

From: Brendan Wycks [mailto:brendan.wycks@cafii.com]

Subject: Further Information Re BC FICOM's Creditor's Group Insurance Issue

In addition to the details set out below in my e-mail message of March 11, 2014, I obtained the following additional information about BC FICOM's Creditor's Group Insurance issue through a phone conversation with Harry James, Director, Policy Initiatives, on March 19:

Relevant Legislation

There are two pieces of BC legislation in play here: the Insurance Act and the Financial Institutions Act. The FI Act contains definitions of classes of insurance that are slightly different from, but not in conflict with, what's in the Insurance Act. Both Acts are germane in the governance and regulation of creditor's group insurance.

Consent Order Details (No Cease and Desist Order)

The Consent Order references four contraventions of the BC Insurance Act made by the Manulife/Benesure creditor's group insurance product"

- (i) Use of unlicensed individuals
- (ii) Payment of commissions to unlicensed individuals
- (iii) Acting as an unauthorized insurer; and
- (iv) Breach of the disclosure requirements, ie. lack of transparency regarding the identities of the insurer and related players and "improper holding out"

The fact that none of the four breaches talks about the insurance policy in question is significant. That's because while BC insurance legislation says that an insurer is prohibited from underwriting a product that the company was not a party to structuring/effecting, the legislation also says that – unless there is an identified immediate harm to consumers – a product in the market that is found to be in contravention will not be found void and immediate withdrawal will not be required.

As a regulator, you look at situations such as this violation of the Act and you weigh things and assess what's the best method for addressing the issue.

If we do find that there are other creditor's group insurance products in the market that are also in contravention, we are likely – unless there's an immediate harm to consumers – to try to work out a solution.

Plans For Open Letter to Insurers Authorized To Offer Creditor's Group Insurance In BC

Our intention is to take a broad, high level approach in the open letter to insurers, which we hope to have out in the week of March 24-28.

We are not trying to put the industry through a "search and cull" process and we don't want to impose an undue burden. In the letter, we won't be asking for a complete catalogue of products that each company has in the market.

We are trying to come up with the wording for two or three simple "filter questions" that will help insurers to identify whether or not they're offering a product that is of the type that we want to hone in on and take a look at. We want the filters to help make it a simple task.

For example, one filter question might be “Do you offer any policies where the group policy holder is not the lender?” (Conversely, just because the lender is the group policy holder doesn’t necessarily mean that that lender was involved in structuring/effecting the contract, so we have to be careful in designing our filters.)

Our goal with the open letter and the filters it will contain as a simple survey is to get a sense of the magnitude of the problem, ie. how many players in the industry may have a product in the market that may be in contravention. We want to find out if it’s a small number of companies, such as two or three participants, or if it’s a larger number such as 15 or 20.

If it’s only a small number, we may decide that the best approach is to work with each company individually on a solution.

Hopefully, with the responses we get to the filter questions that will frame the issue, we’ll be able to remove the vast majority of authorized insurers from the picture; and then direct our focus to the rest that may have an off-side product that contravenes the Act in the market.

From: Brendan Wycks [mailto:brendan.wycks@cafii.com]

Sent: March-11-14 3:10 PM

To: 'Manson, Sue'; 'emily.brown@bmolife.com'; 'alduval@dsf.ca'; 'rose.beckford@scotiabank.com'; eleanore.fang@td.com; brian.wise@assurant.com; 'Hines, Jennifer' (jennifer.hines@rbc.com); 'Yeung, Paul' (paul.yeung@rbc.com); Gill Moira (moira.gill@td.com); Grant Greg (Greg.Grant@cibc.com); 'Lewsen, John'; 'Leya Duigu'; cblaquiere@aegonusa.com; derek.blake@rbc.com; Cecillia.Xiao@assurant.com; heather.latimer@scotiabank.com

Cc: mark.cummings@scotiabank.com; Rino D'Onofrio (rino.donofrio@rbc.com); David Minor (Dave.minor@td.com); Rick Lancaster (rick.lancaster@cibc.com); Richard Hebert (Richard.Hebert@bnc.ca); Linda Fiset (lfiset2@dfs.ca); vivianne.g.maglione@aexp.com; Robert Zanussi (Robert.Zanussi@assurant.com); Isaac Sananes (isananes@aegonusa.com); Julie Barker-Merz (julie.barkermerz@bmo.com)

Subject: Important Heads-Up From BC Financial Institutions Commission (FICOM) On A Creditor's Group Insurance Issue

EOC Members:

I received a voicemail this afternoon from Harry James, Director, Policy Initiatives with BC’s FICOM, who focuses on insurance regulation (and is Chair of CCIR’s TPA Review Committee) – about a creditor’s group insurance issue that they are about to post an Enforcement Action on. I then connected with him to get additional information and add some flesh to the bones of his message.

Here is what I’ve learned:

Later this afternoon, FICOM will be sending to me, as CAFII Executive Director, and to other industry stakeholders an open letter about a contravention issue that FICOM has identified in the market that is germane to those who offer creditor’s group insurance.

FICOM has found at least one instance of a product where the contract was not constructed in accordance with the provisions of BC insurance legislation, and that product had been widely distributed.

The culprit is not a CAFII member. It is a large life insurer (Manulife Financial and Benesure Canada Inc.) that has been involved in the provision of mortgage protection insurance.

The key issue that has resulted in a contravention of BC legislation is that the definition of Creditor's Group Insurance only contemplates contracts that have been "effected by the lender." In the known offending case, the group contract was not so constructed; rather, mortgage brokers, as intermediaries, were the group policy holder. The actual lender was not an active participant in the effecting of the contract.

With respect to the offending large life insurer, a Consent Order will be posted on FICOM's web site this afternoon under the Enforcement tab.

<http://www.fic.gov.bc.ca/pdf/enforcement/trust/fia20140228.pdf>

As a result of this investigation and Enforcement Action, FICOM will, within the next few weeks, be doing some fact-finding with the industry, including CAFII members, just to understand whether or not there are similar products out there in the market.

The potential to be off-side the pertinent part of BC legislation arises not just with mortgage brokers, but with a number of different types of intermediaries. Any group product covering a borrower's loan in which the lender was not directly involved in structuring the contract is likely off-side. A "flag" is where the lender is not a contracting party.

The purpose of today's open letter is to provide a heads-up on what the issue is.

Today's letter will be followed-up by a direct letter to each insurer authorized to underwrite creditor's group insurance, on both the life and p&c sides. It'll be a fact-finding letter asking insurers to tell FICOM whether or not they may offer a creditor's group insurance product that is structured in this manner. The questions in the letter will be high level, rather than a formal, detailed survey. FICOM doesn't want to raise alarm bells unduly but it does need to do further investigation and due diligence to find out if this type of inappropriately structured product is fairly isolated in the market right now or if it's more widespread. And to find out if this may be a national issue, or is local to BC.

Brendan Wycks, BA, MBA, CAE
Executive Director
Canadian Association of Financial Institutions in Insurance
Cell: (647) 218-8243
Alternate: (647) 361-9852
brendan.wycks@cafii.com
www.cafii.com

April 7, 2014
File No.: 78000-50
Ref. No.: 0424

To: Creditors Group Insurers

Re: Creditor's Group Insurance Questionnaire

It has come to the Financial Institutions Commission's (FICOM) attention that there may be creditor's group insurance contracts in the market that have been effected by a third party, not the creditor. As these contracts are not being effected by the creditor, they do not meet the requirements to qualify as creditor's group insurance as stipulated in British Columbia's *Insurance Act* and cannot be offered in this province.

Section 37 and section 92 of the *Insurance Act* define creditor's group insurance as "*insurance effected by a creditor under which the lives of a number of the creditor's debtors are insured severally under a single contract.*" In order to "effect" a contract, the creditor must play an active and substantive role in negotiating and concluding the contract with the insurer.

In order to better understand the extent of third party effected contracts that may exist in the market, FICOM is conducting some preliminary information gathering. Attached is a short questionnaire FICOM is asking each insurer (life and property and casualty) currently authorized to write credit protection insurance and/or accident and sickness insurance business in British Columbia to complete.

Please note FICOM is only requesting that you complete the attached questionnaire; we are not asking you to validate whether all your contracts are in fact in compliance at this time.

Based on the results of the questionnaire, FICOM may work with insurers individually or it may work with other provincial regulators to address this issue.

Please scan and email your completed questionnaire to insurance@ficombc.ca or mail in a paper copy to the following address:

Attn: Molly Burns
Financial Institutions Commission
2800 - 555 West Hastings
Vancouver BC, V6B 4N6

-
- Superintendent of Financial Institutions
 - Superintendent of Pensions
 - Superintendent of Real Estate
 - Registrar of Mortgage Brokers

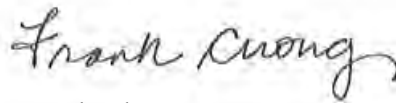
2800-555 West Hastings
Vancouver, BC V6B 4N6
Telephone: 604 660-3555
Facsimile: 604 660-3365
www.fic.gov.bc.ca

Please send us the questionnaire by May 9, 2014.

FICOM is making this request for information pursuant to Section 213 of the *Financial Institutions Act*.

If you have any questions or concerns regarding the questionnaire, please contact Ms. Molly Burns, Analyst, Policy Initiatives at molly.burns@ficombc.ca.

Yours truly,

A handwritten signature in black ink that reads "Frank Chong". The signature is written in a cursive style with a large, stylized 'F' and 'C'.

Frank Chong
Executive Director, Regulation

Enclosure

MB/ac

CREDITOR'S GROUP INSURANCE QUESTIONNAIRE

This questionnaire is to be completed by all insurance companies (life and property and casualty) that are authorized to write credit protection insurance and/or accident and sickness insurance business in British Columbia.

Name of Insurance Company: _____

Contact Person (name and email address): _____

1. Do you issue creditor's group insurance that covers debtor insureds who are residents of British Columbia? **Yes No (please circle)**

2. If you answered yes to question 1, are any of these policies issued to policyholders who are not the creditor? **Yes No (please circle)**

If yes, please indicate the type of products issued (i.e. for mortgages, credit cards, car loans or leases, etc.)

Please scan and email your completed questionnaire to insurance@ficombc.ca or mail in a paper copy to the following address:

Attn: Molly Burns
Financial Institutions Commission
2800 - 555 West Hastings
Vancouver BC, V6B 4N6

Please send us the questionnaire by May 9, 2014