

18 February, 2022

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Corporate Secretary and Executive Director, Legal Affairs
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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
Mr. Mario Beaudoin, Director, Alternative Insurance Distribution Practices

Re: CAFII Feedback On AMF's Incentive Management Guideline November 2021

Dear Mr. Lebel:

CAFII thanks the AMF for the opportunity to provide feedback comments on the Autorité's draft Incentive Management Guideline.

Opening Comments

CAFII strongly believes that market conduct-based regulations and guidelines should outline regulators' consumer protection expectations in terms of outcomes, but should not get into prescriptive details as to how those outcomes can or should be achieved.

We are therefore pleased to advise that we find the AMF's draft Incentive Management Guideline to be generally principles-based and outcomes-focused, outlining the Autorité's expectations in suitable detail without prescribing how regulated entities can or should meet those expectations.

However, that said, we do find that there are parts of the draft Guideline that stray into more prescriptive language. For example, the document consistently uses terms that are more imperative and rigid in nature – such as “ensure,” “satisfy,” and “identify” – rather than more principles-based language such as “reasonably designed to” which would convey the optimal high-level guidance.

CAFII strongly believes that a principles-based and outcomes-focused approach -- which the AMF has, for the most part, taken in developing the draft Incentive Management Guideline -- leads to better regulatory outcomes because it gives businesses the latitude to use their knowledge of the marketplace and their customers, and their operational expertise, to achieve the regulator's fair treatment of customers (FTC) expectations efficiently and effectively.

Feedback On Incentive Management General Principles

CAFII recognizes that the AMF's current Incentive Management Guideline consultation -- as well as the updated Sound Commercial Practices Guideline which the Autorité recently consulted on; and the related supervisory examinations for compliance, from which the Incentive Management Guideline has emanated -- have their root in the management of incentives-based conflicts of interest precepts set out in the International Association of Insurance Supervisors' (IAIS) *Insurance Core Principle 19: Conduct of Business*. Our Association often refers to ICP 19 as a benchmark for discussing industry best practices and ways that companies can do an even better job on FTC.

With respect to the situation here in Canada, we offer the following observation derived from CLHIA's very relevant February 2016 Issues Paper titled "*Insurance Distribution In Canada: Promoting A Customer-Focused System*":

CAFII strongly supports CLHIA's assertion that "in Canada, the potential for conflicts of interest (or the perception of such) is managed in a twofold way – first, by fostering needs-based selling and making recommendations that are suitable to the customer; and second, by advisor disclosure about the insurers that they represent and how they are paid. This is reinforced through CCIR's principles for managing conflicts of interest, and supported by industry practices and guidelines."

CAFII members support, and make every effort to embed in their organizational cultures, the industry best practices guidance with respect to FTC and managing conflicts of interest which CCIR/CISRO provided in their *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* – namely that the customer's interest must take precedence over the salesperson's/advisor's; that the salesperson/advisor must disclose conflicts or potential conflicts of interest; and that the product sold must be suitable for the needs of the customer.

CAFII members also comply with all applicable CLHIA Guidelines; and in particular, we offer the following observations on *Guideline G13, Compensation Structure: Managing Conflicts of Interest*; and *Guideline G14, Confirming Advisor Disclosure*, which are prime examples of how the industry has responded to regulators' concerns.

Our Association concurs with G13's fundamental premises that "a robust compensation system is needed to attract and retain qualified professionals to offer, place and service life and health insurance products that meet the needs of the consumer. At the same time, it is important that well-designed compensation systems be alert to the risk that sales-related compensation could create conflicts of interest" and that "one element of FTC is that remuneration and reward strategies take account of fair customer outcomes."

With respect to G14, our members support and comply with all applicable provisions related to Advisor Disclosure but particularly -- as alternate/direct distributors of credit protection insurance, travel insurance, and other types of life and health insurance -- its provision that "where an insurer accepts an application through a call centre or online process using a licensed life and/or accident & sickness insurance agent, the insurer's processes should also ensure that appropriate disclosure has been made."

We also note that the draft Incentive Management Guidance states the following:

Among other things, the AMF expects the board of directors to:

- *Ensure that the committees responsible for monitoring changes in the business culture and identifying risks of practices that could adversely affect FTC are also responsible for ensuring that clients' interests are taken into account in managing incentive arrangements*
- *Ensure that changes are quickly made to incentive arrangements when FTC cannot be ensured*
- *Ensure that appropriate measures are taken with respect to the clients concerned when a practice that adversely affects FTC is identified*

L'Autorité s'attend notamment à ce que le conseil d'administration⁴ :

- *Veille à ce que les comités chargés de suivre l'évolution de la culture d'entreprise et d'identifier les risques de pratiques pouvant nuire au traitement équitable des clients aient également la responsabilité de s'assurer que les intérêts des clients sont pris en compte dans la gestion des mécanismes incitatifs ;*
- *Veille à ce que des changements aux mécanismes incitatifs soient apportés rapidement lorsque le traitement équitable des clients ne peut être assuré ;*
- *Veille à ce que des mesures appropriées soient prises à l'égard des clients concernés lorsqu'une pratique qui nuit au traitement équitable des clients est identifiée.*

While we agree that a regulated entity's Board of Directors should set the overall tone with respect to business culture -- including the central importance of fair treatment of customers -- we do not concur that details around incentives arrangements would be within the purview of the Board of Directors of a large financial institution, as tactical/operational decisions of that nature would be the responsibility of senior management.

Specific Comments and Observations On Draft Incentive Management Guideline

We agree that variable incentives, whether qualitative or quantitative, could raise a risk and need to be managed. But we do not view such incentives as inherently problematic, particularly where an incentive, such as a bonus, is structured as a component of an overall compensation package that is based on a number of objectives and not just sales or premium volume – for example, a package that includes FTC and related customer satisfaction objectives.

By way of background on the compensation methods and controls typically used by our members, CAFII member client service representatives – the majority of whom are salaried staff – are highly supervised both in branch and in client contact centres. Our members' client service representatives undergo comprehensive and recurring product training to enable them to provide consumers with accurate and reliable information; as well, they receive ethics and integrity training which underscores the importance of fair treatment of consumers (FTC).

That training provides client service representatives offering insurance with the knowledge, skills, and tools to do their jobs and serve clients well. It also ensures that they, as sales personnel, and our member companies, as their employers, act in accordance with applicable federal and provincial/territorial insurance legislation and regulations; and industry guidelines.

In that connection, we concur draft Incentive Management Guideline's introductory statement that "Among the expectations set out in the Guideline, the AMF indicates that it expects any real or potential conflicts of interest to be avoided or managed in a manner that ensures the fair treatment of clients (FTC)." <<Parmi les attentes qui y sont énoncées², l'Autorité indique notamment qu'elle s'attend à ce que tout conflit d'intérêts réel ou potentiel soit évité ou géré de façon à assurer le traitement équitable des clients.>>

However, we do not agree with the following statement: "The incentives awarded to a financial institution's staff, intermediaries or any other person acting on its behalf who is involved in offering its products and services are a major source of conflicts of interest." <<Les incitatifs consentis aux membres du personnel d'une institution financière, aux intermédiaires ou à toute autre personne qui agit pour son compte et qui intervient dans l'offre de ses produits et services constituent une source importante de conflits d'intérêts.>> This statement implies that any incentive is inherently a conflict of interest, but in our view, if probably managed and subject to sufficient controls, that is definitely not the case.

Finally, we agree with and support the broad principles outlined in the draft Incentive Management Guideline's sections on Governance, Managing Incentive Arrangements, Identification and Assessment of Risks and Practices that Could Adversely Affect FTC, and Quality Monitoring. **FRANCAIS:** *Gouvernance, Gestion des mécanismes incitatifs, Identification et évaluation des risques de pratiques pouvant nuire autrement équitable des clients, Contrôles de la qualité.*

Conclusion

CAFII members are very aware that a significant proportion of Quebeckers, and Canadians overall – typically those from lower and middle income households -- is vastly uninsured or under-insured with respect to life and health insurance coverage. According to a 2019 LIMRA Canadian Life Insurance Ownership Study, 50% of adult Canadians do not have any life insurance coverage. Life insurance is not something most people want to think about; and, as a result, these products are challenging to offer. A balanced approach to incentives that appropriately gives financial services representatives recognition, financial or otherwise, for offering these important products -- as part of a risk management conversation that most people wish to avoid -- can lead to important coverage being put in place for Quebeckers, protection which they otherwise might not secure.

As a key industry stakeholder, CAFII again thanks the AMF for the opportunity to offer feedback comments on the draft Incentive Management Guideline. Should you require further information from CAFII or wish to meet with representatives from our Association on this submission or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647-460-7725.

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; 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.