

25 October, 2021

M. Julien Reid

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Autorité des marchés financiers

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c.c. Mr. Patrick Déry, Superintendent, Solvency

Dear Mr. Reid:

Thank you for inviting CAFII to provide recommendations, with concrete examples, of areas where the Autorité des marchés financiers (AMF) could achieve regulatory burden reduction without compromising consumer protection or regulatory effectiveness.

CAFII recommends the following:

Principles-Based Regulatory Approach Focused On Enhancing Consumer Protection

When a regulator is issuing Regulations and related regulatory expectations, a principles-based approach can achieve the desired consumer protection outcome without the need for prescriptive requirements that result in unnecessary, often time-consuming work for regulated entities.

A concrete example of a prescriptive requirement is the AMF's current registration requirements related to distributors of products under the new Alternative Distribution Methods regime. The AMF has mandated that each individual financial institution (FI) branch must be registered as a distributor in its E-Services system.

However, the distributor is actually the parent company, for example the particular bank or credit union.

In practice, there are thousands of branches that are part of CAFII member FIs' networks. They are constantly undergoing changes (opening of new branches; closures; and branch mergers), such that keeping the list of branches up-to-date on the E-Services system creates a significant administrative burden. Given that the parent company is responsible for all its branches, and the AMF can take investigative or enforcement action against the parent company irrespective of the registration of any particular branch in its network, it is difficult to understand how consumer protection or regulatory effectiveness is being served by the branch registration requirement.

CAFII's burden reduction request is that only the parent company information of the distributor should be required to be registered per legal entity; and the requirement to register all individual branches should be removed.

Transparency in Information Requests and Intervention Notices

Some CAFII member companies have reported incidents of receiving a communication in which the AMF indicates that their company has made acts or omissions which are non-compliant with legislation or a Regulation; and that a resulting intervention by the AMF may be forthcoming.

However, in such instances, the AMF has declined to provide any specific and concrete information that would allow the company to begin to investigate the situation itself and take measures to remedy the issue.

This is a burden because the lack of information renders the company unable to properly investigate and rectify the matter, especially if there is a consumer impact, and also often results in unnecessary expenditure of resources trying to determine what alleged non-compliant act or omission is the focus of the notice.

CAFII's burden reduction request is that whenever the AMF is communicating to a regulated entity that it is under investigation, full disclosure of the specifics should be included in the communiqué. This will allow the affected company to conduct its own internal investigation and understand all the details of the situation, in preparation for any regulatory investigation and/or sanction.

Consistent and Clear Communication on Application of A Regulation

CAFII's burden reduction request arising from the *Regulation respecting Alternative Distribution Methods (RADM)* and the AMF's determination that it applies to credit card-embedded insurance benefits relates to providing clear and consistent communication on the application of a Regulation.

The AMF is aware that CAFII and its members do not believe that credit card-embedded insurance benefits actually constitute an offer of insurance, since the customer does not pay any premiums and the insurance is embedded in a credit card, which is what the customer has actually applied for and obtained.

By way of further background context, it is clear that credit card-embedded insurance benefits, a unique product set, were not contemplated as part of the RADM's design. When the AMF made its decision after-the-fact that the RADM still must apply to these insurance benefits, the industry was tasked with having to force-fit a unique product set into compliance, which has been a time-consuming, challenging, and burdensome effort for CAFII members and other industry players.

To elaborate upon the regulatory burden implications:

- Developing a compliance solution for a distribution system which involves multiple channels and a host of FI legacy systems -- which themselves have various limitations and challenges - takes a great deal of time and expertise to achieve. Tackling such compliance solutions can siphon resources away from other IT initiatives aimed at enhancing the customer experience;
- Banks and credit unions have large credit card portfolios and the AMF's extension of the RADM's scope to include credit cards has an impact upon all types of credit cards (consumer, small business, and corporate cards). It's conceivable that some banks will have to develop 30 or more Product Summaries (and in both French and English);
- Adding to the cost and complexity is the need for banks and credit unions to include the Product Summaries as stock items in fulfillment packages, for which some FIs have already reached capacity limits on the number of inserts; and

- Quebec is the only jurisdiction in Canada that requires a Fact Sheet and Product Summary to be prepared and provided to insurance customers, both of which will ultimately be duplicative of information provided in the Certificate of Insurance.

In addition, CAFII Member client service representatives who are actually involved in the process of qualifying, approving, and enrolling credit card applicants are concerned that the RADM's application to credit card-embedded insurance benefits will produce a very negative customer experience.

In particular, while the requirement to provide a Product Summary at time of sale is completely sensible for a credit protection insurance enrollment, a credit card customer is shopping for a credit card, and as such is primarily interested in elements such as the annual fee, if any; the interest rate on unpaid balances; and reward benefits for using the card. Embedded insurance benefits are by no means top-of-mind for credit card applicants.

In practical reality, the application of the RADM to credit card-embedded insurance benefits makes the following observations pertinent:

- The card enrollment and transfer processes currently require banks to provide a myriad of disclosures (e.g. cost of borrowing, privacy, general terms and conditions);
- The requirement to add a Product Summary for embedded insurance to these disclosures will serve only to confuse customers and front-line staff. This is not a good customer experience, as it further complicates the card enrollment and transfer processes; and
- Customers normally shop around for a credit card before choosing which one to apply for and ultimately enrol in; therefore, it would be more effective to simply make the Product Summaries available on the respective credit card landing pages of an FI's website, so that customers can access and read them while shopping around for a suitable credit card.

All that said, CAFII appreciates that the AMF has recently granted CAFII members and the wider industry a concession, under which affected insurers and distributors will not have to distribute the Fact Sheet and the Notice of Rescission to credit card customers by the 17 December, 2021 deadline to post Product Summaries and submit Action Plans to the AMF.

While we accept that the AMF has rejected our views on this matter and CAFII members are therefore working on implementing the AMF's expectations, we would like to highlight certain learnings from the situation highlighted above, as we believe that, at a minimum, they can be applied for a smoother and more effective roll-out of future Regulations, especially in the case of Regulations for which the AMF has deliberately and purposefully chosen to take a more prescriptive approach.

Some burden reduction-oriented and communication enhancement recommendations for the future are as follows:

- 1) Provide clear and concise regulatory requirements and expectations whenever interpretive changes to a Regulation's scope/application are being made, rather than rely on the industry for a solution (e.g. the new requirement of Product Summaries for embedded insurance benefits):

- Establish full expectations up-front for the entire product lifecycle impact of the change, including guidance on action plans, etc.; and
 - Share guidance material such as best practices for Product Summaries at the same time as the requirements for a change are being communicated, and not after industry implementation has already commenced.
- 2) Consult with all relevant industry Associations to ensure that key questions and concerns are addressed before deciding upon a change to a Regulation or a change in interpretation thereof, including changes related to scope/application, and a deadline for implementing the change.
 - 3) Establish and communicate the requirements under a Regulation clearly and concisely to the industry, to minimize any possible differences of interpretation and ensure that the industry has a common understanding and can implement a consistent approach.

Guidance on Expectations Around Elements of a Regulation

CAFII Members are now obligated to produce Product Summaries for credit card-embedded insurance benefits. There can be multiple such insurance benefits embedded in a credit card, and how to structure the related Product Summaries is not clear to our Members. The Product Summaries replace Distribution Guides that were deemed to be too long and complex, but our members have received feedback from the AMF that not enough exclusions were included in the drafts they shared with the AMF for feedback, leading the Product Summaries to be longer than CAFII Members had originally envisioned.

We recognize the challenge for the AMF in balancing reasonably detailed guidance with the objective to not be overly prescriptive, but it is very time-consuming for CAFII Members to be sharing draft Product Summaries with the AMF which the AMF then subsequently indicates are not adequate, without providing any feedback as to why they are inadequate.

Some CAFII members are now in their third or fourth draft of a Product Summary, trying to satisfy the AMF without getting clear direction on how to do so. It would be better in these circumstances for the AMF to be direct and specific about what it is expecting. If the AMF only wishes to provide high level guidance, it should not then reject outputs that conform to that high level guidance.

Retroactive Re-Interpretation of Regulations

Throughout 2019, CAFII Members expended significant time and energy in responding to the AMF's retroactive re-interpretation of a Regulation that had been in-force for 20-plus years, a re-interpretation which suddenly and unexpectedly indicated that only the primary credit cardholder, and not routinely the primary cardholder's spouse, would be eligible to be enrolled in credit protection insurance (CPI) associated with the credit card.

Our Association had extensive discussions with the AMF about this new interpretation but to no avail; and the ultimate outcome is that credit card CPI coverage is no longer being offered to spouses in Quebec, and the existing book of business is being “run off” over five years. It is CAFII’s view that the AMF’s re-interpretation of the Regulation was detrimental to Quebec consumers, many of whom lost economical group CPI coverage which they had in place for many years. Particularly for the in-force policies, resources are now being utilized by the industry to effect a negative outcome for consumers. This change did not seem to be rooted in consumer protection.

The AMF’s interpretation and position on credit card CPI for spouses is a Quebec-only issue, but yet credit cards are structured, designed, and managed nationally by FIs in Canada.

This retroactive re-interpretation by the AMF, and the resulting requirement for the industry to reverse decades-old approaches, and the now different regulatory expectations in Quebec versus all other jurisdictions in the country, makes the cost of doing business in Quebec higher for our CAFII Members and other industry players.

CAFII’s burden reduction request on this matter is that, in future, the AMF refrain from imposing such retroactive re-interpretations of long-standing legislation and/or Regulations upon the industry, without at least engaging in a meaningful consultation process on the issue with the industry.

Approach to Disputes or Disagreements with Industry

The time and effort which CAFII has spent on communicating to the AMF our concerns about the Autorité’s position on the RADM’s applicability to credit card-embedded insurance benefits has been extensive and costly.

As a means of burden reduction, CAFII recommends that the AMF consider reviewing how it manages fundamental disagreements with industry participants. While we recognize and respect that the AMF is fully within its rights and powers to, at the end of the day, impose an outcome, we feel that the dialogue prior to that possible outcome often does not proceed as expeditiously as possible, and it also does not allow for expeditious escalation to senior staff executives to engage in the file.

Simplify Certain Procedures

CAFII also recommends that the AMF give full and serious consideration to the following burden reduction opportunities:

- review and simplify the reporting process with respect to consumer complaints. Currently, two systems apply: one for insurers (CCIR Annual Statement on Market Conduct) and another for firms (bi-annual filing to the AMF);
- allow individual representatives to "delegate" the renewal of their license to their firm or their insurance company sponsor. Currently, renewal notices are sent directly to individual representatives, which does not facilitate the efficient and effective handling of license renewals;
- implement online licensing examinations;

- digitize requests that currently still require paper forms, including facilitating access to ClickSÉQR for people living outside of Quebec. (This is mainly an interprovincial licensing issue, caused by the fact that Quebec's licensing system lives on the provincial government tax database; and, up to this point in time, the AMF has been unable to address this issue.); and
- allow the use of digital signatures in lieu of the current wet signature requirement for licence applications/renewals.

Harmonize With Other Canadian Jurisdictions

We recognize and appreciate the unique characteristics of Quebec, and that there will never be complete harmonization across provincial and territorial jurisdictions in Canada. We also appreciate the leadership role that the AMF has played in both CCIR and CISRO, especially around Fair Treatment of Customers and on harmonization where and to the degree possible.

However, there are multiple examples that could be cited of Quebec inconsistencies with the rest of Canada that do not appear to reflect genuine consumer protection enhancements. As a burden reduction initiative, CAFII therefore requests that the AMF consider what regulators in other jurisdictions in Canada are doing and attempt to harmonize with them.

One current example is that the industry is now engaged in an AMF consultation on a proposed Regulation on Complaint Handling and Dispute Resolution which, as currently formulated, will place the industry in a situation of having to have different models and processes for Quebec which are distinct from those employed in the rest of Canada.

Concluding Comments

CAFII and its Members respect and applaud the critically important role that the AMF plays in providing consumer protection to Quebecers, while promoting innovation and efficiency in Quebec's financial services and insurance industries. Our Members are committed to Fair Treatment of Customers and are dedicated to being fully compliant with Quebec legislation and Regulations.

In that connection, CAFII appreciates the AMF's outreach to the industry around burden reduction, and we thank you for the invitation to provide our recommendations.

We remain committed to supporting the AMF in its critically important mission and mandate; and we look forward to continuing our involvement as key stakeholder contributors to the Autorité's ongoing success. In particular, we look forward to continued open, constructive, and transparent dialogue so that the industry can implement and achieve the AMF's consumer protection expectations while minimizing unnecessary regulatory burden and inefficiencies, and avoiding unintended consequence situations that give rise to negative customer experiences.

Should you require further information from CAFII or wish to meet with representatives from our Association on this burden reduction recommendations 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.