

CAFII Views On Why The AMF's Regulation Respecting Alternative Distribution Methods (RADM) Should Not Apply to Credit Card-Embedded/Inclusive Insurance Benefits

CAFII has been supportive of the AMF's new Regulation Respecting Alternative Distribution Methods (RADM). Our Association's members are diligently working to comply with all of the Regulation's new requirements by the June 13, 2020 conclusion of the much-appreciated one-year transition period provided by the Autorité.

CAFII has been informed by ACCAP/CLHIA that recently, at a regular update meeting with Nathalie Sirois and other AMF officials to discuss various issues, the AMF indicated that it expects insurers to publish on their websites a Distribution Guide or Product Summary and that it also expects insurance distributors to provide consumers, at point of sale, with a Distribution Guide or Product Summary and the AMF's Fact Sheet for all sales of insurance without a representative, including for credit card-embedded/inclusive insurance benefits.

CAFII is very concerned about this possible AMF position related to credit card-embedded/inclusive insurance benefits under the RADM.

CAFII members have been preparing to implement the Product Summary and Fact Sheet modernization mandated under the RADM on the assumption that those documents apply only in the case of **direct sales** of insurance products; and we are strongly of the view that in the case of credit card-embedded/inclusive insurance benefits, no "offer" of insurance and no "sale" of insurance occurs.

In that connection, we believe that this issue is much larger than just requiring the provision of a Product Summary and Fact Sheet to consumers who apply for and secure a credit card with embedded insurance benefits. Having the RADM/Distribution Without a Representative regime apply to such inclusive benefits will have a much larger impact, particularly given the new requirements under the Regulation, including the following:

- 1) consumer confusion: the consumer's intent is to apply for and secure a credit card, an important financial decision, and he/she would be distracted in the decision-making process by overwhelming documentation regarding the secondary features and benefits of the credit card(s) under consideration;
- 2) disclosing, to consumers, premiums paid by the credit card issuer to the insurer, which is commercially sensitive information and proprietary to the insurer; and
- 3) annual reporting to the AMF on each credit card-embedded insurance benefit (for data points such as premiums, claims etc.) which, given the array of embedded insurance benefits provided by insurers to credit card issuers, will be a huge undertaking for the businesses involved and will impose immense new burden upon industry participants and upon the AMF in its compliance monitoring and oversight work.

As a foundation for the further arguments which we advance below in support of CAFII's position that credit card-embedded/inclusive insurance benefits are altogether different from the direct sales of insurance covered under the RADM and that such embedded benefits should not give rise to the requirement to provide consumers with a Product Summary and Fact Sheet, it is important to properly characterize the nature of embedded/inclusive insurance benefits, as follows:

- 1) credit cards issued in Québec, and indeed throughout Canada, have embedded benefits included as a feature of the card;
- 2) consumers apply for and choose between competing credit cards offered in the marketplace largely based upon the rewards program associated with the card (i.e. percentage of cash back, air miles or similar points-type rewards) and the magnitude of the annual fee, not other embedded/inclusive benefits such as insurance coverage;
- 3) the consumer who applies for a particular credit card makes no decision on whether or not to purchase the embedded insurance coverage; his or her only decision related to the card-embedded insurance benefits is whether or not to use those benefits which holding the card makes available to him/her; and
- 4) premiums for the credit card-embedded insurance benefits available to the cardholder are paid by the credit card issuer (not the consumer) and there is no remuneration paid by the insurer to the distributor (credit card issuer) with respect to such embedded/inclusive insurance benefits.

The very competitive marketplace among credit card issuers includes a wide variety of different offerings; and it is important to note that in almost all credit card situations, the consumer is applying for a card that includes a variety of embedded, non-optional features and benefits. Within a particular credit card, if there is a benefit which the consumer does not value, he or she cannot simply reject that particular benefit and opt out of receiving it; rather, he or she must consider a different credit card with different embedded benefits.

Credit cards are not offered "à la carte"; they come with a specified bundle of embedded benefits and the consumer can choose to apply for a card based on what those embedded benefits are, or otherwise choose not to apply for the card. The Mastercard and VISA networks have rules which require that certain features and benefits be included with the credit cards issued under their networks, and there can be no "opting out" by either the cardholder or the issuer from the embedded insurance coverages that are part-and-parcel of a card.

As such, in the case of credit card-embedded/inclusive insurance benefits, having to provide consumers with a Product Summary of an embedded insurance coverage, along with an AMF-prescribed Fact Sheet that outlines rights that the customer is supposed to have related to the embedded insurance coverage, while not doing so for all of the other features and benefits embedded in the credit card, is almost certain to confuse the consumer.

Industry participants may find themselves having to direct consumers to the AMF for an explanation as to why irrelevant documents are being provided to them by the financial institutions where they've applied for a credit card. Is the AMF prepared/resourced to field such questions and is consumer confusion the public policy outcome the AMF is seeking?

Below we provide a section-by-section analysis of the RADM, with respect to why its provisions should not apply to credit card-embedded/inclusive insurance benefits, as well as the repercussions if the AMF officially determines and insists that they do apply.

19. This article applies to an insurer that **offers** insurance products through a **distributor** in accordance with Title VIII of the Act respecting the distribution of financial products and services (chapter D-9.2).

“Distributor” is defined under s.408 of Title VIII of the Act as “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.**”

A credit card issuer does not meet the Act’s definition of “distributor” because

- 1) the card issuer is not “secure[ing] a client’s adhesion in respect of an insurance product” because embedded/inclusive benefits are provided to all cardholders and the credit card issuer does not undertake any action in relation to a particular cardholder in order to make the inclusive benefit available to that cardholder;
- 2) embedded benefits are inextricably connected to the credit card as included features and not optional “accessories” which are offered to a cardholder to decide whether or not to select; and
- 3) an insurance product that “relates solely to the [credit card]” would typically have the object of covering the unpaid balance on the credit card (the consumer’s debt obligation), but this is not the case with inclusive benefits (e.g. for embedded travel medical insurance benefits, the coverage covers medical expenses for the cardholder).

It is also helpful to look at how the AMF’s *Sound Commercial Practices Guideline, 2013* applies to distribution without a representative. When it comes to disclosure before and after the offer, there are specific references to “purchase.” Consumers do not “purchase” a product which they don’t have to pay for, such as credit card-embedded insurance benefits, they are merely receiving it. There is no consumer purchase decision directly related to the embedded insurance benefits; therefore, the *Sound Commercial Practices Guideline*’s requirements – and the RADM’s provisions -- do not and should not apply.

If the AMF officially determines and insists that the RADM’s provisions do apply to credit card-embedded/inclusive insurance benefits, such that credit card issuers must be viewed and treated as “distributors,” the impact is outlined in the following sections of the Regulation:

20. This article refers to section 66 of the Insurers Act: An authorized insurer must, without delay, send the Authority a list of the contracts with respect to which a distributor will be dealing with clients or participants and a list of such distributors. The list of distributors must include the names and addresses of the distributors and the insurance contracts for which the insurer is doing business with them. The list of contracts must include a description of the insurance coverage provided by those contracts.

In the case of credit card-embedded/inclusive insurance benefits, this will result in insurers having to file great deal of information with the AMF and keep it updated on a regular basis. This will be a huge undertaking for the businesses involved and impose immense new burden upon industry participants and upon the AMF in its compliance monitoring and oversight work.

21. The insurer must disclose annually to the Authority the following information for each product offered through a distributor:

- (1) the number of insurance policies and certificates issued and the amount of premiums written;
- (2) the number of claims and the amount of indemnities paid;
- (3) the number of rescissions and cancellations;

(4) *the remuneration paid to all distributors and third parties referred to in subparagraph 1 of the first paragraph of section 20.*

It will be an enormous undertaking for underwriters of credit card-embedded/inclusive insurance benefits to provide the AMF with all of this data, broken down by product. Since the wording under 21(1) is not limited to premiums paid by insureds, it would also require a reporting of premiums paid by the card issuers to insurers in the case of embedded/inclusive insurance benefits.

S.21(4) also presumes the payment of remuneration, which makes sense in the context of optional products, but for embedded/inclusive insurance benefits, there is no such remuneration.

22. Before offering a product through a distributor, the insurer prepares the product summary in accordance with sections 28 and 29. The insurer mandates the distributor to deliver the summary to the client at the time it offers the product to him, together with a fact sheet in the form set out in Schedule 2.

For the Product Summary, under s. 29, several required disclosures are not applicable to and highly problematic for credit card-embedded/inclusive insurance benefits, as follows: s.29(9) right to cancel; and s. 29(12) disclosure of premium (actually paid by the card issuer – which is commercially sensitive, proprietary information of the insurer).

When it comes to its applicability to and suitability for credit card-embedded/inclusive insurance benefits, the entire Fact Sheet is problematic and will only mislead and confuse consumers, for the following reasons:

- 1) **Right to cancel:** Credit card-embedded/inclusive insurance benefits cannot be cancelled, and they can only be terminated when the credit card itself is cancelled. Card cancellations are handled by the credit card issuer, not the insurer.
- 2) **Name of distributor** - the card issuer would need to be listed here, but this could create the false impression that it is the entity providing the insurance benefits.
- 3) **It is your choice: You are never required to purchase insurance – How to Choose”:** credit card-embedded/inclusive benefits come with the card. There is no purchase of insurance. There is no option to accept or refuse any individual feature. The inclusive benefits that come with a credit card are not voluntarily purchased or accepted.
- 4) **Distributor Remuneration: A portion of the amount you pay for the insurance will be paid to the distributor as remuneration.** There is no remuneration in the case of credit card-embedded/inclusive insurance benefits, so this clause in the Fact Sheet is Not Applicable.

Given that the RADM does not specifically outline consumer disclosure requirements with respect to insurance benefits embedded in a credit card – a situation where there is no direct sale of the insurance benefits; the consumer is not paying a premium for the coverage; the consumer does not have the option to decline/opt out of the coverage without switching to a different credit card altogether; and the AMF’s Fact Sheet has no applicability to embedded insurance benefits and would be entirely confusing to consumers – CAFII members have been implementing the RADM on the basis that providing consumers with a Product Summary and a Fact Sheet is not required for credit card-embedded/inclusive insurance benefits.

Further concerns and issues related to the possible AMF position that a Product Summary and Fact Sheet must be provided with respect to credit card-embedded/inclusive insurance benefits arise from

- (1) the fact that the consumer's intent is to apply for and secure a credit card, an important financial decision, and it would not be helpful to distract him/her in the decision-making process with overwhelming documentation regarding the secondary features and benefits of the credit card(s) under consideration. Under the RADM, the Product Summary and Fact Sheet are intended to be provided to consumers as point-of-sale documents, i.e. they must be provided to the consumer prior to the purchase of an insurance product.

We understand and support the AMF's Fair Treatment of Consumers and consumer protection objectives in this area. However, for credit cards, the provision of a Product Summary and a Fact Sheet at point-of-sale (i.e. at point of application for a credit card) will only confuse consumers, especially because they are applying for a credit card with a wide variety of features and benefits; and **not** directly purchasing insurance; and

- (2) the variety and nature of the insurance coverages that are typically included in a credit card's embedded benefits. For example, embedded travel insurance benefits could include travel medical (accident and sickness) insurance, trip cancellation insurance, trip interruption insurance, and baggage loss insurance. To require the provision of a Product Summary and Fact Sheet for each of these benefits would overwhelm consumers.

Based on industry experience, consumers have a good understanding of these embedded/inclusive benefits, are provided with easy to understand certificates of insurance, and make claims regularly. Has the AMF received any consumer complaints about these benefits?

CAFI respectfully submits that the possible AMF position which we are querying -- that under the RADM regime, a Product Summary and Fact Sheet must be provided to consumers and that related reporting to the AMF requirements for direct sellers of insurance do apply **in the case of credit card-embedded/inclusive insurance benefits** -- does not fit or align well with existing marketplace realities.

We request that the Autorité clarify and communicate to the industry, as soon as possible, that credit card-embedded/inclusive insurance benefits **are exempt** from the RADM's requirements to provide consumers with a Product Summary and a Fact Sheet, and the related direct seller of insurance reporting requirements to the AMF.