

April 4, 2022

Ms. Louise Gauthier, Co-Chair, CCIR/CISRO Fair Treatment of Customers (FTC) Working Group; and  
Mr. Ron Fullan, Co-Chair, CCIR/CISRO Fair Treatment of Customers Working Group  
c/o Messrs. Tony Toy and Munir Chagpar, CCIR Policy Managers/Secretariat; and  
Ms. Adrienne Warner, CISRO Policy Manager/Secretariat

Dear Ms. Gauthier and Mr. Fullan:

***Re: CAFII Comments on CCIR/CISRO Revised Incentive Management Guidance***

Dear Ms. Gauthier and Mr. Fullan:

CAFII thanks CCIR and CISRO for the opportunity to review and provide feedback on the CCIR/CISRO Fair Treatment of Customers Working Group's updated draft *Incentive Management Guidance*.

Our Association very much appreciates and supports CCIR/CISRO's efforts to augment the jointly developed *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*, with specific Guidance on its implications for the Incentive Management programs utilized by the insurance industry. We are pleased that this work is being done at a national level, with the two national co-ordinating bodies of provincial and territorial regulators working together, which helps to foster a harmonized approach across jurisdictions.

We also thank CCIR and CISRO for recognizing and respecting – as demonstrated by both the *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* and the updated draft *Incentive Management Guidance* -- the importance of balancing the primary objective of fair treatment of customers, on the one hand, with a regulatory framework that does not impede consumer choice in accessing and purchasing insurance products, on the other hand.

CAFII's feedback on specific sections of the updated draft *Incentive Management Guidance*, which we felt it germane to comment on, follows.

***B. Preamble***

We note that the updated draft Guidance includes the following new paragraph in its Preamble section:

*This guidance provides Insurers and Intermediaries with the necessary latitude to determine the requisite strategies, policies, processes, procedures and controls in order to facilitate achieving such results and to apply them based on the nature, size and complexity of their activities, while taking into account representatives' regulatory obligations in order to facilitate achieving the Customer outcomes reflected in this guidance.*

CAFII fully supports CCIR/CISRO for including this new clarifying and context-setting paragraph. It sets out several important considerations including a recognition of the need for regulatory flexibility around “the nature, size and complexity of their activities” and that there is no ‘one size fits all’ correct approach to Fair Treatment of Customers (FTC).

### **C. Scope**

We note that Scope section in the updated draft Guidance includes the following new paragraph:

*The Insurer is responsible for FTC throughout the life-cycle of the insurance product, as it is the Insurer that is the ultimate risk carrier. The Insurer’s ultimate responsibility does not absolve Intermediaries of their own responsibilities for which they are accountable. Treating Customers fairly is a shared responsibility when Insurers and Intermediaries are both involved.*

CAFII firmly supports the inclusion of this new paragraph in the *Incentive Management Guidance* as it is a helpful explanation.

#### **1. Governance: CCIR and CISRO expect Insurers’ and Intermediaries’ governance and business culture to place FTC at the center of decisions concerning the way Incentive arrangements are designed and managed.**

CAFII is appreciative of the fact that the updated draft Guidance now purposely avoids the use of the term “core” and that it also makes clear the CCIR/CISRO’s acknowledgement that governance matters related to incentives may be the responsibility of Boards and/or senior management. This section now more accurately reflects typical and proper governance roles and responsibilities within regulated entities.

#### **4. Post-sale controls: CCIR and CISRO expect Insurers and Intermediaries to establish effective post-sale controls to identify inappropriate sales resulting from Incentive arrangements.**

CAFII thanks CCIR/CISRO for adopting our feedback, in part, by replacing the adjective “unsuitable” with “inappropriate” as a modifier of “sales” in the above-referenced summary expectation statement associated with post-sale controls in the updated draft Guidance.

That said, it is our strong view that the concept of “suitability” and related modifiers such as “unsuitable” should not be used in a blanket and unqualified manner anywhere in the Guidance. Rather, that the concept needs to be either (i) used/treated in a distinct, qualified manner; or (ii) replaced with a better, less problematic concept such as “appropriateness” and related modifiers such as “inappropriate” throughout the Guidance.

In that connection, in our September 21, 2022 CAFII submission on the preliminary draft of the *Incentive Management Guidance*, we offered the following commentary with respect to its application to credit protection insurance (CPI), which we continue to view as critically important feedback and therefore now reiterate:

*CAFII cautions against a blanket and unqualified use of the term “unsuitable sales” throughout this section, as it is not applicable to Authorized Insurance Products/CPI offered by banks and other FRFIs.*

*In an insurance context in Canada, the concept of “suitability” (and variations on that word) – which implies the provision of “advice” to customers -- is not applicable to Authorized Insurance Products/CPI.*

*The issue around “suitability” stems from the fact that while the federal Bank Act and section 5(1) of the federal Insurance Business (Banks and Bank Holding Companies) Regulations (IBBRs) permit banks and other federally regulated financial institutions (FRFIs) to offer advice regarding Authorized Insurance Products/CPI, the offering of that advice is significantly tempered by provincial/territorial regulatory and licensing requirements.*

*The nature of the advice that banks/FRFIs are permitted to provide around an Authorized Insurance Product/CPI is strictly limited to the Authorized Insurance Product itself and must not include suitability-related measures such as a needs-based financial/insurance assessment, Know Your Client tools, or holistic advice.*

*In the case of Authorized Insurance Products/CPI, because the consumer is purchasing/enrolling in optional insurance related to a single and specific borrowing need such as a mortgage, line of credit, or credit card – and that scenario falls within the scope of activity permitted to occur through a non- advisory sales channel, i.e. the business must provide consumers with sufficient information, which meets provincial/territorial regulations and industry commitments and guidelines, to enable them to make an informed decision – Authorized Insurance Products/CPI are typically offered by non-licensed individuals in most provinces and territories. Non-licensed individuals are strictly prohibited from offering advice and recommending an insurance product as “suitable.”*

*With respect to Authorized Insurance Products/CPI, given the prohibition against holistic advice engendered by the combination of the federal Bank Act and IBBRs with provincial/territorial regulatory and licensing requirements, FRFIs legally can only ascertain a consumer’s “eligibility” for coverage and to make a claim at the time that an Authorized Insurance Product/CPI is being offered as optional insurance. FRFIs therefore prioritize establishing certainty of the consumer’s “eligibility” for coverage and to make a claim under the group CPI master policy.*

*This situation makes Authorized Insurance Products/CPI a unique product set – a product set to which the concept of product suitability does not apply due to legal constraints; but a product set to which the more limited concept of “eligibility” for coverage and to make a claim does indeed apply as a Fair Treatment of Customers (FTC) consideration.*

*As a proposed solution to deal with the problematic application of the words “unsuitable sales” in the Draft Incentive Management Guidance, CAFII recommends that those words be precisely defined within the Guidance – perhaps through an approach which uses a superscript number and corresponding footnoted definition below -- and that the definition expressly state that “unsuitable sales” does not apply to Authorized Insurance Products/CPI as defined by the federal Bank Act and the federal Insurance Business (Banks and Bank Holding Companies) Regulations.*

In our view, the updated draft Guidance has not adequately addressed the above-noted important feedback.

Further, stemming from a quite recent development, continued CCIR/CISRO use of the “suitability” concept would be particularly problematic for CAFII members and other players in the *bancassurance*/Authorized Insurance Products/CPI sector due to its inconsistency with the Financial Consumer Agency of Canada (FCAC)’s recently finalized and released *Guideline On Appropriate Products and Services For Banks and Authorized Foreign Banks*. This is because the *Incentive Management Guidance* would immediately result in “exception management” challenges for CAFII members and other regulated entities in the same sector.

In summary, continued use of “suitability” and related terms is very problematic for CAFII members and others in the *bancassurance*/Authorized Insurance Products/CPI sector, while equally effective alternative terminology is readily available to be utilized instead.

### **Final Observations**

CAFII believes there is no fundamental conflict between FTC and offering incentives to the insurance sales and customer service personnel who interact with customers, as part of their overall compensation package.

The adage that insurance is sold, not bought, is true. Life and health insurance, in particular, is not easily sold because it is completely optional and not something that people readily think about and pursue. Therefore, offering incentives to sales/customer service-personnel -- as part of a well-designed and implemented and carefully monitored program -- can help promote healthy competition in the marketplace resulting in more access and choice for consumers in securing life and health insurance protection, which is ultimately in their personal best interest and the best interest of society.

CAFII members have extensive controls in place around sales practices and related incentive programs, including training, scripts, sales reviews, and a variety of post-sales monitoring tools, which together help prevent, detect, and address inappropriate sales incidents from occurring.

With respect to training, our members’ customer service personnel undergo comprehensive and recurring product training, to enable them to provide consumers with accurate and reliable information; as well as ethics and integrity training which underscores the importance of FTC. This training provides them with the knowledge, skills, and tools to do their jobs and serve consumers well. It also helps ensure that they, as sales/customer service-personnel, and CAFII member companies, as their employers, act in accordance with all applicable federal and provincial/territorial insurance legislation and regulations; and industry guidelines.

### **Conclusion**

Thank you again for the opportunity to provide feedback on CCIR/CISRO’s updated draft *Incentive Management Guidance*. Should you require further information from CAFII or wish to meet with representatives from our Association on this or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at [keith.martin@cafii.com](mailto:keith.martin@cafii.com) or at 647-460-7725.

CAFIL and its members remain committed to supporting CCIR and CISRO in their critically important independent and joint work; and we look forward to continuing our involvement as a key stakeholder contributor to your efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rob Dobbins', with a long horizontal flourish extending to the right.

Rob Dobbins  
Board Secretary and Chair, Executive Operations Committee

### **About CAFII**

CAFIL 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.

CAFIL 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.

CAFIL'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.

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