

CAFII/AMF “Industry Issues Dialogue”

Monday, October 23/17

Lévis, Québec

Summary Notes

1. Quebec Bill 141: An Act primarily designed to improve the supervision of the financial sector, the protection of deposits of money, and the functioning of financial institutions

1.a. Is the Ministry of Finance providing for a consultation period on Bill 141?

Philippe Lebel, the AMF’s Director General, Legal Affairs, suggested that there would likely be a form of consultation on Bill 141 fairly soon, possibly in late November, which would occur through committee review hearings at the National Assembly, possibly only for a very limited time period such as one week.

CAFII will need to be prepared to make its views on Bill 141 known at that time, either through a written submission and/or through an in-person appearance at a committee hearing at the National Assembly.

The AMF very much hopes that organizations such as CAFII will support the thrust of Bill 141 and its efforts to modernize the province’s financial services and insurance regulatory regime.

Supplementary question: Should CAFII write a letter to suggest CAFII wants an invite?

Yes; however, there will likely be limited time to produce comments – possibly one week, or maybe two.

1.b. What do you foresee in terms of next steps and related timing for legislative review, passage, and the Bill’s proclamation into force?

The AMF hopes that Bill 141 will be studied by the National Assembly before its Christmas in December. There will be a lot of people commenting on it.

After that, MNAs will have to study the Bill section by section. It will be a different review process for each section of the Bill.

A best guess is that the Bill will be put to a vote and passed by the National Assembly in the Spring of 2018. The expectation is that one year after its passage, the Bill will be proclaimed into force and its provisions will come into effect.

1.c. With respect to the Bill’s Chapter II on Distribution of Financial Products and Services, is the Bill’s particular purpose of “enabling firms to offer financial products and services through technological means” accomplished and effected largely through clause 487 and the resulting addition of new clause 71.1 to the Distribution Act.

Louise Gauthier emphasized that a critical clause of the Bill is Clause 860.1, which speaks to distribution. This clause stipulates that distribution firms can distribute products through any channel so long as there is one person in the firm with a license. This means that firms can offer advice on the Internet.

The relevant section is Section 492 which stipulates that the insurer must offer access to a natural person who is licensed in order to offer advice.

When the insurer directly offers the product through the internet, there is a provision in the new act that will oblige the insurer to offer access to a natural person, who is licensed. Robo-advice would be offered through distribution firms that are registered.

1.d. In the context of Bill 141's support for digital innovation in insurance and financial services, you'll recall that in 2016, Messrs. Morisset and Stevenson commented in industry meetings that insurance products sold online without the involvement of a licensed representative must be fairly 'simple.' Have you made any further determinations or advanced your thinking since last year as to what you will categorize as a 'simple' product?

Eric Stevenson noted that when the original comments were made that products sold on the Internet should be simple, the internet was still developing as a significant channel. It has evolved considerably since then, and so have the views of regulators and policy-makers on what can appropriately be sold via the internet. The specifics of how the regulatory regime will work still need to be discussed and developed, but they will be based on the concepts and framework of Bill 141. However, the AMF recognizes that using product definitions such as 'simple' and 'complex' might not be the most effective way to regulate sales on the Internet.

Supplementary question: When the drafting of Regulations occurs after Bill 141 has been passed, will the drafting pen rest with the AMF?

Yes. There will be Guidelines as well, but the Regulations will have to be created by the AMF.

1.e. Is the AMF happy with the degree to which Bill 141 supports the 11 Orientations set out in your April 2015 Report on Internet Insurance Offerings in Québec?

Yes, but the fact that the AMF has to develop Regulations allows it to complete the framework. This sector is moving fast and evolving. It will be important that – during the Regulations drafting stage – the AMF works with the industry to understand the technologies that are available today, which were not necessarily in existence when Bill 141 was being crafted.

1.f. What will be the impact of Bill 141 on the DWR regime in the province? Will the Two-Page Distribution Guide modernization initiative now be reactivated and completed?

Yes, Bill 141 puts this initiative back on the rails. The AMF is still planning to require that consumers be provided with a short document with the key information that allows them to make an informed decision.

The AMF plans to develop Regulations based more so on principles than on the actual Act. Regulations for distribution without a representative (through the internet and other channels) and for distribution involving a licensed representative – these may be covered off in a single Regulation or they may be addressed by a set of separate Regulations.

1.g. What types of hurdles and/or obstacles do you expect to encounter with respect to the abolishment of the two Chambres and absorbing them within the AMF? How do you foresee the process unfolding?

The AMF sees the abolishment of the Chambres as a positive step. There will be a transition period; more specifically, after the adoption of the Bill, there will be a six-month transition to the new regime. And even after that period, disciplinary cases that have already begun will be allowed to reach their conclusion under the old regime.

This is going to be a political battle and the key question is whether the government will be able to withstand the political pressure it will face to reverse the abolishment of the Chambres. However, the government should receive more support now than it has in the past on this issue. There are more consumer organizations now that will be supportive of this move, although they are not all well-organized or well-funded.

1.h. Do you feel that when the Bill's provisions come into force the AMF will have the independent authority and autonomy from Government -- which the IMF recommended, in its Financial Sector Assessment Program Report on Canada based on its 2013 visit, the AMF should have as an insurance supervisor?

First, it is important to note that the IMF recommendation on autonomy was made with respect to OSFI, not the AMF. Second, the IMF can recommend that regulators be fully independent from the government, but we have constitutional constraints that cannot permit the government to always adhere to all of these recommendations.

Generally, however, the AMF is happy with the direction Bill 141 takes with respect to the expectations of the IMF.

As well, the CCIR has developed and evolved significantly over the past three years – particularly with its development of a Co-operative Framework for Market Conduct Supervision under a Memorandum of Understanding among the 13 provincial/territorial jurisdictions -- and this also demonstrates significant progress on some of the IMF's recommendations. The IMF wants the AMF to be able to pass Guidelines without having to get approval from the Ministry of Finance, and Bill 141 moves in that direction by giving the AMF that new authority.

1.i. Can you elaborate on the goals and objectives behind the establishment, within the AMF, of the "Consultative Committee for Consumers of Products and Users of Financial Services"? How will the members of that committee be recruited and selected; and when will it be launched?

After passage of Bill 141, there will be the development of a Consultative Committee for Consumers. There will be an opportunity to review the membership of that Committee. It will have a wide mandate and will act as a kind of sounding board.

The AMF does not yet know the types of people needed for that committee; however, there are still at least nine months (until Bill 141 is passed, likely in the Spring of 2018) to think about it. The AMF will probably not create any committees before the Bill is passed.

2. New AMF Strategic Plan

2.a. We've taken note of the fact that the new 2017-2020 AMF Strategic Plan recently published on your website includes a focus on insurance sales compensation; and, of course, you've just completed an Issues Paper consultation with insurance stakeholders on Managing Conflict of Interest In Relation to Incentives. Are there any other highlights of your new Strategic Plan that you would draw specifically to the attention of CAFII and its members as alternate/direct distributors and underwriters of creditor's group, travel, and other types life and health insurance?

The AMF will share a global view of the comments received on the current insurance sales compensation review with stakeholders, via a summary report. After considering the responses, the AMF will determine whether new Regulations are required on this issue, in consultation with the industry.

The AMF posed a question to CAFII.

Question: In regards to the Financial Consumer Agency of Canada (FCAC)'s current review of high pressure sales quotas and other questionable tactics allegedly being used by banks, what is CAFII's perspective on what is going on at the federal level?

This is being taken very seriously. FCAC was already starting to do a review, which has now been accelerated. Discussions and interviews are currently underway at the individual banks. Interviews are underway down to the level of frontline staff in bank branches.

The FCAC has not been sharing any other information on the direction or possible outcomes of its review. A preliminary report is scheduled to come out in December 2017, with a final report issued in February, 2018.

CAFII emphasized that the vast majority of products under review is banking products, not insurance-related products. However, some insurance products are included. The only reason some insurance products are being looked at is because they are sold by the insurance arm of a parent bank. The FCAC is primarily looking at how banking products are being sold by the banks, not insurance products.

Closing Comments and Themes

The AMF staff executives emphasized that it would appreciate CAFII's support for a key desire/thrust – something partially addressed by Bill 141 -- which is to make the AMF more independent and autonomous from the government.

The AMF executives emphasized insurers' key responsibility to have adequate oversight and controls in place with respect to their third party distributors.

They underscored the AMF's commitment to building a regulatory regime which fosters insurtech and innovation.