

## **Regulatory Update for CAFII Board of Directors, June 19, 2012**

By Lawrie Savage & Associates

### **International**

#### Commission Disclosure in the UK

The British Insurance Brokers' Association (BIBA) warned that Europe could require mandatory commission disclosure from brokers by 2019 through revisions to the Insurance Mediation Directive. There is significant political pressure for mandatory disclosure. The BIBA has called for “disclosure on request” and does not believe that a case to mandate disclosure has been made.

### **National**

#### Canadian Bankers Association (CBA) Announces Guidelines for Point of Sale Mobile Payments

On May 16, the banking industry and credit union system announced a set of voluntary, secure, open guidelines for the development of mobile payments at the point-of-sale in Canada. The guidelines, known as the Mobile Reference Model, include how information is exchanged among various parties to a transaction including financial institutions, payment card companies, telecommunications companies and merchants. These guidelines are intended to create a path to help all market participants move forward in developing mobile payment solutions to meet the growing demand for mobile payments in Canada. These guidelines were developed as an outcome of the federal government’s Task Force for the Payments System Review in 2011, and provide definition for a fair, transparent, and competitive Canadian market for emerging payment options with mobile devices. By developing a set of guidelines that all participants in the payments marketplace can work within, the goal is to ensure safety, security and ease of use for merchants and consumers while allowing for innovation and competition among market participants.

### **British Columbia**

#### New Organizational Structure in the Financial Institutions Commission (FICOM)

FICOM has implemented a new structure effective June 1. They have established a risk surveillance and analytics unit whose role is to identify upstream risks. They have also established a policy group of three staff who will be preparing and issuing guidance documents. The Ministry of Finance will retain their policy group (Jill Sinkwich and Brian Dillon) who will focus on policy related to legislative and regulatory changes.

#### New Supervisory Framework

BC will continue to incorporate provincial companies and regulate them for solvency. There is a project underway to self-assess BC’s supervisory requirements to International Association of Insurance

Supervisors (IAIS) standards. BC has implemented a new supervisory framework which will mirror OSFI supervisory requirements and incorporate the new IAIS standards.

#### Agent Supervision Changes

The BC Insurance Council is reviewing supervision of agents. Currently, a newly licensed life agent could begin selling insurance policies on his own immediately upon passing the certifying examination (LLQP). The proposal in place is for new life agents to be supervised for 2 years by a qualified agent, ie an agent who has 5 years experience in the last 7 years. The supervisor would be responsible for overseeing the new agent- from product recommendations to filing applications with insurers. The province is looking to have documentation developed for supervision requirements by the end of June to be effective for licensees after September 1, 2012.

On the P&C side, the Insurance Council has had supervision requirements in place for a number of years. As most P&C insurance is done through agencies, supervision is done by the agency and the agency nominee is accountable for all activity. The nominee can delegate the responsibility for supervision as he/she sees fit. A level I licensee must be under direct supervision of level 2 or 3. Level I cannot leave the office and cannot sign the policy. The strictness of these conditions will likely be reviewed by Council this year.

### **Alberta**

#### Political Changes

The Deputy Minister for Finance is now Annette Trimbee (appointed in May). Doug Horner, Minister of Finance, is no longer also Deputy Premier. The Deputy Premier is Thomas Lucaszuk. The Ministry is in the process of assessing priorities.

#### General Insurance Supervision Changes

Alberta Insurance Council is changing the Agent regulation and expects to have it finalized this summer. Proposals include removing the requirement for general agents to move from Level 1 to level 2 within 3 years. 90 day Probationary certificates could be issued prior to official certification (one time only per individual). Each Level 1 and Probationary Licensee must be supervised. It is the responsibility of the firm's designated representative (DR) to determine what constitutes adequate supervision of each individual license. A new level 3 certificate is proposed for management level licensees ( ie supervisors of agents) who could be the designated representative for an agency.

#### Implementation of IAIS Standards

This has been identified as a key project area (along with automobile insurance reforms). Alberta will be a solvency regulator province so must implement all the Insurance Core Principles (ICPs) of the IAIS. Alberta will work with CCIR which has two committees; one for solvency standards and one for market conduct (ICPs 18 and 19).

## Saskatchewan

### Insurance Act Review Update

Jim Hall, who retired in January 2012 as Superintendent of Insurance, is working on a contract basis with the Saskatchewan Financial Services Commission to undertake the *Insurance Act* review. The province intends to harmonize with Alberta, BC, Ontario and Manitoba. Work is just starting so there is no timing or next steps yet for the review.

## Manitoba

### Insurance Amendment Act Introduced

Bill 27, the *Insurance Amendment Act* was introduced on May 9, 2012. Many of the Act's provisions, including virtually all of Parts V and VI (life insurance and accident and sickness insurance), are harmonized with the *Insurance Act* of Alberta.

Consumer protection enhancements include:

- better access for claimants to documents and information about life insurance and accident and sickness insurance contracts;
- protection for innocent persons from loss of coverage for intentional acts of co-insureds and other persons;

The bill includes changes to permit self-evaluative privilege and Electronic Commerce but the province is waiting for further direction from the CCIR Ecommerce paper on how to deal with beneficiary designations and contract termination. Regulations may be made about how insurers may use information about the credit status of policy holders and applicants for property insurance relating to a residence. The Bill includes legislative authority to license incidental sellers of insurance. Regulations have yet to be drafted but they would like be ready for fall 2012. The province does not expect a long transition period.

The Bill can be found at <http://web2.gov.mb.ca/bills/40-1/b027e.php>

### Budget adds retail sales tax on Insurance products

Retail sales tax of 7% is to apply to insurance premiums effective **July 15, 2012** (with the exception of health, Autopac, and individual life insurance.) Group insurance is taxable with the exception of group health. Creditor's insurance, disability, critical illness, and accidental death and dismemberment insurance, property and casualty insurance, trip cancellation insurance, baggage insurance and land titles insurance. The tax will apply where the insured is a person resident in Manitoba or the premiums are paid in respect of property located in Manitoba. The tax bulletin outlining this change can be found at <http://www.gov.mb.ca/finance/taxation/bulletins/061.pdf> The bulletin issued shows an expanded list of products over what was included in the budget bill.

## Ontario

### Insurance Act Review Update

Details of changes to the *Insurance Act* were included as Schedule 31 of Budget Bill 55. The changes deal with life and accident & sickness sections of the Act. The changes have mirrored those made in Alberta and BC with some exceptions. The limitation period notification is harmonized to other Ontario statutes ie it references the Ontario *Limitations Act 2002*. Ecommerce has been intentionally omitted as Ontario feels that there is too much grey area on written versus electronic beneficiary designation and termination to make specific changes. Self-evaluative privilege has not been included in the changes. An Administrative Monetary Penalty (AMP) regime has been put into the *Insurance Act* under section 441 which is the Unfair and Deceptive Acts and Practices section. It applies to companies, agents, and brokers in all areas of insurance. Regulations are not ready and timing is not known. Regulations will be subject to 45 days notice in the provincial regulations register. Ontario will likely not have a wider or more formal industry consultation.

### Changes to Solvency Regulation of Ontario Insurers

Unlike BC and Alberta, FSCO does not intend to be a solvency regulator. FSCO has issued a consultation paper entitled *Improving Solvency Supervision of Insurers in Ontario*. Given that most insurers operating in Ontario are federally-incorporated and regulated by Office of the Superintendent of Financial Institutions (OSFI), the paper proposes that FSCO exit the area of solvency regulation and focus on market conduct regulation. Since 2008, regulators around the world, co-ordinated by the IAIS, have been enacting stronger solvency standards. In Canada, OSFI has adopted provisions that meet IAIS standards while provincial regulators in the process of implementing the new standards .

The proposals are to:

1. Cease providing for the provincial incorporation of new insurers;
2. Require as a condition of licensing that insurers are incorporated in a jurisdiction that complies with international solvency standards; and
3. Provide a transition period for insurers incorporated in Ontario to transfer their incorporation to jurisdictions in compliance with these standards.

Interested parties will have until **July 9, 2012** to make comments on the policy proposals outlined. The paper can be found at <http://www.fSCO.gov.on.ca/en/insurance/Pages/improving-solvency-supervision.aspx>.

### Financial Services Commission of Ontario (FSCO) Statement of Priorities

FSCO has released a draft Statement of Priorities for 2012. CAFII submitted comments prior to the due date of June 6, 2012. The document can be found at [http://www.fSCO.gov.on.ca/en/about/annual\\_reports/Documents/SOP-march2012-draft.pdf](http://www.fSCO.gov.on.ca/en/about/annual_reports/Documents/SOP-march2012-draft.pdf)

### Private Member's Bill to Ban Credit Score Usage for Homeowner's Policies

On June 11, Liberal MPP Mike Colle introduced private member Bill 108, Homeowners Insurance Credit Scoring Ban Act. The bill would expand the ban on credit score usage now in place for automobile insurance underwriting and rating. The Bill amends the definition of "unfair or deceptive acts or practices" in section 438 of the Act to prohibit insurers from using, in respect of rating or underwriting personal property insurance, a person's credit history or rating. There is a link on Mike Colle's website to CBC's Marketplace documentary on credit score and a link to the IBAO's online petition called "Soaring Insurance Rates". Mike Colle had previously introduced a similar bill in November 2010. The bill can be found at [http://www.ontla.on.ca/web/bills/bills\\_detail.do?locale=en&Intranet=&BillID=2658](http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2658)

### Office of the Integrity Commissioner Annual Report

The 2011-2012 Annual Report of the Office of the Integrity Commissioner has been released and can be found at [http://www.oico.on.ca/web-att.nsf/vw/2012/\\$FILE/OIC\\_Annual\\_Report\\_2011\\_2012\\_Eng.pdf?OpenElement](http://www.oico.on.ca/web-att.nsf/vw/2012/$FILE/OIC_Annual_Report_2011_2012_Eng.pdf?OpenElement). The Annual report includes information about the registry and questions and answers from MPP inquiries. On May 24, the the Integrity Commissioner, Lynn Morrison, called for a review and consultation with stakeholders on Ontario's *Lobbyists Registration Act*. Among the changes recommended are:

1. Provide the Registrar with investigation powers and the power to issue penalties
2. Introduce a restriction to prevent persons who lobby from being paid to provide advice to government
3. Eliminate the "significant part of duties" threshold Clarify that "grass-roots communications" (a type of indirect communication)

## **Quebec**

### Staff Changes at AMF

Danielle Boulet is no longer part of the AMF. The Interim Superintendent of Solvency is Nathalie Drouin, Executive Director Enforcement and Legal Affairs. Ms. Boulet's departure also creates a vacancy in the role of Chair of CCIR.

### AMF posts Strategic Plan 2012-2017

The AMF has posted its strategic plan for the next 5 years. Specific goals include consumer support, collaboration with industry, deterring financial fraud and innovative oversight practices. In its plan, the AMF notes the need to enhance financial literacy of consumers. It calls for the launch of its own financial literacy index based on simple concepts to measure the knowledge and behaviour of consumers. It will measure the behavior of consumers in relation to the index and set improvement targets. The plan can be found at [http://www.lautorite.qc.ca/files/pdf/publications/autorite/plan-strategique\\_2012-2017\\_ang.pdf](http://www.lautorite.qc.ca/files/pdf/publications/autorite/plan-strategique_2012-2017_ang.pdf)

### Internet Insurance Offerings in Québec

In May, CAFII made a submission to the AMF consultation on Internet Insurance Offerings in Québec.

### Rendez-Vous with the AMF

The AMF is once again holding the “**Rendez-vous with the AMF**” as a venue for exchange between Quebec regulators and industry on the latest issues and challenges. The event will be held on Monday, October 15 at the Palais des congrès de Montréal.

### **Canadian Council of Insurance Regulators**

#### CCIR Ecommerce Position Paper

CAFII responded to the CCIR Ecommerce consultation in May 2012.

#### Position Paper - Managing General Agencies (MGAs) Distribution Channel in the Life Insurance Industry

The CCIR has posted a position paper to communicate back to stakeholders the key findings from the submissions CCIR received from their issues paper of April 2011 and to set out recommendations to enhance and harmonize best practices in the MGA distribution channel. The paper notes “consensus that certain functions, including product development (although MGAs may collaborate with the insurer), claims handling, and underwriting are not currently, and should not in the future, be outsourced to MGAs. The general view is that these core insurer functions should never be delegated to MGAs as this could result in conflicts of interest and unequal treatment of customers.”

The paper contains a number of recommendations as follows:

- 1:** Insurer Relationship with MGAs - Insurers must have in place effective systems and controls whenever they use the services of an MGA. The CCIR has developed a document “Best Practices for Insurer-MGA Relationships” which is based on the principle that insurers remain ultimately accountable.
- 2:** Agent Supervision- Insurers should incorporate the principles in CLHIA Guideline G8 - *Screening Agents for Suitability and Reporting Unsuitable Agents* into all of their business across Canada, including any contracts involving the outsourcing of these functions to an MGA.
- 3:** Product Suitability- Regular market conduct reviews should be undertaken by regulators to determine if insurers and their agents are providing consumers with adequate information to make informed decisions and suitable product recommendations.
- 4:** Information needs of regulators- Regulators will develop options and an action plan to make sure that adequate information on life agents and MGAs is obtained in a timely manner. The CCIR has formed a Disciplinary Information Committee to look into the feasibility of a centralized

cross-Canada database documenting misconduct. This would assist both insurers as they consider the suitability of new applicants for contracts as well as assisting consumers to make informed decisions about their advisors.

Comments from industry are due **June 30**. The paper can be found on the CCIR website at [http://www.ccir-ccra.org/en/init/Agencies\\_Reg/MGA%20position%20paper%20final%20EN.pdf](http://www.ccir-ccra.org/en/init/Agencies_Reg/MGA%20position%20paper%20final%20EN.pdf)

#### Presentation by Danielle Boulet to the CLHIA Conference May 9, 2012

Ms. Boulet, as Chair of the Canadian Council of Insurance Regulators, delivered a presentation on regulatory and supervisory initiatives. Key points follow.

##### Fair Treatment of Customers

Ms Boulet noted that when the CCIR adopted a risk-based approach to regulation in 2008, it changed regulatory focus from rules to goals and outcomes. International standards in market conduct regulation are emphasizing the fair treatment of customers. This is consistent with the CCIR's recommendations for industry handling conflict of interest which requires industry to incorporate three principles, Priority of Client Interest, Disclosure of Conflict or Potential Conflict of Interest, and Product Suitability. Fair Treatment of Customers is an overarching principle which provides regulators with a framework for analysis of emerging issues:

- What fair outcomes for consumers are we looking for,
- What are the potential risks to consumers, and,
- How can those risks be minimized?

IAIS ICPs have two principles that deal with Fair Treatment of Customers. ICP 18 deals with intermediaries, while ICP 19 focuses on Conduct of Business. It is in the latter that the FTC concept is embedded in the new set of requirements that will have to be implemented by regulators. Collaboration with the industry will therefore be necessary.

##### CCIR Strategic Initiatives

CCIR has a number of strategic initiatives underway.

- Market conduct ICP Implementation Committee

This committee is working to ensure that ICPs 18 and 19 are implemented across Canada.

- Disciplinary Information

Develop online capacity to search out disciplinary action against a licensed intermediary wherever the action may have been taken.

- Issues and Position Papers

An Issues Paper purpose is to stimulate debate and build a common understanding of a topic for both regulators and stakeholders, and present a well-rounded picture of the topic and issues. An Issues paper may lead to a Position Paper, to lay out policy, or proposed actions, on the issue of concern. Both are consultation papers with stakeholders. The CCIR has recently issued an “Issues Paper” on Electronic Commerce and a “Position” paper on Managing General Agencies. CCIR will be proactively researching and considering trends, risks, and issues as they arise.