

***Agenda Item 6(a)(i)(1)
November 14/17 EOC Meeting***

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Sent: Monday, November 06, 2017 5:57 PM

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Subject: Update On Development Of CAFII Position/Submission On Quebec Bill 141 And New Related Bill 150

EOC Members and Market Conduct Committee Members:

The purpose of this message is to update you on the steps that CAFII has taken with respect to Quebec Bill 141 and the more recently introduced and somewhat related Bill 150, tabled by the Minister of Finance on October 31/17, both of which are attached in English and French.

By way of recap, we are still not certain whether or not there will be consultation with the industry around Bill 141 and Bill 150; and, if there is going to be consultation, when it will occur.

That said, we're working off the assumption – based on the advice we received from the AMF staff executives, particularly Phillipe Lebel, in Levis on October 23 – that there will be something of a consultation around Bill 141 (and likely Bill 150 as well), but that it will occur at the level of Quebec's National Assembly – not with the Ministry of Finance, the sponsor/owner of the Bills – when the Bills goes through legislative committee hearings there.

And we're assuming that those hearings will likely occur sometime in November or early December (before the National Assembly rises on Friday, December 8/17 for its Holiday Season recess until Tuesday, February 6/18), with relatively short notice to interested parties of the opportunity to make a written submission to the relevant legislative review committee and/or to appear before it.

Therefore, following consultation with Market Conduct Committee Chair Rose Beckford and EOC Chair Pete Thorn, this afternoon I had a productive teleconference meeting with Sylvie Bourdeau – the specialized insurance law counsel with Fasken Martineau in Montreal whom we have on retainer – and asked her to prepare a “Bill 141 and Bill 150 Legal Issues Identification Analysis From the Perspective of CAFII Members” as a first step -- so that we will be poised to make CAFII representations on those Bills, whenever the invitation to do so arises; and likely even if such an invitation to comment and provide feedback is never issued to industry stakeholders, i.e. we will likely want to make a submission on the two Bills to the relevant National Assembly committee and/or the Ministry of Finance unsolicited, if no formal consultation process is announced.

I expect to receive from Sylvie a proposal/estimate for this assignment very shortly; and then her analysis report soon after we give her the green light to proceed. The Market Conduct Committee will then be engaged promptly to provide feedback on Sylvie's issues analysis document, and take the lead in assisting in its refinement into a polished submission.

I gave Sylvie a verbal overview of the issues of concern about Bill 141 that have currently been identified by CAFII members; and will also be providing her with a written synopsis of those issues. More specifically, those issues are

- *Clause 49 within Chapter III (found on page 24 of 472 in the attached English translation of the Bill), because it could apparently make an authorized insurer vulnerable to arbitrary and capricious decisions on the AMF's part with respect to the insurer's chosen TPA or other third party/outsourced partner. That clause reads as follows: "The Authority may prohibit that an authorized insurer's obligations under this Act be performed by a third person on the insurer's behalf if, in the Authority's opinion, such performance would render the application of this Act difficult or ineffective. Before rendering its decision, the Authority must notify the prior notice prescribed by section 5 of the Act respecting administrative justice to the insurer in writing and grant the latter at least 15 days to submit observations."*

- *Bill 141's indication that Section 408 of the Act respecting the distribution of financial products and services, which currently reads as follows:*

"408. An insurer may, in accordance with this Title (Distribution without representative), offer insurance products through a distributor. A distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client's adhesion in respect of such an insurance product."

will be modified by the addition of the following sentence

"Only a natural person may distribute an insurance product on behalf of a distributor." (clause 530 of Bill 141, p. 389)

- *as currently worded, Bill 141 only allows for online insurance sales so long as a licensed person works for the firm. But banks cannot be licensed as firms. This would seemingly impact CAFII members' ability to sell creditor insurance through banking channels.*

If your member FI has identified any additional CAFII member-relevant issues with respect to Bill 141, please communicate them to me asap so that they can be shared with Sylvie Bourdeau for consideration in her legal analysis.

Sylvie's comprehensive legal analysis review of both Bills from a CAFII member perspective will also likely turn up issues that we have not yet identified.

For those who may only be becoming aware of the existence of Bill 150 via this email, Sylvie has identified its CAFII-relevant content as clauses 235 to 260 on pages 78 to 82.

She has initially drawn to CAFII's attention – as a potential issue of serious concern – clause 257, which indicates that Section 426 of the Act Respecting the Distribution of Financial Products and Services will be repealed. Section 426 of the Distribution Act reads as follows:

426. For the purposes of this Title, the following insurance products are deemed to be insurance products which relate solely to goods and to which clients adhere:

- (1) debtor life, health and employment insurance;
- (2) investor life, health and employment insurance.

In addition, there is an indication in Clause 256 that Section 409 will also be repealed. Clause 409 in the Act Respecting the Distribution of Financial Products and Services includes a direct reference to sales of creditor insurance and it is inter-connected with Clause 426 (by direct reference).

As with Bill 141, if your member FI identifies any particular CAFII member-relevant issues with respect to Bill 150, please communicate them to me asap so that they can be shared with Sylvie Bourdeau for consideration in her legal analysis.

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