

## **CAFII Regulatory Issues And Perspectives Newsletter**

### **FEDERAL/NATIONAL**

#### **CANADIAN COUNCIL OF INSURANCE REGULATORS**

##### **CCIR Considers National Database -- Would Allow Users To Determine If An Insurance Agent Has Faced Disciplinary Action**

In the published highlights of its January 24, 2013 Conference Call, CCIR recently reported that since both CCIR and CISRO have now agreed in principle to move forward with an electronic form-based database as a central source for disciplinary information, CCIR has approved a new Disciplinary Information Implementation Working Group (DIIWG) to oversee the building of the database.

The DIIWG is to be joint between CCIR and CISRO and co-chaired by Shonna Neil, FSCO's Senior Manager of Licensing, for CCIR; and a designate to be named by CISRO.

In January, Investment Executive reported the following on this topic:

*Insurance advisors who have been sanctioned for misconduct could soon see that enforcement activity recorded in a centralized, Canada-wide database, as regulators aim to make it easier for consumers to identify those advisors who have breached the rules.*

*The **Canadian Council of Insurance Regulators (CCIR)** has established a committee to explore the feasibility of this kind of national database. The idea is to allow consumers, regulators and firms to search a single database to determine whether an insurance advisor has faced disciplinary action in any province across the country. The database would include listings for both life and property and casualty agents.*

*Under the current system, information about disciplinary action is scattered among multiple databases across the country, as this task is handled by provincial insurance regulators. Thus, even if an advisor is licensed in multiple jurisdictions, details of any disciplinary action against that advisor appear only on the website of the regulator in the province in which the misconduct took place.*

*The CLHIA is urging the CCIR to take the national database concept even further by including not only disciplinary details but also licensing information for all insurance agents, as this information is also dispersed among different databases across the country.*

*Despite the broad support for the national database, the committee responsible for the project must overcome a variety of technological, legal and operational hurdles in order to implement the database. For example, from a legal perspective, access to information laws vary slightly among the provinces, so regulators must ensure the database is constructed in compliance with the laws of each province.*

*From an operational standpoint, there are challenges associated with distinguishing between agents with the same name: regulators want to avoid having an advisor with a clean record mistaken for one with a history of misconduct.*

*To address this issue, the Alberta Insurance Council (AIC) is pushing for each insurance advisor across the country to be assigned a unique registration number.*

### **IAIS/IMF Audit of Canada Around Insurance Core Principles**

The International Monetary Fund (IMF) will be conducting a financial stability assessment of Canada in 2013 under the Financial Sector Assessment Program (FSAP). The FSAP will assess Canada's adherence with international standards in the areas of insurance, banking, securities, payment/settlement systems, and fiscal transparency.

CCIR has shared with CAFII the news that, likely due to limited time and resources, the auditors/reviewers from the IMF will be taking a sample-based approach to Canada.

CCIR learned in recent months that the IMF auditors will be looking at just Ontario and Quebec. They'll be on-site beginning in June, and working mainly out of Ottawa. They'll be looking at a wide range of financial system areas including banking, securities, clearing, solvency, and insurance.

How much time they'll have to focus on market conduct in insurance is unknown, but because the Insurance Core Principles (ICPs) are new, they may give that area a generous amount of time.

So Ontario (FSCO) and Quebec (AMF) are having to devote a lot of time and resources now to self-assessment processes against the ICPs; and their CCIR colleagues are providing support and encouragement.

### **Agencies Regulation Committee To Review Third Party Administrators (TPAs)**

In the published highlights of its January 24, 2013 Conference Call, CCIR reported that it had approved a workplan for the second phase of its Agencies Regulation Committee (ARC)'s work. The ARC will now review the regulation of Third Party Administrators (TPAs) in group life, accident and sickness, creditor's group insurance, and travel insurance to determine potential risks to consumers.

### **CANADIAN INSURANCE SERVICE REGULATORY ORGANIZATIONS (CISRO)**

#### **CISRO Provides Update On Harmonized Life Insurance Licensing Qualification Program**

CISRO's LLQP Committee, chaired by Ron Fullan, Executive Director of Saskatchewan's Insurance Council, provided a comprehensive update on the Harmonized Life Insurance Licensing Qualification Program (LLQP) at a Stakeholder Information Session held at the FSCO office in Toronto on January 17.

At this information session, Fullan and LLQP Committee colleagues from B.C., Alberta, Ontario, Quebec, and New Brunswick updated attendees on the following:

- the harmonized LLQP's features, program governance, and development/implementation timeline;
- progress to date in developing the new program;
- stakeholder feedback and CISRO responses;
- their stakeholder engagement plan; and
- next steps in the process.

Information will continue to be posted on the CISRO site as the project progresses; and quarterly stakeholder information sessions will also continue. There will be opportunities for written submissions to CISRO at key points in the process. The next quarterly stakeholder information session is scheduled for Tuesday, April 9 in Toronto.

## **JOINT FORUM OF FINANCIAL MARKET REGULATORS**

### **Role And Future Direction Of The Joint Forum Of Financial Market Regulators**

In 2011, the Joint Forum of Financial Market Regulators began a review to determine what its role and future direction should be going forward. The consensus feedback of the constituent organizations (CCIR, CSA, CAPSA, CISRO) was that changes should be made to enhance the value of the Joint Forum. There were concerns regarding resource commitments and the need to align the work of the Joint Forum with the priorities of the individual constituent organizations.

At its September 2012 meeting, the Joint Forum decided that the next step in defining its role and future direction would be to arrange a session in April 2013 with participation from members of the Joint Forum and other senior decision-makers from each of its constituent organizations.

The Spring 2013 Joint Forum meeting will be held on April 10 in Toronto.

## **COMPETITION BUREAU**

### **March Is Fraud Prevention Month**

March is Fraud Prevention Month; and on February 28, the federal Competition Bureau announced that it will be participating in a variety of initiatives aimed at helping Canadians protect themselves when faced with fraud. This year's Fraud Prevention Month theme is consumer empowerment, and the Bureau is encouraging Canadians to become informed and proactive in the fight against fraud.

The Competition Bureau is Chair of the Fraud Prevention Forum, which includes more than 125 private sector firms, consumer and volunteer groups, government agencies and law enforcement organizations that have banded together to help combat fraud and raise awareness. During Fraud Prevention Month, Forum members will participate in a number of activities across the country designed to raise awareness among consumers and businesses about the dangers of fraud.

One of the tools the Bureau has developed for educating consumers and businesses about fraud, and how to report it, is the *Canadian Edition of the Little Black Book of Scams*. Available on the Bureau's website, improvements are being made this year to improve the book's accessibility.

***FRAUD: Recognize It. Report It. Stop It.***

## **OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS (OSFI)**

### **Anti-Money Laundering/Anti-Terrorist Financing Regulations Approved**

On February 13, the Financial Transactions and Reports Analysis Centre (FINTRAC) announced that amendments to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act's Regulations had been approved.

The changes will take effect on February 1, 2014. More information about each change will be available in updates to the FINTRAC Guidelines in the fall of 2013.

The approved Regulations take into account and reflect concerns expressed by CAFII during the Department of Finance's 2012 Consultation on Strengthening Canada's Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regime.

The Government accepted CAFII's arguments that the Regulations should be structured to continue to exempt insurance products of immaterial (or no) cash value to the client, and those below a \$10,000 threshold for the cost of an annuity or insurance policy.

Removing that exemption, for products that pose very little AML/ATF risk, would have created a significant barrier to transactions carried out using alternate distribution channels such as e-commerce and telephone. And it also would have made it uneconomic to offer a number of important insurance products to the underserved middle market of Canadians: consumers whose insurance needs are too small to attract the personal attention of an individual broker.

On March 8, CAFII wrote to Nicholas Burbidge, Senior Director, AML and Compliance Division at Office of the Superintendent of Financial Institutions, to thank him for OSFI's willingness to engage with the industry and listen to stakeholder concerns, with a view to achieving the best possible outcome that balances AML/ATF risk with both consumer protection and business efficiency considerations.

## **CAFII**



### **Canadian Association of Financial Institutions in Insurance Appoints Executive Director**

The Board of Directors of the Canadian Association of Financial Institutions in Insurance (CAFII) is pleased to announce the appointment of Brendan Wycks, BA, MBA, CAE as Executive Director of the Association, effective immediately.

Brendan brings to CAFII leadership experience with several industry and professional Associations in the areas of government and regulatory relations; self-regulation and protection of the public interest; public and media relations, including national branding campaigns; and delivering compelling member value. He has served as Executive Director of the Marketing Research and Intelligence Association and the Insurance Brokers Association of Canada, and as a staff executive with the Institute of Chartered Accountants of Ontario.

Brendan holds a BA from the University of Western Ontario, an MBA from the University of Toronto, and the Certified Association Executive (CAE) designation from the Canadian Society of Association Executives.

The Canadian Association of Financial Institutions in Insurance (CAFII), established in 1997, is a not-for-profit industry association that represents and provides a voice for financial institutions involved in selling insurance products and services through a variety of distribution methods. CAFII members offer travel, life, health, property and casualty, and creditor's group insurance through call centres, agents and brokers, travel agents, direct mail and the internet. CAFII believes consumers are best served when they have meaningful choice and easy access in the purchase of insurance products and services.

## **PROVINCIAL**

### **ALBERTA**

#### **Alberta Insurance Council To Begin Publishing Disciplinary Decisions Effective April 1**

On February 25, the Alberta Insurance Council announced that it will begin publishing disciplinary decisions effective April 1, 2013.

The Minister of Finance has issued an order directing the Alberta Insurance Council to publish the decisions of the General, Life and Adjusters' Insurance Councils effective April 1, 2013. There will be a link placed on the web site directing interested parties to the source of the decision.

#### **Alberta Insurance Council Announces Changes To Certificate Expiry, Penalties and Fees Regulation, AR 125/2001**

The Alberta Insurance Council recently announced that the Certificate Expiry, Penalties and Fees Regulation has been amended to provide for a single annual renewal date that applies to all classes of certificates. The new renewal term will run from July 1 of one year to June 30 of the following year. All sectors (Life, General and Adjusters) will be transitioned to the new term by June 30, 2014. Fees for the certificate will be prorated during the transitional term.

Complete details of the changes, a table of prorated fees, and links to the regulation can be viewed on the Alberta Insurance Council website at [www.abccouncil.ab.ca](http://www.abccouncil.ab.ca).

### **BRITISH COLUMBIA**

In late January, the B.C. Government passed an Order-in-Council (OIC) to implement amendments to the province's *Financial Institutions Act* that were passed in 2010.

Two provisions of the OIC are of particular relevance to CAFII members.

First, the Order brings into force an updated administrative penalty framework set out in section 253.1 of the Act and also enacts a regulation listing provisions of the statute and related regulations for which an administrative penalty may be imposed, along with the maximum penalty for a contravention of each provision.

A second change relates to the exemption available for the sale of credit insurance by a lender from the obligation to use a licensed insurance agent, **which has now been expanded to include regulated insurers that themselves advance credit.**

## **ONTARIO**

### **FSCO Granted New Powers To Impose AMPs In Ontario Insurance Sector**

The Financial Services Commission of Ontario (FSCO) recently announced that changes made by the Ontario Government to the province's insurance-related statutes grant it new powers to levy Administrative Monetary Penalties (AMPs) for contraventions of legislation or regulations that occur on or after January 1, 2013.

An AMP is a financial penalty imposed by a regulator such as FSCO, instead of a court, for contraventions of law. AMPs encourage regulatory compliance and prevent financial benefit from violations.

The introduction of AMPs is in keeping with the Ontario Government's commitment to modernize financial regulation and regulatory practices. This enforcement tool provides FSCO with more flexibility in assessing appropriate penalties for non-compliance and misconduct in the insurance sector. AMPs also give FSCO an authority similar to other financial services regulators across Canada.

The changes allow FSCO to apply AMPs for existing contraventions that are identified in the AMP regulations. They do not create new compliance requirements.

The contraventions to which an AMP can apply include listed unfair or deceptive acts or practices by any person or entity including insurers, agents, brokers, adjusters and those involved in the provision of goods and services to insurance claimants.

AMPs can be imposed for breaches of orders, undertakings and licence conditions, as well as for contraventions of statutory provisions such as:

- Failure of agent to meet annual continuing education requirements
- Failure of agent to notify Superintendent of address change
- False billing practices
- Failure of insurer to charge authorized rates
- Engaging in prohibited acts and/or practices
- Acting as an agent when unlicensed or suspended
- Other unfair or deceptive acts/practices

## **FSCO Holds Pre-Consultation Meetings Around Modernizing Discipline Hearings For Ontario Insurance Agents And Adjusters**

On February 14, FSCO held a pre-consultation meeting with CAFII and CLHIA representatives to discuss

- A new model for holding hearings and disciplining insurance agents and adjusters; and
- The Superintendent's authority to issue interim orders and maintain jurisdiction once a disciplinary process is underway.

FSCO's desire is to replace the current Advisory Board (AB) disciplinary model – unique to insurance agents and adjusters in Ontario, and limited to licensing decisions – with the Financial Services Tribunal (FST), which has adjudicative powers with respect to other industry players, as the body that holds hearings and issues orders.

Making this change would require changes to the Insurance Act to remove the requirement for the Superintendent to appoint AB panels to conduct hearings. Under the current model for agents and adjusters, an AB prepares a "Findings of Fact" Report following a disciplinary hearing and issues non-binding recommendations for the Superintendent to consider, but the Superintendent is not a "party to" the hearing.

The FST model is seen as a more modern and streamlined disciplinary process as compared to the AB model, which involves more steps and sometimes increased costs, time, and risk of uncertainty and inconsistency. For example, currently an agent or adjuster facing both an Administrative Monetary Penalty (AMP) or fine and licensing discipline must go through two different processes to deal with the same set of facts because the due process for imposing an AMP falls under the FST disciplinary process rather than an AB.

The Superintendent's disciplinary toolbox was expanded recently to include Administrative Monetary Penalties (AMPs) or fines. With this new tool now at its disposal, FSCO intends to make greater use of AMPs, either stand-alone or in combination with licensing sanctions (suspension or revocation).

Another drawback that FSCO highlighted with respect to the current AB model for agents and adjusters is that it is inconsistent with the more explicit and comprehensive powers that the Superintendent has in other regulated sectors. Currently, the Insurance Act doesn't provide the Superintendent with the explicit authority to issue Interim Orders to suspend an agent's or adjuster's license; nor does it ensure that the Superintendent retains jurisdiction after a disciplinary process has begun.

In terms of next steps, after its round of pre-consultation meetings, FSCO plans to release a formal Consultation Paper, which will include an invitation for written submissions within 30 days. The outcomes of that consultation will then be shared with the Government, to inform its decision as to whether to make the changes to the Insurance Act.

## **FSCO Requests Meeting With CAFII Around Consumer Complaint Handling**

On March 1, FSCO contacted CAFII to arrange a meeting to discuss its plan to make changes to its consumer complaint handling timelines to accommodate faster response times to consumers. That meeting has since been confirmed for Thursday, March 21 from 1:30 to 2:30 p.m. at the FSCO office.

## **QUEBEC**

### **AMF Announces Senior Management Appointment**

On February 8, the *Autorité des marchés financiers* (AMF) announced the appointment of Patrick Déry as Superintendent, Solvency, effective February 18.

In this role as Superintendent, Solvency, Déry will be responsible for standards and deposit insurance, the supervision of deposit institutions, control of the right to practise and the supervision of insurers. Déry returns to the AMF after previously serving as Superintendent, Client Services, Compensation and Distribution from July 2011 to September 2012.

Déry, who holds a master's degree in economics, also has extensive management experience at the Québec Ministry of Finance. In particular, he served as Assistant Deputy Minister, Federal-Provincial and Financial Policies and was instrumental in managing the impact of the 2007-08 financial crisis on financial institutions operating in Québec.

### **AMF Strikes Insurance Firms Off Roll; Imposes Penalties Of \$100,000**

On January 17, the AMF announced that on December 20, 2012, its Bureau de décision et de révision (the "Bureau") had approved an agreement to deregister Sherpa Holding and Déry Capital inc., as well as impose an administrative penalty of \$50,000 upon each firm.

These insurance firms and their officers set up a scam, which enabled them to sell to targeted clients a life insurance product in which part of the premium paid by the client was reimbursed after the payment had been made to the insurer.

The scam enabled the firms and their officers to sell a life insurance product, typically Universal Life, for a face amount of more than \$1 million, thus earning a commission greater than the amount of the annual premium reimbursed to the client. As a result of this scam, the firms earned significant commissions.

## **GLOBAL/INTERNATIONAL**

### **Global Federation Of Insurance Associations Established**

On October 9, 2012, 32 national insurance industry associations -- representing insurers and re-insurers in 56 countries, and collectively 87 per cent of the world-wide insurance business -- formally established the Global Federation of Insurance Associations (GFIA). The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.

GFIA's founding Canadian members are the Canadian Life and Health Insurance Association (CLHIA) and the Insurance Bureau of Canada (IBC). Frank Swedlove, President of CLHIA, was elected GFIA's inaugural Chair.

The GFIA will be active in commenting on a broad range of issues affecting the international insurance industry, including developments in the systemic risk debate; the work of the IAIS in developing ComFrame, the common framework for the supervision of international groups; market conduct and trade issues; and initiatives in relation to financial inclusion and anti-money laundering.

**Further information about GFIA can be found on its web site at [www.GFIAinsurance.org](http://www.GFIAinsurance.org).**

### **Global Federation Of Insurance Associations Worried About Regulatory Constraints**

On February 27, Investment Executive reported the following:

*The insurance industry remains concerned about efforts to designate certain firms as systemically important, which would likely bring additional regulatory constraints.*

*In a letter to the International Association of Insurance Supervisors (IAIS), the Global Federation of Insurance Associations (GFIA) urges the IAIS to consider the questions raised by the industry as it finalizes the process for identifying global systemically important insurers (G-SIIs).*

*"Some of the open questions are complex, and need careful consideration as the outcomes are likely to have a significant impact on the targeted entities and thus, we believe, further analysis and exchange with the industry should be allowed for," it says.*

*In particular, the industry lobby says that it remains concerned about the proposed methodology for identifying G-SIIs, which, it says, will result in insurers being designated "not for the risk they pose to the financial system but because of their size."*

*It also says it believes that "the potential systemic risk posed by certain insurers as a result of activities they engage in should be assessed versus the global financial system as a whole, and not versus other insurance companies, as currently suggested."*

*And, it maintains that it's not correct to think that insurers could benefit from being on a list of G-SIIs, as this status would give them access to more favourable funding conditions. "GFIA wishes to reiterate its strong opinion that such reasoning is excessively bank-centric and has no rationale in insurance," it says.*

*Additionally, the letter stresses that the GFIA is worried about the sorts of added regulatory constraints such firms could face.*

## **Banking Rules Under Scrutiny In Canada--EU Trade Talks**

### **... Canada Resisting EU Attempts To Weaken Oversight Of Financial Institutions**

The following is an excerpt from a Canadian Press article published on February 27:

*A leaked draft of part of the Canada-Europe trade talks shows that Canada's vaunted banking system is on the negotiating table. The Canadian Press has obtained the Feb. 1 version of the services chapter of the Canada-Europe trade deal that Europe has circulated to its member states.*

*It shows that Canada is struggling to maintain the traditional stringent standards it imposes to ensure financial stability and protect financial services in Canada from foreign control. "EU does not want to exclude financial services from the scope of performance requirements," says notes written into the draft text.*

*The documents also show that Canada is resisting European Union attempts to weaken oversight of financial institutions — leading to a heavily contested text that is one more obstacle to completing an agreement with Europe soon.*

*Both sides want more access to each other's financial services markets. For Canada, the European market is a huge opportunity for big insurance companies located mainly in Ontario. And Germany in particular has been pushing for more financial services opportunities in Canada.*

*But the documents show Canada is taking a cautious approach, and will only allow a more open market if Canadian authorities can block business activity that would put the financial system at risk. Canada's caution is bumping up against an aggressive European drive for investor protections that have no strings attached.*

*Canada wants the text to say: "A party may prevent or limit transfers ... through the equitable, non-discriminatory and good-faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers."*

*But that section of text is in bright red, indicating — like much of the financial services portion of the agreement — that the EU has not yet agreed.*

*Canada also wants to set up a special mechanism that would have governments resolve any disputes that arise from new forays into each other's financial services sector. The draft shows the EU is somewhat open to a version of this idea, but has deep reservations for fear Canada will use the mechanism as an excuse to block legitimate European investment. European officials have not agreed to many parts of the Canadian text in this area.*

*That's because the federal government speaks frequently about the strength of Canada's financial services, boasting about the oversight that allowed Canada to avoid the worst of the global financial crisis that is still undermining Europe's banks.*