

CAFII Board -Regulatory Update- October, 2012

By Lawrie Savage & Associates

Federal

Payments System Review- Code of Conduct for the Credit and Debit Card Industry to be extended to Mobile Payments

On September 18, 2012, the Department of Finance announced a consultation on proposed changes to the Code of Conduct for the Credit and Debit Card Industry in Canada (the code). Finance wants the code to explicitly cover mobile payment transactions. The changes would apply to credit and debit card networks that offer mobile payments. The consultation and participation instructions can be found at <http://www.fin.gc.ca/n12/12-106-eng.asp> Comments will be accepted for 60 days.

Credit Union Regulations Published for Comment

Draft regulations to establish a new type of financial institution were published in the Canada Gazette Vol. 146, No. 27 — July 7, 2012 for a 30 day consultation period. The regulations will allow credit unions to incorporate and continue federally and is based on the framework applicable to banks. The proposed regulations do not compel provincially regulated credit unions to be federally regulated.

The proposed regulatory package includes five regulations:

- *Prospectus (Federal Credit Unions) Regulations*

The Regulations would incorporate, by reference, provincial prospectus requirements and provide that an exemption from those requirements constitutes an exemption from federal prospectus requirements. However, the Regulations would stipulate that a federal credit union must provide a minimum level of disclosure to the buyer of a security.

- *Regulations Amending the Canadian Payments Association Election of Directors Regulations*

The proposed Regulations specify that, once part of the federal framework, a federal credit union would be required to vote and participate in the governance of the CPA as part of the Cooperatives class, rather than in the Bank class.

- *Disclosure on Continuance Regulations (Federal Credit Unions)*

The proposed Regulations specify the information that must be publicly disclosed to members and customers of the credit union and the process that must be followed to qualify the credit union to continue federally and be eligible for federal deposit insurance.

- *Federal Credit Union Conversion Regulations*

The proposed Regulations specify the process and disclosure required for a federal credit union to change its legal form from a company owned by members to one owned by shareholders. The proposed Regulations contain a series of requirements that must be followed to ensure a fair demutualization process.

- *Regulations Amending Certain Regulations Made Under the Bank Act*

The proposed Regulations specify consequential amendments to existing *Bank Act* regulations to make them apply to federal credit unions. The regulations can be found at <http://www.gazette.gc.ca/rp-pr/p1/2012/2012-07-07/html/reg4-eng.html>

Financial Literacy – Consumer Financial Toolkit Launched

The Financial Consumer Agency of Canada (FCAC), the Investor Education Fund (IEF) and l’Autorité des marchés financiers (AMF) together have developed a resource entitled “Your Financial Toolkit” for consumers to understand and make financial decisions. The toolkit has 11 modules, worksheets, quizzes, questionnaires, videos and case studies. Each module contains activities that can be completed in a workshop making it a good tool for educational institutions or for employers to provide financial training. The toolkit is available online or in paper format from the FCAC. The toolkit can be found at <http://www.fcac-acfc.gc.ca/ft-of/home-accueil-eng.html>

FCAC Publishes Credit Card Balance Insurance Guide

In August, the Financial Consumer Agency of Canada published updated consumer information on creditor card balance insurance. The guide provides consumers with basic information such as what credit card balance insurance is, how it protects consumers, what it costs and how to obtain it. The information can be found at <http://www.fcac-acfc.gc.ca/eng/media/pressrelease/posting-eng.asp?postingId=409>

New Negative Option Billing Regulations in Force August 1, 2012

Federally regulated financial institutions must provide consumers with required information in clear, simple language and obtain customer consent before for a new optional product or service, such as optional insurance coverage on a loan or credit card is obtained. Consent for an optional product or service can be verbal or in paper or electronic form. The financial institution must provide the consumer with a product summary (written or verbal) that contains the following information:

- a description of the product or service
- the terms of the agreement
- how to cancel the product or service

- all related fees and costs for the product or service, or information about how the fees will be calculated, and

- an example to illustrate the method

If consent is verbal, the financial institution (FI) must provide confirmation of consent for the new product or service. The FI must also provide a document setting out all the terms and conditions, the date from which the product or service is available, steps to take to use the product and how to cancel. There are also rules pertaining to special promotions, cancellations, changes to the product offering and refunds. In particular, the FI must provide advance warning of the end of a promotional offer. Any consumer complaints received by FIs must be handled in accordance to the FCAC's new Compliance Framework.

The requirements are set out in the *Negative Option Billing Regulations* under the *Bank Act*, *Cooperative Credit Associations Act*, *Insurance Companies Act* and *Trust and Loan Act*. A consultation draft of the regulations was released in March 2011. Final regulations were published in the *Canada Gazette Part II* on March 14 2012.

British Columbia

Red Tape Reduction Report Released

The government of British Columbia has published its first annual report on regulatory reform. Regulatory reform is intended to eliminate unnecessary red tape and reduce regulatory requirements. Under the Regulatory Reporting Act, of November 2011, the government made it a requirement to present annual public reports on regulatory reform progress by June of each year. The report can be found at: http://www.straightforwardbc.gov.bc.ca/docs/Reg_Reform_Report_2012.pdf

Mandatory Supervision for Life Agents Introduced

BC Insurance Council has established a mandatory supervision requirement for new life insurance agents. The new rules will apply to all licences issued to new life agents with an effective date of September 1, 2012 or later.

Life agents will require supervision for a minimum of 24 months. An exception may be allowed where an applicant holds a current Chartered Life Underwriter, Certified Financial Planner, or Registered Financial Planner designation. In these cases, the applicant or new life agent may request to have the period of supervision reduced by up to 12 months.

Supervision must be provided by a qualified life insurance agent who has a minimum of five years experience within the last seven years. Council will consider exceptions to the minimum five years' experience requirement where a licensee can demonstrate alternate, relevant experience and / or education. Council recommends all supervisors confirm with their errors and omissions carrier that their coverage is adequate for the additional responsibilities. The level of supervision is determined by the supervisor. Supervisors may delegate some or all of the supervisory requirements. Ultimately, it is the

supervisor's responsibility to determine what procedures are appropriate to ensure there is an adequate level of supervision for a new life agent.

Alberta

General Insurance Agent Licensing- Proposed Changes

Alberta Finance is looking to have all general insurance licenses expire on June 30 each year for annual renewal. The changes proposed include:

- 1) Probationary certificates – to be allowed once per individual for a maximum of 90 days prior to official certification. This will allow people to experience the insurance industry while completing formal studies.
- 2) Eliminate mandatory requirement to achieve level 2 within 3 years
- 3) Supervision- Level 1 is under supervision of a level 2 agent or a designated representative (DR). They have established a general supervision requirement rather than prescribed requirements as follows: Each Level 1 general and Probationary Licensee must be supervised. It is the responsibility of the firm's DR to determine what constitutes appropriate standards of supervision of each individual Licensee. When determining the level of supervision, the DR is expected to take into account the levels of qualification, education and experience of the licensees, the nature of the insurance business being conducted, and the requirements of the *Insurance Act* and regulations.
- 4) Level 3 certificate for a the designated representative - DR must hold level 2 , have 2 years experience in general insurance within last 3 years, must be responsible for management and supervision of the business and passed the level 3 examination.

Saskatchewan

Ian McIntosh appointed Deputy Superintendent of Insurance

After the departure of Jim Hall as Superintendent of Insurance, David Wild, Chair of the Saskatchewan Financial Services Commission, became the Superintendent of Insurance in February 2012. In August 2012, Ian McIntosh became Deputy Superintendent of Insurance.

Insurance Act Review Update

Jim Hall advises that the province will not be in a position to issue any recommendations for comment by stakeholders until sometime in 2013. CAFII is invited to submit suggestions for changes to the new legislation by the end of October, 2012.

CLHIA (F Zinatelli) reports that CLHIA has been in touch with Jim Hall about the Saskatchewan review. They have encouraged him to focus on the Life and A&S sections in accordance with the Uniform Act.

They are encouraging harmonization with Manitoba and are supportive of having wording in the legislation to give greater clarity to the validity of electronic beneficiary designations.

Manitoba

Insurance Council Annual Report Highlights

Council's annual report notes that it is celebrating its 20th year and has 9,900 licensees. Council has begun the process to enable an online license renewal system which should be in place for 2013. Also of interest, the annual report notes that they have developed a quiz for life and accident and sickness insurance agents on the code of conduct. The quiz will be made available for self-test on the council website. The 2012 annual report is available at <http://www.icm.mb.ca/files/Bulletin/Annual%20Reports/2012%20Annual%20Report%20Web%20Version>

Ontario

Changes to Lobbyists Registration Act Forthcoming

On July 25, 2012, the Ontario Government announced proposed changes to the *Lobbyists Registration Act, 1998 (Ontario)*, to be introduced when parliament resumes in the fall. These changes follow from the Ontario Integrity Commissioner's call for a review of the existing legislation in her report of May 24, 2012.

Ontario is proposing to strengthen its *Lobbyists Registration Act* to ensure greater transparency and accountability among lobbyists, government and the public. Proposed amendments would enhance the existing act by:

- Giving the Integrity Commissioner more enforcement powers, including the ability to prohibit individuals from lobbying
- Giving the Integrity Commissioner new investigative powers, including the ability to compel testimony and obtain key documents
- Requiring lobbyists to identify the specific MPP and ministers' offices they lobby
- Preventing lobbyists from accepting additional fees for preferred outcomes
- Prohibiting lobbyists from providing paid advice to a ministry and lobbying on the same subject matter
- Providing the Integrity Commissioner with the ability to establish a lobbyist code of conduct
- Incorporating for-profit and not-for-profit organizations under the same category of 'in-house' lobbyists, treating both classes of lobbyists the same and capturing more lobbying activity

The government announcement can be found at

<http://news.ontario.ca/mgs/en/2012/07/making-lobbying-industry-more-accountable.html>

Unclaimed Intangible Property Consultation

Items such as amounts due under an insurance policy and unpaid wages are considered to be intangible property which may not have been claimed by their rightful owners. Ontario has recently proposed a program to manage such unclaimed assets for the benefit of Ontarians until property is claimed. The Ontario legislation is intended to be founded on the Uniform Unclaimed Intangible Property Act. The consultation is very broad based and seeks input on all aspects of handling unclaimed property. Input is required by October 12, 2012. The consultation can be found at http://www.attorneygeneral.jus.gov.on.ca/english/about/uipp_consultation-EN.pdf

Quebec

New Finance Minister Announced

New Quebec Premier, Pauline Marois of the Parti Québécois (PQ), has announced that Nicolas Marceau, a former professor of economics at UQAM, the University of Quebec in Montreal, will be the new Finance Minister. The PQ won a minority government on September 4 with 54 seats out of 125 in the National Assembly. The Liberals hold 50 seats; the new Coalition Avenir Québec (CAQ) took 19 seats and Québec Solidaire (QS) 2 seats.

Staff Changes at the Autorité des marchés financiers (AMF)

On September 20, 2012, the Québec Cabinet announced the appointments of Nathalie Drouin as Deputy Minister of Justice and Patrick Déry as Deputy Minister of Natural Resources. Nathalie Drouin leaves the post of Superintendent, Solvency and Executive Director, Legal Affairs of the AMF, a post she has held since June 12, 2012. Patrick Déry leaves the position of Superintendent, Client Services and Distribution at the AMF, a post he has held since July 2011.

AMF President and CEO Mario Albert will assume the position of Superintendent, Solvency Oversight on an interim basis. Philippe Lebel, Senior Director, Legal Affairs, will serve as Executive Director, Legal Affairs on an interim basis. Eric Stevenson will assume certain responsibilities of the Superintendent, Client Services and Distribution Oversight on an interim basis. He will continue serving as Senior Director, Distribution Policies and Compensation, and will also oversee Distribution Practices.

Rendez-vous with the AMF

The annual rendez-vous event will take place on October 15 at the Palais des congrès in Montreal. The sessions start at 10:15 am with opening remarks from AMF President and CEO Mario Albert. The session topics include:

- 1) The European debt crisis,

2) Consumer awareness of rights and responsibilities. The AMF will reveal the results of the index to measure the financial vigilance of Quebecers, and

3) Effective law enforcement and investor confidence

The sessions will be followed by a reception at 5:15 pm. There is no fee but registration is required at <http://www.lautorite.qc.ca/fr/inscription-rendez-vous-pro.html>

Canadian Council of Insurance Regulators

Ecommerce Submissions Posted

The CCIR has posted to its website the 25 submissions it received in response to the January 2012 consultation on **Electronic Commerce in Insurance Products**. Its purpose is to stimulate debate about the issues noted in this paper and launch a process of consultation on those issues as well as to educate and to build a common understanding of the topic and issues for both regulators and stakeholders.

The Electronic Commerce Committee (ECC) will be analysing the responses and developing a preliminary list of recommendations to bring to the CCIR Fall Meeting for discussion.

Credit Scoring Working Group

The CCIR will not be developing a position paper on credit score and will instead publish its findings as the conclusion of this project.

Interim Chair

Carolyn Rogers, CCIR Vice-Chair and CEO and Superintendent of the Financial Services Commission of British Columbia, has agreed to act as interim Chair of CCIR until the regularly scheduled elections in spring 2013.

Next Meetings

The fall 2012 CCIR meeting was held in Charlottetown, PEI, on September 27th and 28th

Invitation to Meet with CCIR Executive

CAFI has been invited to meet with the CCIR executive in person on October 25th in the morning or anytime on October 26th. The purpose is to have an opportunity to discuss in person industry issues, concerns and work plans.

US Debt Protection Update

Capital One Fined \$210 Million for Deceptive Practices

July 2012 –The Consumer Financial Protection Bureau (CFPB) issued an order requiring Capital One Bank to refund approximately \$140 million to two million customers and pay an additional \$25 million penalty. This action resulted from CFPB examinations that identified deceptive marketing tactics used by Capital One’s call center vendors to pressure or mislead consumers into paying for add-on products such as payment protection and credit monitoring when customers called to have new credit cards activated. Unfair practices of Capital One included:

- Misleading consumers about the benefits of the products (mainly re credit score)
- Providing misinformation about the nature of the products, eg not advising that products optional, or advising consumers that they were required to purchase the product in order to receive full information about it, but that they could cancel the product if they were not satisfied. Cancellation difficulty ensued.
- Eligibility Issues: Products were sometimes offered to ineligible unemployed and disabled consumers.
- Misinformation about cost of the products: Some consumers were thought the coverage would be free.
- Enrollment without consent

Enforcement Action

- Capital One has ceased all marketing of these products until a compliance plan is acceptable to the Bureau.
- Repayment to two million consumers: Capital One will pay approximately \$140 million to all of the estimated two million consumers to cover the amount paid for the product, as well as a refund of the finance charges, any over-the-limit fees resulting from the charge for the product, and interest.
- Pay claims denied based on ineligibility at enrollment: For consumers whose payment protection claims were denied due to unemployment, disability, which existed prior to enrolment, Capital One will pay their claims as if they had been eligible, if that amount is greater than the refund for that consumer.
- \$25 million penalty payable to the CFPB’s Civil Penalty Fund.
- the Office of the Comptroller of the Currency (OCC), is separately ordering restitution of approximately \$150 million from Capital One. This amount includes the same \$140 million refund to be paid to the

approximately two million customers harmed by the deceptive marketing practices identified by the CFPB's examiners. The OCC's order also includes separate restitution for additional consumers harmed by unfair billing practices taking place between May 2002 and June 2011. The OCC is assessing a \$35 million civil money penalty against Capital One.

The full text of the CFPB's Consent Order is available at:

http://files.consumerfinance.gov/f/201207_cfpb_consent_order_0001.pdf

A factsheet on the Consent Order is available at:

http://files.consumerfinance.gov/f/201207_cfpb_ending_deceptive_marketing_practices.pdf

Bank of America Stops Offering Credit Card Payment Protection Plans

Bank of America has ceased offering credit protection service for credit cards. The Bank has made a tentative \$20 million settlement with lawyers representing customers. The bank stopped offering the product in August and no longer offers the plans to new customers. Existing customers will be given 6 months of protection free and the bank plans to exit the business next year. Bank of America says the decision to terminate the product offering was not related to lawsuits but was a streamlining of business.

American Express Ceased Account Protector Product in US

American express ceased the credit card account protector product in 2012 and will cover enrolled customers to the end of December 2012.

Discover Bank to Pay \$200 Million

On September 24, the Federal Deposit Insurance Corporation (FDIC) and the CFPB, in finding that Discover Bank has engaged in deceptive acts and practices, are requiring Discover to refund approximately \$200 million to more than 3.5 million consumers and pay a \$14 million penalty. The investigation determined that Discover's inbound and outbound telemarketing scripts contained material misrepresentations and omissions related to Payment Protection, Identity Theft Protection, Wallet Protection and Credit Score Tracker products. Misrepresentations included

- implications that free benefits were offered
- cardmembers were asked if they wanted to "be enrolled" rather than agreeing to purchase
- enrollment was offered before terms and conditions were disclosed verbally
- customers were required to purchase before receiving the full terms and conditions list by mail

Discover's telemarketing scripts for the Payment Protection Product also typically failed to disclose material terms and conditions of the Payment Protection Product. For example, these scripts failed to state that individuals who are self-employed, unemployed, employed part-time, or suffering from a pre-existing medical condition cannot obtain certain Payment Protection Product benefits.

The issue was compounded by the fact that Discover did not need to ask the customer for their credit card number.

In addition to the fine, there are a number of conditions imposed on Discover including:

- Discover shall include a message on the first three periodic statements on which a Product charge appears, highlighting inclusion of the charge. The statement shall be positioned in a clear and conspicuous manner and shall be in 12-point font or any larger type.
- if a Cardmember requests that Discover make no further calls to the Cardmember with respect to a Product, Discover shall immediately place the Cardmember on Discover's No Call List. Discover shall provide an updated copy of the No Call List to all third-party telemarketers on a bi-weekly basis.

The order requires implementation of comprehensive compliance, staff training and complaint management programs including monitoring of third parties, and client record retention provisions.

The full consent order can be found at
http://files.consumerfinance.gov/f/201209_cfpb_consent_order_0005.pdf