

**CAFII Regulator Visit Report**  
**Confidential: Not For Distribution**

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**Regulator:** Insurance Council of British Columbia  
**Date:** May 15, 2013  
**Location:** Mercatto Restaurant, Toronto

**Attendees:**

Insurance Council of BC: Gerry Matier, Executive Director

CAFII: Sara Gelgor, ScotiaLife Financial; John Lewsen, BMO Insurance; Tamara VanMeggelen, RBC Insurance; Rose Beckford, ScotiaLife Financial; and Brendan Wycks, Executive Director, CAFII.

**Overview**

This was a lunch liaison meeting held in Toronto while Gerry Matier was in town to attend the Canadian Association of Independent Life Brokerage Agencies (CAILBA) Conference.

Gerry was very open, candid, and frank in his discussion with the CAFII Representatives. He did at least 70% of the talking, in a highly articulate, erudite, stream-of-consciousness fashion.

Regulation of MGAs in BC was a top-of-mind topic for him, as he updated the CAFII group at length about it.

**Role And Responsibilities Of MGAs In Distribution Of Life Insurance In BC**

Gerry Matier updated CAFII representatives at some length on the reception (generally favourable) and the impact (positive) garnered by the Notice issued by his Insurance Council in January 2012 on the Role and Responsibilities of MGAs in B.C., and the related duties of insurers and agents has received.

He emphasized that the main focus is on solid contractual arrangements that set out clearly defined roles and responsibilities, and ensuring that there are no blurred accountabilities.

See Appendix A for an article on this Insurance Council of BC initiative.

**Insurance Council of B.C. Priorities**

A Message from the Insurance Council of BC's new Chair, David Porter, is prominently featured on its web site (see Appendix B). In that Message, Porter indicates that the Council will be focusing on three key issues in 2013: Competency, Confidentiality, and Conflicts-of-Interest.

Competency is fairly obvious – given its connection to the LLQP Harmonization initiative – and Gerry Matier elaborated on the Confidentiality and Conflicts-of-Interest priorities for the CAFII representatives.

Confidentiality relates pretty well exclusively to the p&c side of the industry in the province. BC is a public auto insurance province and all drivers have their liability coverage through the Insurance Corporation of British Columbia (ICBC). ICBC therefore has a huge database on all drivers in the province, and licensed p&c brokers have access to that database. The Insurance Council, in recent years, has had to deal with a number of cases in which the confidentiality of consumer information in that database has been inappropriately violated, and they are mounting a communications and sensitivity-raising campaign to stem such incidents.

Conflicts-of-Interest relates to the need to raise awareness among industry participants to voluntarily disclose real or potential conflicts-of-interest to clients. This relates to product suitability, especially with respect to exempt securities, and Gerry Matier described, in generalities, a disciplinary case where the licensed representative's failure to disclose a conflict-of-interest with respect to an exempt investment was at issue.

**CCIR Agencies Regulation Committee To Review Third Party Administrators (TPAs)**

CCIR has approved a work plan for the second phase of its Agencies Regulation Committee (ARC)'s work. The ARC will now review the regulation of Third Party Administrators (TPAs) in group life, accident and sickness, creditor's group insurance, and travel insurance to determine potential risks to consumers. (This was pre-figured in the Background (introduction) to CCIR's November 2008 "Incidental Selling Of Insurance Report," which states "the ISI Working Group did not review potential issues related to third party administrators since CCIR has mandated the Agencies Regulation Committee to work on this matter.")

CAFII has been asked, and has agreed, to have an initial telephone consultation with the ARC about the TPA review, in which clarity will be sought around what should be the definition of a TPA for the purposes of the review.

Gerry Matier advised that CCIR's Agencies Regulation Committee, under the Chairmanship of Harry James from FICOM in BC, is approaching this issue with a "blank slate" and looking for CAFII and other industry stakeholders to educate it about the prevalence and use of TPAs in the industry, and to help it shape the scope of its review.

## **Appendix A**

### **B.C. Regulator Lays Down Precedent-Setting Guidelines**

*From Insurance & Investment Journal, February 21, 2012*

Managing General Agencies are a bit of an industry anomaly in that they've never really been subject to regulation specifically geared toward them, until now. Although there have been several attempts on the part of national organizations to draft guidelines or advice, most of these are still hung up in discussion and debate with stakeholders. Given that insurance regulation is a provincial responsibility, however, the Insurance Council of British Columbia decided it was past time to give MGAs a clear outline of the regulator's expectations.

"We waited to see how the CCIR (Canadian Council of Insurance Regulators) paper went, but because of a number of events, including a few issues in our jurisdiction, and because MGAs were looking for clarification, we felt it was time to publish the work we had done," says Gerry Matier, ICBC executive director. "We think it will be complimentary to whatever comes out of the CCIR."

The six-page notice, released in January, discusses and recognizes the duty MGAs have to the insurers they're under contract with. It puts new onus on the companies to know about an agent's abilities and background, and it spells out the duty life agents have to MGAs and insurers as well.

Although some provisions are somewhat obvious – that MGAs need to carry adequate errors and omissions insurance, or that they need to have any vague contract details or anomalies clarified in writing – other provisions will undoubtedly be welcomed by executives and compliance staff.

Notably, the Council draws a line in the sand, clearly stipulating that a number of insurance company responsibilities such as underwriting, policy issuance or claims cannot be "pushed down" to the MGA level.

Although such duties are not in dispute at the moment, Mr. Matier points out that responsibilities can evolve quite dramatically over time. "At some point MGAs may become involved in the claims process; it's not unreasonable to believe that could happen," he says. "If, down the road these things start to come up, we want to be on the record saying these are the duties of the insurer and they should remain there."

#### **Reporting responsibilities**

New "know your agent" rules, meanwhile, address known problems in the industry where sub-par brokers are sometimes cut loose by their MGA. Oftentimes, lack of production is cited as a reason for the agent's termination, when, in reality, the known problem is a larger question of competency or weak ethics.

“The fact that somebody has done something wrong doesn’t mean they’re going to lose their career,” says Mr. Matier. “But if they have knowledge problems, competency problems or ethical problems, whatever it is, we shouldn’t be hiding from them, we should identify them. What are the issues and how do we deal with it? How do we make sure it doesn’t happen again and how do we make sure the next consumer doesn’t get hurt by the same problems?”

In these cases traditionally, MGAs reported problem cases to insurers who in turn decided whether or not to report the problem to regulators.

“We wanted to be very clear. We think the MGAs are in an excellent position to identify issues if they do see them, and we feel they should be responsible enough to bring those to our attention.”

In the past, he says enforcement staff have encountered situations where the MGA involved could have assisted in identifying the problem before it had a chance to escalate. “I’m not saying these things would not have occurred, but they might have been identified sooner,” he says, adding that such reporting can take place formally or informally.

“I’m prepared to take a phone call from an MGA on the side, saying we can’t put our finger on it, but we think this person might benefit from an inspection.”

In addition to these provisions, the notice acknowledges that an MGA’s primary duty is to the insurer, thanks to the contractual nature of the relationship. It addresses situations where an MGA might be engaged in retail sales activity by soliciting the public directly or by servicing existing business. In these cases, it says the far more stringent know your client rules that apply to retail agents will apply to the MGA as well. (Not normally the case when the business is simply acting as an intermediary.)

The notice states that, although MGAs are required to carry out all of the responsibility outlined in their contracts, failure on the part of an MGA to meet a contractual obligation “is not a valid reason for an insurer to not address a policyholder’s complaint.” It continues, saying “insurers are ultimately responsible for all of the functions contracted to and completed by MGAs.”

Failure to conduct appropriate life agent background checks, meanwhile, will be enough to call an MGA’s suitability into question – MGAs must be satisfied that business being submitted is consistent with their understanding of the life agent’s knowledge, experience, abilities and business history. Those who fail to properly review transactions outside of an agent’s skills or abilities could face disciplinary action.

### **Independent advisors**

Finally, the notice says life agents also have an obligation to honour their contracts as well – attempting to bypass the MGA for whatever reason, could bring an agent’s abilities and suitability into question.

“Although this paper discusses MGA distribution, I think it’s probably even more important for independent advisors to have a look at the document and read between the lines about what their responsibilities are,” says Paul Brown, CAILBA (Canadian Association of Independent Life Brokerage Agencies) and president and CEO of the IDC Worldsource Insurance Network, adding that he welcomes the paper and the clarity it brings.

As for the more obvious provisions outlined, Mr. Matier says some were included in response to circumstances in some cases or simply for the sake of clarity in others. “It’s kind of hard to hold somebody accountable when you don’t tell them what it is they should be doing,” he says.

## **Appendix B**

### **Message From Chair of Insurance Council of British Columbia**



Over the past few years, Council has made great strides in becoming a progressive regulator in the insurance industry. As Chair, I look forward to continuing in this direction and will seek to maintain a cooperative effort with the industry to protect the public by ensuring individuals licensed to sell insurance are competent, qualified, and trustworthy.

Over the next year, I see Council focusing on a number of key areas, specifically competency, confidentiality, and conflicts of interest.

In the area of competency, Council continues to review its educational criteria. We are currently working with the other Canadian jurisdictions to update and improve the existing qualification program for life insurance agents. We anticipate the updated LLQP program will be in place by 2015.

Council is also commencing preliminary discussions with the general insurance industry to determine whether the existing educational criteria for general insurance agents and salespersons is still appropriate and current. It is important that Council maintains a minimum educational criteria for individuals entering the industry.

With regards to confidentiality, Council is concerned with cases it has encountered where clients' confidentiality has not been properly maintained. One of the key cornerstones of the insurance industry is the maintenance of clients' information. Unfortunately, we continue to experience situations where clients' information has not been properly maintained or has been intentionally breached. The public is entitled to expect their information will be properly safeguarded and, for the insurance industry to maintain the public's trust, it must ensure confidentiality is paramount. Council is working on a paper that will articulate areas of confidentiality and the duties and obligations of licensees.

In the area of conflicts of interest, Council is developing guidelines that will specify expectations for insurance agents, adjusters and salespersons regarding issues pertaining to conflicts of interest. There are a number of ways in which conflicts of interest can be addressed; the most important being proper disclosure to the client. Council will identify conflicts of interest that licensees should avoid, as well as conflicts of interest that, at the very least, require appropriate disclosure to and consent of a client before proceeding.

In closing, I want to take this opportunity to acknowledge the departure of Ken Thom, one of the voting life insurance agent representatives on Council, and a number of non-voting members who have completed their terms. I also want to acknowledge the work done by Dan Swanlund, Council's outgoing Chair.

I look forward to working with Council members and staff over the next year to continue to enhance the professionalism of Council and to look for ways to improve upon the services we provide to the public and the industry.

As Chair, I want to continue to maintain the high quality of service that Council has established over the years. I welcome any feedback the industry wishes to provide and will always be receptive to suggestions on how Council can continue to improve the quality of service stakeholders expect.

C. David Porter, B.Comm., LL.B., FCIP, CRM