that given rise to conflict of interest concerns:

1. *Incentives which create an obvious conflict by their very nature* – incentive programs such as awarding travel/trips for top-selling intermediaries.
2. *Incentives which potentially place the intermediary's interest ahead of the customer's interest* – incentive programs such as volume bonuses and sales campaigns.
3. *Incentives which restrict access to markets* – insurers set sales quotas for intermediaries to access or maintain contracts, which in smaller markets may mean that intermediaries have access to a limited number of markets.
4. *Incentives which impede servicing the customer* – original seller compensation only, no compensation provided for a new "agent of record" servicing an orphan policy.

Tim Mifflin then elaborated on category #1: regulators' concern about high-value travel/hospitality rewards which, by their very nature, create a conflict of interest, such as travel to a vacation resort.

Keith Martin noted that while there are some travel rewards incentives used in the CPI industry, they are more modest than what Mr. Mifflin described and tend to be associated with other activities such as team-building or training.

Tim Mifflin replied that that made sense to him; that it was not his view that CAFII members were engaged in the sort of travel incentives that the Working Group was concerned about; and that his impression was that such high value travel rewards incentives were becoming much less common in the industry generally. Nevertheless, Mr. Mifflin's verbal presentation included the comment that

As part of this review, the FTC Working Group is considering whether insurance regulators should establish a formal position on travel incentives which is similar to the standards that the securities industry has already announced.

The meeting concluded with the FTCWG noting that its next round of quarterly meetings with industry stakeholder groups would be held in June 2020. FTCWG members expressed the hope that based on the clarifications they had provided in this meeting as to their expectations, CAFII would be able to provide a written submission on the results of a third party survey of CAFII members, on their incentives and compensation models currently in the market, in advance of the next meeting in June.

(After the meeting's conclusion, there was informal discussion and dialogue, during which April Stadnek, Director, Strategic Initiatives at the Insurance Councils of Saskatchewan (ICS), advised Brendan Wycks and Keith Martin that while in Toronto that week, she had met two days prior with Luke O'Connor of CLHIA and with Moira Gill of TD Insurance, as a CAFII representative, on the issue of implementing/launching a Restricted Insurance Agent Advisory Committee in Saskatchewan, which had recently been formalized via publication of the ICS' new Bylaws on its website. Ms. Stadnek indicated that she would be reaching out to the CLHIA and CAFII soon with further information.)

Appendix A

27 February, 2020 Email from Brendan Wycks to Tony Toy on Request for Information on CAFII Members' Incentive Models

Hi, Tony.

This message is in follow-up to our phone conversation on Tuesday, February 25/20.

As I mentioned in our call, several CAFII members had significant reservations about the CCIR/CISRO FTC Working Group (FTCWG)'s request that CAFII put together an Association-level written submission/deck on "incentives and compensation models currently in market" (as per your email messages of December 10/19 and February 15/20 below) because they viewed that request as something that would potentially necessitate anti-competitive activity (in violation of *The Competition Act* federal law) within our Association.

Individually, in conversation with me, several of our members also informed me that they regard their own company's incentives and compensation model as definitely "competitively sensitive" and as a source of competitive differentiation.

Some CAFII members were particularly concerned about the following passage in your February 15/20 email -- *As some regulators have and are beginning to implement the principles of the Guidance, the FTCWG would like to receive specific examples of practices identified by insurers and distributors that were determined to be possibly misaligning with the Guidance and solutions that addressed those situations* (underlining is mine, for emphasis) – as they took that to mean that the FTCWG was expecting that CAFII members should be prepared to provide in writing, for inclusion in our Association's requested written submission, and also prepared to stand up in front of their competitors (albeit fellow members of CAFII, an industry Association) and to share/speak to the incentives and compensation model they deploy in the marketplace, during our Association's upcoming March 5/20 stakeholder meeting with the FTCWG.

Those CAFII members had a common view that the FTCWG's request that CAFII prepare and provide a written submission/presentation deck in advance of the March 5 meeting, as well as the expected focus/tenor of the discussion at that meeting, could potentially cause our Association to engage in activity that would be anti-competitive as well as self-incriminating for participating CAFII member companies.

While our members had those concerns, CAFII remains committed to being an active partner in CCIR/CISRO's efforts related to fair treatment of customers.

Therefore, we decided to seek legal advice on the issues related to the FTCWG's request of CAFII, from a competition law expert at Stikeman Elliott, to determine whether or not we could satisfy the request, as well as to determine the type of information we could share without creating a risk of breaching competition laws.

Here are salient excerpts from the legal advisory memo that our Association received from Stikeman Elliott on this matter (in blue):

This memo summarizes our competition law assessment of the request made of CAFII to provide a written submission/presentation deck on industry incentives and compensation models to the CCIR/CISRO Fair Treatment of Consumers Working Group. We understand that the Working Group has asked CAFII to provide an association-level written submission in relation to incentives and compensation models currently in the market. We understand that the Working Group is looking into how incentives and compensation models may create conflicts of interest when marketing insurance products.

Specifically, CAFII has asked us to analyze the risk associated with complying with the Working Group's request via an association-level submission under the Competition Act. In sum, we view complying with this request as presenting meaningful competition law risk if it would involve the sharing of competitively sensitive information as between CAFII members. This is because competition laws significantly limit the degree to which such information may be shared between competitors, with such sharing giving rise to potential competition law liability. We therefore do not recommend that CAFII proceed with an association-level submission, subject to the following three mitigating considerations:

1. If certain over-arching, high-level information about incentives and compensation models is common knowledge within the industry to the point of essentially being public or "quasi-public" information then it may be possible to prepare a high-level submission that does not involve the sharing of competitively sensitive information or any specific member data.

2. Any individual CAFII member is of course free on an individual and unilateral basis to provide information and/or a submission directly to the Working Group, as this would not involve the sharing of competitively sensitive information between CAFII members.

3. If CAFII wanted to pursue an association-level submission, then it could explore retaining a third-party (e.g., a law, accounting, or actuarial firm) to receive competitively sensitive information from individual members, with the third-party then being responsible for aggregating/anonymizing information and ensuring that competitively sensitive information regarding one member is not provided to other members, and with the third-party therefore playing a central role in the preparation of the submission to the Working Group. This may be not practical or desirable given time constraints and other considerations.

Exchanging competitively sensitive information with competitors may contravene section 45 or section 90.1 of the Competition Act, which severely restrict and regulate the sharing of information between and collaboration among competitors. The first step in assessing risk under the Competition Act is to consider whether the information to be shared as between CAFII members is competitively sensitive.

Such information is unlikely to be competitively sensitive if:

- The information is public or widely known across the insurance industry.*
- The information is already known among CAFII members because members use the same incentive programs, given overall uniformity within the industry.*

Such information is likely competitively sensitive if:

- There is not common, public, industry-wide knowledge about incentive and compensation models.*

- *Incentive programs and practices vary (or may vary) among CAFII members and across the insurance industry.*
- *Having information about a competitor's incentive program would provide a competitive advantage or potentially cause a member to alter its own conduct.*

Based on the criteria above, if the information requested by the Working Group could be considered competitively sensitive, then we recommend not sharing this information as between CAFII members and therefore not making a submission to the Working Group.

CAFII and its members are strongly of the view that information on the incentives and compensation models which members currently use in the marketplace is indeed competitively sensitive information because

- company-specific models are not public information or widely known across the industry;
- our members do not all use the same incentive programs and there is no overall uniformity of incentive/compensation models across the industry; rather, incentive programs and practices vary among CAFII members and across the industry; and
- having information about a competitor's incentives program and compensation models would indeed provide a competitive advantage and potentially cause a member to alter its own conduct.

Therefore, as I mentioned in our phone call, CAFII is of the view that our upcoming March 5/20 Quarterly Stakeholder Meeting could/should be re-oriented to a discussion about what are the reasonable expectations/asks of the industry that the FTCWG should have going forward, as it seeks to ensure compliance with the *CCIR/CISRO Guidance: Conduct of Insurance Business and Fair Treatment of Customers*, particularly in the area of incentives and compensation models.

In that connection, if the FTCWG concurs with our proposal, perhaps the meeting can be shortened from 90 minutes to one hour. And if the FTCWG is agreeable to our meeting-shortening proposal, we request that our Quarterly Stakeholder Meeting be rescheduled to 9:30 to 10:30 a.m. on Thursday, March 5/20. **Please get back to me at your earliest convenience as to whether this slight rescheduling proposal is acceptable to the FTCWG.**

P.S. In response to your related request, earlier this afternoon I sent you via a separate email a list of expected CAFII in-person participants at our upcoming meeting with the FTC Working Group on the morning of Thursday, March 5/20.

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