

17 February, 2023

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c.c. Mr. Éric Jacob, Superintendent, Client Services and Distribution Oversight
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Ms. Louise Gauthier, Senior Director, Distribution Policies
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Me Mélissa Perreault, Director of Distribution Practices and SROs
Me Cindy Coté, Senior Policy Analyst, Distribution Practices and SROs
Me Isabelle Déry, Standardization Analyst, Prudential Oversight of Financial Institutions

Re: CAFII Feedback On Revised 8 December, 2022 Draft 2 of AMF's Regulation respecting Complaints Handling and Dispute Resolution in the Financial Sector

Dear Mr. Lebel:

CAFII commends the AMF for making some significant changes to the 9 September, 2021 original draft of the *"Regulation Respecting Complaint Processing and Dispute Resolution in the Financial Sector,"* and for arranging a second round of industry consultation on the revised 8 December, 2022 Draft 2 of the Regulation. We believe that insurance and financial services regulation becomes optimal, and that consumer protections are enhanced, when such regulation is grounded in strong communication and collaboration between regulators and regulated entities, as exemplified by the manner in which the AMF has consulted with industry on this draft Regulation.

While our Association appreciates the improvements that have been made to the draft Regulation – such as removal of some of the checklists and other prescriptive measures, as well as the originally contemplated requirement for industry to provide a complaint drafting service for consumers – we still consider the revised Draft 2 of the Regulation to be too prescriptive and not sufficiently principles-based. We hold that view because the revised draft Regulation does not just outline the AMF's objectives, it also goes into significant detail about how regulated entities are to achieve those objectives.

Insurers and their financial institution distributors, along with other financial services firms, have long had robust procedures in place to handle and resolve customer complaints, across Canada including Québec. Now, in Québec, this new and unique AMF Regulation will increase the regulatory burden of managing complaints by adding a broader new definition of 'complaint' to the nationally accepted definition previously promulgated by the Canadian Council of Insurance Regulators (CCIR), of which the AMF is a significant member regulator, and by including new timelines and procedures for the resolution of complaints.

CAFII made an AMF-requested submission on regulatory burden reduction opportunities in Québec on 25 October, 2021, a submission to which we have yet to receive an official response. If we were asked to make that submission again now, we would add this Regulation to the list of burden-intensifying initiatives that are unique to Québec -- different from regulatory approaches in other jurisdictions without a compelling consumer protection rationale -- and which ultimately increase the costs of doing business in Québec.

CAFII recognizes that there are features of the approach which the AMF has decided to take in the new Regulation -- including the broader definition of 'complaint' and some of the new processes being proposed -- which mirror the novel approach to complaints recently put in place by the Financial Consumer Agency of Canada (FCAC). However, it should be acknowledged that the FCAC's new definition of 'complaint' and its related new processes are still a work-in-progress. Our Association therefore recommends that it would not be prudent for the AMF to attempt to replicate the FCAC's approach until the passage of a reasonable period of time (three years would seem to be a prudent minimum period), only after which will there be some certainty as to whether there is indeed a value-added consumer protection benefit to the novel approach which the FCAC has taken.

CAFII has previously heard the AMF espouse that it seeks to promote harmonization by aligning with the CCIR definition of 'complaint.' However, given that the Autorité has now developed an expanded, unique definition of 'complaint', it would appear that the AMF will be moving further away from harmonization unless the CCIR updates its definition to match the AMF's new definition. In that connection, our Association strongly encourages the AMF, in the first instance, to determine whether the CCIR, as a national co-ordinating body, is willing to change its definition of 'complaint'; and, whatever the outcome, to adopt and adhere to a nationally harmonized definition of 'complaint', rather than introducing a unique new Québec definition that will result in industry having to manage against multiple definitions of 'complaint' across the country at the same time.

Because the AMF's new definition of 'complaint' will definitely capture a broader range of customer interactions, CAFII foresees a significant increase in the number of reportable complaints, but without any corresponding increase in consumer protection benefits being delivered. The AMF may find itself having to deal with a much larger number of complaint files, not due to a higher proportion of concerning customer outcomes, but because the new definition of 'complaint' is so all-encompassing that it will require reporting for any interaction with a customer that includes an expression of dissatisfaction.

That being said, our Association has carefully reviewed what the AMF has indicated will be and what will not be captured by the new definition of 'complaint.' Based on that guidance, CAFII members will not regard an issue that may be raised by a customer about something that is not directly related to an actual, existing product or service or its delivery as falling within the AMF's definition of 'complaint.'

Given that the Regulation empowers the AMF to impose significant administrative monetary penalties (AMPs) upon regulated entities for not adhering to what is a new and novel approach to complaints, we believe that the new scenario in Québec will lead, in the absence of greater guidance from the AMF, to industry players interpreting some of the Regulation's clauses in a more strict and conservative manner than is likely the AMF's intent. Additionally, CAFII recommends that dialogue, consultation, and collaboration with regulated entities should be used as the preferred and principal way for the AMF to move the industry in the direction it seeks; and that AMPs should only be used as a last resort regulatory measure. We encourage the AMF to exercise discretion and latitude in its utilization of AMPs, particularly during the transitional period in which the industry will be adjusting to the new Regulation.

Furthermore, with respect to a matter requiring clarification, at the AMF's 12 January, 2023 virtual session for stakeholders on Draft 2 of the Regulation, one of the AMF's presenters said that a complaint file should remain open even if a legal proceeding has been initiated by the customer. It is CAFII's strong view that once a customer launches a legal proceeding, the complaint file should be closed. We would appreciate a clarification from the AMF that the above-noted AMF staff executive comment at the virtual session was made in error, especially given that Draft 1's reference to the file having to remain open despite the customer's launch of a legal challenge (something we strongly disagreed with in our written submission on Draft 1) has been removed in the revised 8 December, 2022 Draft 2 of the Regulation, which we were very pleased to see.

On another matter requiring clarification, there is some confusion about how to count the maximum 60 days timeline for resolution of a complaint after it has been received, in particular if a customer introduces new issues close to the 60-day mark in the process. It is CAFII's strong view that regulated entities can only be held responsible for the days that are under their own control. Therefore, our interpretation is that the counting of days should only apply to the regulated entity's obligations — and as a result, if the customer is sent, for example, a request for information, and they take 15 days to respond, that 15 days should not count against the 60 days for resolution. We also encourage the AMF to clarify that the 60 days specified means 60 business days, not 60 calendar days. In our view, it would be unreasonable to include weekends and holidays within the 60 days allowed for resolution of a complaint.

With respect to the key matter of CAFII members' reporting on complaints to the AMF and related timelines, whenever provinces are finalizing regulatory changes that will require significant process changes, CAFII always requests that a minimum lead time period of 12 to 18 months be provided to allow for our members' implementation of the required changes.

However, because the *Regulation respecting Complaints Handling and Dispute Resolution in the Financial Sector* will be particularly complex to implement – given that it is a totally new and substantive Regulation which calls for major changes to firms' existing governance, resource allocation, structure, systems, and policies and procedures, as well as staff hiring and training during a time of significant labour shortages; and given, as well, that the AMF's e-services will need to be updated to bring it into alignment with the new Regulation -- CAFII requests that the AMF give serious consideration to providing a three-year Transition and Implementation Period from the coming into force of the Regulation, in order for our members to have sufficient time to make the necessary changes based on a schedule of prioritized and staggered deliverables, which will be a major undertaking. During that Transition and Implementation Period, insurers, distributors, and intermediaries will ensure that complaints are handled and disputes resolved in a diligent manner, in accordance with the AMF's and CCIR's current expectations.

With that implementation timelines information as background context, CAFII asks that the AMF provide the industry with clarification as to the timelines around when it expects reporting against the new Regulation to begin.

With respect to Clause 19, we note that CAFII's Draft 1 feedback comments on that clause were not addressed in Draft 2. Therefore, we take this opportunity to reiterate those comments and would appreciate the AMF's confirmation of our interpretation of and position on that clause:

With respect to Clause 19, it is our view that a Level 1 complaint that is immediately remedied by the company to the complainant's satisfaction should not be subject to this Clause. We believe that specifying this exclusion would bring the Quebec/AMF Regulation into harmony with the definition of a Level 1 complaint set out in CCIR's Annual Statement on Market Conduct (ASMC). In the absence of harmony between the AMF's definition of a Level 1 complaint and the corresponding definition used in the ASMC, it would be necessary for the AMF to utilize its own separate industry mechanism for complaint reporting (outside of the ASMC), which would be inefficient and degrade the value of reporting done through the ASMC. (CAFII written submission to the AMF, 8 December, 2021)

Finally, we note that there are several sections of the Regulation where there is a reference to informing the customer about something relevant to the complaint file, including its resolution. However, it is not clear whether the Regulation permits this to be done through electronic or digital means. We encourage the AMF to clarify, in all such instances, that electronic or digital communication with the complainant is appropriate and acceptable.

Sincerely,



Rob Dobbins
Board Secretary and Chair, Executive Operations Committee

About CAFII

CAFII is a not-for-profit industry Association dedicated to the development of an open and flexible insurance marketplace. Our Association was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Our members provide insurance through client contact centres, agents and brokers, travel agents, direct mail, branches of financial institutions, and the internet.

CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services. Our members offer credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Insurance; National Bank Insurance; RBC Insurance; Scotia Insurance; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Tire Bank; Chubb Life Insurance Company of Canada; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Securian Canada; and Valeyo.