

## CAFII Executive Operations Committee Meeting Agenda

**Date:** Tuesday, July 20, 2021  
**Chair:** R. Dobbins  
**Location:** [Virtual MSTEams Meeting](#)

**Time:** 2:00 – 3:30 p.m. EDT  
**Dial-in:** 437-703-4263  
**Phone Conference ID:** 965 295 258#

1. Welcome, Call to Order, and Priority Matters	2:00 p.m.	Presenter	Action	Document
a. Call to Order		R. Dobbins		
b. Welcome to Three (3) New EOC Members (Fergal Murphy, TD Insurance; Esther Lee, CIBC Insurance; Jonine McGregor, Canadian Tire Bank)		R. Dobbins		

2. Consent Items	2:05 p.m.	Presenter	Action	Document
a. Consultations/Submissions Timetable				✓
b. July 9/21 CAFII Submission To CISRO On Draft “Principles of Conduct for Intermediaries”				✓
c. Regulator and Policy-Maker Visit Plan				✓
d. Summary of Board and EOC Action Items				✓
e. Board-Approved Schedule Of CAFII 2021 Meetings And Events				✓

3. Financial Management Matters	2:06 p.m.	Presenter	Action	Document
a. CAFII Financial Statements as at June 30/21		T. Pergola	Update	✓
b. Forecast For CAFII 2021 Fiscal Year as at June 30/21		T. Pergola	Update	✓

4. Committee Updates	2:13 p.m.	Presenter	Action	Document
a. Research & Education		A. Stuska		
i. In-Development Proposal From Research & Education Committee for a Follow-up CAFII Research Initiative on Trends, Consumer Demands/Expectations, and Best Practices in Digitization of Insurance		A. Stuska/K. Martin	Update/ Discussion	
b. Media Advocacy		A. Mukherjee	Update	
i. Development of Two New CAFII Motion Graphics Website Videos on (i) Results of Research Project On Insurance Consumers’ Digitization Preferences; and (ii) Job Loss CPI		K. Martin	Update	✓
c. Market Conduct & Licensing		B. Kuiper	Update	
i. FSRA Follow-up Consultation on Revised UDAP Rule, with August 11/21 Submission Deadline		F. Coleman	Update	✓ (2)
ii. FSRA Inter-Related Consultations on (i) Proposed Sound Business and Financial Practices of Credit Unions and Caisses Populaires Rule; and (ii) Credit Union Market Conduct Framework Approach and Interpretation Guidance.		B. Wycks/ I. Choquette	Update/ Discussion	✓ (3)
d. Travel Insurance Experts		K. Umutoiwase	Update	
e. Networking & Events		C. Manno	Update	
i. Progress on Plans for Fall 2021 Webinar on “Climate Change and Its Implications For Life Insurance” including Background and Evidence; Causes and Consequences; Mortality and Morbidity Outcomes; Life Insurance Implications; and Risk Management Challenges (Presenters from RGA Life Reinsurance Company of America)		B. Wycks	Update	

5. Recent and Upcoming Strategic and Regulatory Initiatives	2:35 p.m.	Presenter	Action	Document
a. July 21/21 CAFII Pre-Consultation Meeting with CCIR/CISRO FTC Working Group on Its Draft “Incentives Management Guidance”		B. Wycks	Update	✓ (3)
b. CAFII’s Action Plan Arising from June 29/21 Special Purpose Board Meeting on Norton Rose’s Legal Arguments/Opinion in Opposition to AMF’s Interpretation on RADM’s Applicability to Credit Card-Embedded Insurance Benefits and Resulting Regulatory Expectations		K. Martin	Update/ Discussion	✓
c. CAFII Outreach Request To CBA That It Engage In AMF Credit Card-Embedded Insurance Benefits Issue, Given Implications For Core Credit Card Offerings in Quebec		K. Martin/B. Wycks	Update	
d. CAFII Working Group on Industry Alignment Around Compliance with AMF’s Expectations Re RADM’s Applicability to Credit Card-Embedded Insurance Benefits		S. Kirby/K. Kasperski/K. Martin	Update/ Discussion	✓
e. CAFII Working Group on Industry Alignment Re Interpretation of FCAC’s Appropriateness Guideline’s Application to Authorized Insurance Products/CPI; and Potential Approaches to Compliance		M. Boyle/K. Martin	Update	✓

f.	FSRA Consultation with Stakeholder Advisory Committee (SAC) Members on Renewal of SAC Structure	K. Martin	Update	✓
g.	CAFII Data Improvements Working Group With RSM Canada Around Quarterly CPI Benchmarking Study: Progress Report	K. Martin	Update	✓ (2)
h.	Insights Gained From CAFII/CLHIA/THIA Weekly Calls Re Impact Of COVID-19 On Travel Insurance Industry	B. Wycks/K. Martin	Update	

6.	Governance Matters	3:07 p.m.	Presenter	Action	Document
a.	Plans for Tentatively Scheduled Next EOC Meeting on August 17/21: Option to Cancel		R. Dobbins	Update/ Decision	
b.	Plans For Next Board Meeting On October 5/21		B. Wycks	Update	
c.	"Switching" of Hosting Responsibility For December 7/21 CAFII Board Meeting and Possible Immediately Ensuing, In-Person Holiday Season Reception		B. Wycks	Update	
d.	Draft Minutes of June 22/21 EOC Meeting		B. Wycks	Approval	✓
e.	Draft Minutes of June 29/21 Special Purpose Board Meeting		B. Wycks	Endorsement	✓

7.	Read Only Items		Presenter	Action	Document
a.	Norton Rose Legal Arguments/Opinion in Opposition to AMF's Interpretation on RADM's Applicability to Credit Card-Embedded Insurance Benefits and Resulting Regulatory Expectations				✓ (2)
b.	Outreach from Erica Hiemstra, FSRA Re Recent FSRA Supervision Work on Life & Health Insurance Agents and Second Annual LARF Report				✓
c.	Media Release On Canadian Tire Bank's Joining CAFII as a New Member and Adam Vespi's Appointment As CTB's First CAFII Director				✓
d.	Media Pickup of Press Release on Results of CAFII-Commissioned Research by Pollara on CPI Consumers Digitization Preferences				✓
e.	Possible Topics and Presenters for Fall 2021 CAFII Webinars				✓

8.	Other Business	3:17 p.m.	Presenter	Action	Document

9.	In Camera Session	3:17 p.m.	Presenter	Action	Document

10.	Tracking Issues		Presenter	Action	Document
a.	Upcoming AMF Consultations on Updated Sound Commercial Practices Guideline and Draft Regulation Respecting Complaint Processing				
b.	BC Ministry of Finance Drafting of Regulations To Implement Financial Institutions Amendment Act, 2019				
c.	FCAC: Phase 2 of Domestic Bank Retail Sales Practices Review				

**Next EOC Meeting (Tentative: Option to Cancel):** Tuesday, August 17/21, 2:00 to 3:30 p.m., Virtual MSTEams Meeting

**Next Regularly Scheduled Board Meeting:** Tuesday, October 5/21, 12:30 to 4:00 p.m. (Including "Industry Issues Dialogue" With AMF Staff Executives), Virtual MSTEams Meeting

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 1(a)**

### **Purpose of this Agenda Item**

Start of meeting.

### **Background Information**

### **Recommendation / Direction Sought -- *Update***

Update only.

### **Attachments Included with this Agenda Item**

No attachments.

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 1(b) Welcome to New EOC Members**

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#### **Purpose of this Agenda Item -- *Update***

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Welcome to New EOC Members (Fergal Murphy, TD Insurance; Esther Lee, CIBC Insurance; Jonine McGregor, Canadian Tire Bank)

#### **Background Information**

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TD Insurance and CIBC Insurance have appointed new members to the EOC; and Jonine McGregor, a recent EOC appointee from Canadian Tire Bank, was unable to attend the June 22/21 EOC meeting, so has not yet been formally introduced to EOC colleagues.

#### **Recommendation / Direction Sought -- *Update***

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Update only.

#### **Attachments Included with this Agenda Item**

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No attachments.



## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 2 (a-e)**

#### **Consent Items**

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#### **Purpose of this Agenda Item**

To provide documentation for the EOC to review, which does not require updates, discussion, or decisioning.

#### **Background Information**

The Consent Items that do not require any discussion or decisions are:

- a. Consultations/Submissions Timetable;
- b. July 9/21 CAFII Submission To CISRO On Draft “Principles of Conduct for Intermediaries”
- c. Regulator and Policy-Maker Visit Plan;
- d. Summary of Board and EOC Action Items;
- e. Board-Approved Schedule of CAFII 2021 Meetings and Events.

#### **Recommendation / Direction Sought – Information Only**

No action required.

#### **Attachments Included with this Agenda Item**

5 attachments.

## CAFII Consultations/Submissions Timetable 2021-22

Regulatory Issue	Deliverable	Deadline	Accountable
BC Ministry of Finance 10-Year Review of FIA (Initial Public Consultation Paper released June 2, 2015)	<ul style="list-style-type: none"> <li>Revised Financial Institutions Act (FIA) tabled in the legislature</li> <li><i>CAFII Follow-up Meeting (Virtual) with Ministry officials Re CPI Sales Practices and Related Fair Treatment of Consumers Considerations</i></li> <li><b>CAFII submissions on draft Regulations in support of Revised FIA</b></li> </ul>	<ul style="list-style-type: none"> <li>October 21/19</li> <li>Q3 or Q4 2021</li> <li><b>Q3 through Q4 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Committee; Co-EDs to monitor</li> </ul>
AMF Consultation On Strategic Priority Objective 2.3: Burden Reduction	<ul style="list-style-type: none"> <li>AMF sends letter to Keith Martin, inviting CAFII to respond to its consultation on Strategic Priority Objective 2.3: Burden Reduction</li> <li><b>CAFII submission on AMF Strategic Priority Objective 2.3: Burden Reduction</b></li> </ul>	<ul style="list-style-type: none"> <li>June 18/21</li> <li><b>October 18/21</b></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
AMF Sound Commercial Practices Guideline Update	<ul style="list-style-type: none"> <li>AMF releases consultation document for 60 day period</li> <li><b>CAFII submission on updated Sound Commercial Practices Guideline</b></li> </ul>	<ul style="list-style-type: none"> <li>Q3 2021 (expected)</li> <li><b>Q3 or Q4 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Cttee; Co-EDs to monitor</li> </ul>
Quebec Bill 141 and Related Regulations (including Regulation Respecting Alternative Distribution Methods, RADM)	<ul style="list-style-type: none"> <li>CAFII sends AMF “creative solutions” submission on degree to which industry can meet AMF’s requirements on RADM’s applicability to credit card-embedded insurance</li> <li>AMF responds to CAFII’s “creative solutions” submission</li> <li><b>CAFII implements 3 Board directives in response to AMF’s March 30/21 response</b></li> <li>AMF launches consultation of Draft Regulation Respecting Complaint Processing</li> <li><b>CAFII submission on Draft Regulation Respecting Complaint Processing</b></li> </ul>	<ul style="list-style-type: none"> <li>July 7/20</li> <li>March 30/21</li> <li><b>Q2 2021</b></li> <li>Q3 or Q4 2021 (expected)</li> <li><b>Q3 or Q4 2021</b></li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Committee; Co-EDs to monitor</li> </ul>
CCIR/CISRO Guidance: Conduct of Insurance Business and Fair Treatment of Customers	<ul style="list-style-type: none"> <li>CAFII sends letter to CCIR/CISRO FTC Working Group asking it to obtain information on incentives and compensation models used by member distributors directly and privately, to avoid Competition Act violations</li> <li><i>CCIR/CISRO FTC Working Group accepts proposal in CAFII’s July 2/20 letter</i></li> <li><i>CAFII meets virtually with CCIR/CISRO FTC Working Group to provide preliminary feedback on its Draft “Incentives Management Guidance”</i></li> </ul>	<ul style="list-style-type: none"> <li>July 2/20</li> <li>August 31/20</li> <li><u>July 21/21</u></li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Cttee; Co-EDs to monitor</li> </ul>
CISRO “Principles Of Conduct For Intermediaries”	<ul style="list-style-type: none"> <li><i>CISRO releases draft “Principles of Conduct For Intermediaries” for public consultation</i></li> <li>CAFII makes submission on CISRO’s draft “Principles of Conduct For Intermediaries”</li> </ul>	<ul style="list-style-type: none"> <li>May 25/21</li> <li>July 9/21</li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Cttee; Co-EDs to monitor</li> </ul>
FCNB Insurance Act Rewrite and Introduction of RIA Regime	<ul style="list-style-type: none"> <li>FCNB launches industry consultation on RIA licensing regime model</li> <li>CAFII submission on FCNB’s RIA Regime licensing regime model</li> <li><i>FCNB launches informal stakeholder consultation on applicability of A&amp;S insurance provisions of various provincial Insurance Acts to New Brunswick</i></li> <li><i>CAFII responds to FCNB consultation on A&amp;S Insurance Act provisions</i></li> <li>CAFII/CLHIA send joint response to FCNB’s further Insurance Act Rewrite questions (received November 6/20)</li> <li>FCNB announces tabling of <i>An Act to Amend The Insurance Act</i> in NB legislature; and that implementation Rule will follow in late 2021 (with 60 day public consultation)</li> <li>CAFII responds to David Weir follow-up questions re legislative constraints which prevent bank branch employees from being individually licensed to sell travel insurance</li> </ul>	<ul style="list-style-type: none"> <li>November 29, 2019</li> <li>January 31, 2020</li> <li>July 2020</li> <li>October 22/20</li> <li>December 22/20</li> <li>March 17/21</li> <li>May 19/21</li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Cttee; Co-EDs to monitor</li> </ul>
Financial Services Regulatory Authority of Ontario (FSRA) Regulatory Consultations	<ul style="list-style-type: none"> <li>CAFII speaks to its submission on FSRA’s FY 2021-22 Statement of Priorities and Budget at Stakeholder Advisory Committee meeting with FSRA Board</li> <li>CAFII responds to FSRA consultation on Unfair and Deceptive Practices (UDAP) Rule</li> <li>CAFII meets with FSRA and CLHIA virtually re follow-up questions arising from UDAP Rule submissions</li> <li>CAFII responds to two follow-up UDAP Rule-related questions posed by FSRA</li> <li><u>FSRA releases Revised UDAP Rule, for further consultation</u></li> <li><b>CAFII responds to FSRA’s further consultation with submission on Revised UDAP Rule</b></li> <li><u>Keith Martin provides qualitative interview input to Environics in response to FSRA consultation on Stakeholder Advisory Committee structure, possible renewal/revision</u></li> </ul>	<ul style="list-style-type: none"> <li>November 25/20</li> <li>March 18/21</li> <li>March 24/21</li> <li>May 4/21</li> <li><u>July 14/21</u></li> <li><b>August 11/21</b></li> <li><u>July 2021</u></li> </ul>	<ul style="list-style-type: none"> <li>Mkt Conduct &amp; Licensing Cttee; Co-EDs to monitor</li> </ul>

Underline = new/updated item since previous publication; **Boldface = CAFII response pending**; *Italics = CAFII meeting with regulators/policy-makers pending*

July 9, 2021

Mr. Ron Fullan, Chair  
Canadian Insurance Services Regulatory Organisations  
c/o: cisro-ocra@fsrao.ca

Dear Mr. Fullan:

CAFII thanks CISRO for the opportunity to provide input on its draft *Principles of Conduct for Intermediaries*. Our Association strongly supports CISRO's efforts to codify principles and guidance around the fair treatment of customers.

We have organized this feedback submission around High Level Feedback Points; followed by Specific CAFII-Relevant Feedback Points.

#### **High Level Feedback Points**

CAFII strongly supports the premise that fair treatment of customers expectations must apply to intermediaries. Our Association is therefore generally comfortable with the 10 Principles set out in *CISRO's Principles of Conduct for Intermediaries*, and the expectation that intermediaries should conduct their business in accordance with the Principles that are relevant and applicable to them.

As an industry Association whose members must comply with the legislative and regulatory expectations of 18 federal and provincial/territorial insurance regulators and policy-makers across Canada, CAFII is strongly supportive of regulatory harmonization. We therefore applaud and thank CISRO for (i) deciding to set out high level, harmonized-to-the-degree-possible Principles which reflect the minimum regulatory conduct standards for intermediaries that are common across Canada regarding the fair treatment of customers; and (ii) designing the Principles with the intent of supplementing, complementing, and building upon the intermediary elements in the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* (FTC Guidance) and aligning them with the Insurance Core Principles of the International Association of Insurance Supervisors.

CAFII appreciates that in the Principles' definition of intermediary, CISRO has taken pains to stipulate that the definition includes "business entities that distribute insurance products and services . . . It also applies to all distribution methods, including the internet." We agree with and support CISRO's specifying a relatively broad definition of intermediary. The definition's provisions which we highlighted above are directly relevant to CAFII, given that many of our members are Restricted Insurance Agent licence holders (i.e., business entity/corporate licensees) in those provinces which have RIA licensing regimes; and we focus as an Association on direct-to-consumer distribution of credit protection insurance (CPI) and travel insurance, including the internet channel, rather than on traditional face-to-face distribution by an individually licensed advisor.

That said, we note that the CISRO Principles' definition of intermediary includes "adjuster." Adjusters are not included, however, in the definition of "intermediary" found in the CCIR/CISRO FTC Guidance. Therefore, because adding "adjuster" to the CISRO definition of "intermediary" has the potential to cause confusion, without significant offsetting value to be gained in doing so, CAFII recommends the deletion of adjusters from the scope of the CISRO Principles' definition of "intermediary."

In addition, CISRO's Principles of Conduct for Intermediaries uses the term "must" to describe many of the Principles. Given that the Principles will not have the same legal status and enforceability as a Regulation, we recommend that CISRO harmonize with the language used in the FTC Guidance by using the words "are expected to" or other variations on the verb "expect" -- or alternatively the verb "should" -- rather than "must."

### **Specific CAFII-Relevant Feedback Points**

CAFII has two feedback points to offer with respect to *Principle #4 Advice*.

First, with respect to this Principle's stipulation that "Advice must be suitable for the needs of the Customer based on the Customer's disclosed circumstances," CAFII would like to remind CISRO that while the federal *Bank Act* and section 5(1) of the federal *Insurance Business (Banks and Bank Holding Companies) Regulations* (IBBRs) permit banks and other federally regulated financial institutions (FRFIs) to offer advice regarding Authorized Insurance Products/CPI, the offering of that advice is significantly tempered by provincial and territorial regulatory and licensing requirements.

The nature of the advice that banks/FRFIs are permitted to provide around Authorized Insurance Products/CPI is strictly limited to the product itself and must not include suitability-related measures such as a needs-based financial/insurance assessment, Know Your Client tools, or holistic advice.

In the case of Authorized Insurance Products/CPI, because the consumer is enrolling in optional insurance related to a single and specific borrowing need such as a mortgage or line of credit – and that scenario falls within the scope of activity permitted to occur through a non-advisory sales channel (i.e. banks/FRFIs must provide consumers with sufficient information, which meets provincial or territorial regulations and industry commitments and guidelines, to enable them to make an informed decision) – Authorized Insurance Products/CPI are typically offered by non-licensed individuals throughout Canada.

Non-licensed individuals are strictly prohibited from offering advice and recommending an insurance product as "suitable."

That said, CAFII does not believe that this point of clarification which we've raised, while important, necessarily dictates that an amendment must be made to CISRO's draft *Principles of Conduct for Intermediaries*. That's because (i) *Principle #4 Advice* begins with the following words: "If providing advice to or for a Customer, . . ."; and (ii) the Preamble to the Principles states the following: "Intermediaries should conduct their business following the Principles **that are relevant to them**, . . ."

As a second point of feedback with respect to *Principle #4 Advice*, CAFII notes that there is a lack of congruence between the CISRO Principles' expectation that ". . . the intermediary must seek **complete information** from the Customer" and the CCIR/CISRO FTC Guidance's requirement that ". . . **appropriate information** should be sought from Customers." In the interests of optimal alignment, CAFII recommends that CISRO harmonize its Principles with the terminology in the already established FTC Guidance.

As a parallel point of feedback with respect to *Principle #5 Disclosure*, CAFII notes that there is a lack of congruence between the CISRO Principles' expectation that intermediaries should "... provide Customers with objective, **complete**, relevant, and accurate information ...". versus the CCIR/CISRO FTC Guidance's expectation that "**appropriate information**" should be disclosed to consumers. In the interests of optimal alignment, CAFII recommends that CISRO harmonize its Principles with the terminology in the already established FTC Guidance.

As a final specific feedback point on what CAFII believes to be an inadvertent omission error, we believe that the following edit is in order in *Principle #10, Oversight*: "Intermediaries **are expected to** have tools at their disposal such as policies and procedures, ..."

### Conclusion

Fair treatment of customers is, in CAFII's view, a critically important element in a regulator's expectations toolkit, as it gets at the heart of a business' organizational culture. CAFII members firmly believe in and strive to be exemplary in embedding and practising fair treatment of customers as part of their business cultures.

We thank and applaud CISRO for developing and consulting widely on its draft Principles of Conduct for Intermediaries. We see value in the Principles as a source of accessible, crisp, plain language, base-case guidance, and as a document which addresses the need for recurring reinforcement of the imperative that businesses should base their marketplace behaviours on fair treatment of customers.

Thank you again for the opportunity to provide input and feedback on CISRO's Principles of Conduct for Intermediaries. Should you require further information from CAFII or wish to meet with representatives from our Association on this or any other matter at any time, please contact Brendan Wycks, CAFII Co-Executive Director, at [brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com) or 647-218-8243.

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 travel, life, health, property and casualty, and credit protection 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 that helps ensure Canadian consumers get the insurance products that suit their needs. Our aim is to ensure 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 Financial Services; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.

**Agenda Item 2(c)**  
**July 20/21 EOC Meeting**

**CAFII Insurance Regulator and Policy-Maker Meetings/Interactions**  
**From June 19/21 To July 15/21**

<u>Date</u>	<u>Event/Occasion/Issue</u>	<u>Who</u>
June 18, 2021	CAFII deadline extension request to AMF for affected insurer members to implement Product Summaries and related documents to comply with AMF's expectations re Regulation respecting Alternative Distribution Methods' applicability to credit card-embedded insurance benefits.	Having been alerted by THIA to imminent vacation absence for two weeks of AMF's Mario Beaudoin, Keith Martin emailed Mr. Beaudoin, seeking a prompt response to CAFII's June 2021 letter requesting a three month extension (to December 17/21) for affected insurer members to implement Product Summaries and related compliance documents to meet AMF expectations. Mario Beaudoin called K. Martin on the phone immediately thereafter, and conveyed that an AMF letter granting CAFII's deadline extension request, with one small caveat, was awaiting approval by AMF staff executives Louise Gauthier and Eric Jacob; and would likely be sent to CAFII the next week. (Letter was received by CAFII on June 23/21.)
June 21, 2021	CCIR/CISRO Fair Treatment of Customers Working Group (FTCWG) consultation with industry stakeholders on its Draft "Incentives Management Guidance"	CCIR Policy Manager Tony Toy called B. Wycks to advise that the CCIR/CISRO FTCWG would be holding pre-consultation/kickoff virtual meetings with industry stakeholders around its Draft "Incentives Management Guidance." Via subsequent email exchanges, CAFII's meeting was confirmed for Wednesday, July 21/21 from 2:15 to 3:15 p.m. and Tony Toy provided an invitation letter, a meeting agenda, and a Confidentiality Undertaking which will subsequently be utilized to enable CAFII Member reps to access the Draft Incentives Management Guidance on a controlled and embargoed basis.



July 6, 2021	Virtual Meeting of the Canadian Association of Pension Supervisory Authorities (CAPSA)'s Capital Accumulation Plan Guideline Industry Working Group's Communication/Fees Subcommittee	Brendan Wycks, CAFII's representative on this Industry Working Group, attended this meeting and interacted therein with Angela Mazerolle, Vice-President, Regulatory Operations and Superintendent of Insurance at the Financial and Consumer Services Commission of New Brunswick (FCNB), who is the Chair of this IWG in her capacity as a provincial pension supervisor and a Vice-Chair at CAPSA, the national co-ordinating body of pension regulators.
July 12, 2021	FSRA Follow-up Consultation on its Revised Unfair and Deceptive Acts or Practices (UDAP) Rule, with an August 11/21 submission deadline	Jennifer Chan, Senior Policy Analyst, Market Conduct and Policy Division, FSRA, sent an email alert to industry stakeholders – including B. Wycks and K. Martin at CAFII – to advise of this imminent consultation, the document for which (Revised UDAP Rule) would be posted on FSRA's website on July 14/21.



Summary of CAFII Board and EOC Action Items					
	Source	Action Item	Responsible	Deadline	Status July 20, 2021
		<b>Association Strategy and Governance</b>			
1	EOC and Board: October 2019	Launch CAFII EOC Working Group to Explore a New Lower Dues Category of CAFII Membership, via a first meeting and a draft Terms of Reference for this Working Group.	B. Wycks/K. Martin	31-Dec-21	In progress/ See #2
2	BOD: June 9, 2020	Revisit the launch of the CAFII Working Group On A Proposed Lower Dues Category Of CAFII Membership once the economic environment stabilizes, via a first meeting and a draft Terms of Reference for this Working Group.	K. Martin	31-Dec-21	In progress
3	EOC May 29, 2018	Develop a summary job description for the CAFII EOC Chair role and circulate it to EOC Members.	B. Wycks/K. Martin	31-Dec-21	In progress
4	EOC February 27, 2018	Document in writing the process for reviewing, approving, and admitting applicants for CAFII Members and Associate status	B. Wycks	31-Dec-21	In progress
5	BOD June 8, 2021	Negotiate terms for a three-year contract renewal with Managing Matters, to present to the Board at the October 2021 Board meeting.	K. Martin/B. Wycks	28-Sep-21	In Progress
		<b>Regulatory Initiatives</b>			
6	EOC March 30, 2021	Organize a virtual meeting for CAFII with David Weir, FCNB around the in-development Rule and its provisions addressing the creation of a Restricted Insurance Agent licensing regime in New Brunswick	B. Wycks	15-Mar-21	In Progress

	Source	Action Item	Responsible	Deadline	Status July 20, 2021
7	BOD June 8, 2021	Develop a short summary of the pros, cons, and costs of different options related to a CAFII education program, for presentation to the Board at the October 5, 2021 Board meeting	B. Wycks/K. Martin	28-Sep-21	In Progress
8	BOD June 8, 2021	Organize a 90 minute Special Purpose Board Meeting at which Norton Rose will present its findings from its AMF RADM legal analysis in relation to credit card-embedded insurance coverages	B. Wycks/K. Martin	30-Jun-21	Completed
9	BOD June 8, 2021	Develop with Market Conduct Committee the CAFII submission to CISRO on its consultation on "Principles of Conduct For Intermediaries"	B. Wycks/K. Martin	09-Jul-21	Completed
10	EOC June 22, 2021	Share CAFII EOC members concerns about communicating on the licensing issue with NWT to Dallas Ewen and to the CLHIA; B. Wycks, K. Martin, immediately	B. Wycks/K. Martin	Immediate	Completed
11	EOC June 22, 2021	Reach out to EOC members for those who are interested in reviewing the CCIR document on incentives compensation management guideline to sign a non-disclosure agreement; B. Wycks, K. Martin, June/July 2021	B. Wycks/K. Martin	June/July 2021	Completed
		<b>Research and Education; and Media Communications</b>			
12	EOC March 30, 2021	Present report to EOC and Board on outcomes of the efforts of the Working Group on Data Improvements to the Quarterly CPI Benchmarking Study	K. Martin	Q3/Q4 2021	Completed
13	EOC May 25, 2021	Develop with Operatic Agency a new motion graphic website video on the Pollara consumers' digitization preferences	B. Wycks/K. Martin	Summer 2021	In progress
14	EOC June 22, 2021	Offer EOC members the opportunity to comment on two new motion graphic website video on the Pollara consumers' digitization preferences and job loss	B. Wycks/K. Martin	Summer 2021	In progress

**CAFII Board-Approved 2021 Schedule of Meetings and Events**  
(Approved by Board at October 15/20 Meeting)

**EOC Meetings:** *To be held for 2 hours or 1.5 hours, in alternating months, via teleconference*

- **Tuesday, January 26, 2021** (2:00-4:00 p.m. )
- **Tuesday, February 23, 2021** (2:00 – 3:30 p.m.)  
*(Family Day stat holiday: Monday, February 15)*
- **Tuesday, March 30, 2021** (2:00-4:00 p.m. )  
*(Good Friday, April 2; Easter Monday, April 5)*
- **Tuesday, April 27, 2021** (2:00 – 3:30 p.m.)
- **Tuesday, May 25, 2021** (2:00-4:00 p.m. )  
*(Victoria Day stat holiday: Monday, May 24)*
- **Tuesday, June 22, 2021** (2:00 – 3:30 p.m.)  
*(St. Jean Baptiste Day: Thursday, June 24; Canada Day: Thursday, July 1)*
- **Tuesday, July 20, 2021** , tentative summer meeting (2:00 – 3:30 p.m.)
- **Tuesday, August 17, 2021**, tentative summer meeting (2:00 – 3:30 p.m.)  
*(Civic Stat Holiday: Monday, August 2)*
- **Tuesday, September 14, 2021** (2:00-4:00 p.m. ) *If in-person meeting is possible, switch to 2:00-4:30 p.m. meeting, hosted by TBA.*  
*(Rosh Hashanah: September 7 & 8; Yom Kippur: September 16)*
- **Tuesday, October 26, 2021** (2:00 – 3:30 p.m.)  
*(Thanksgiving Stat Holiday: Monday, October 11)*
- **Tuesday, November 23, 2021** (2:00-4:00 p.m. ) *If in-person meeting is possible, switch to 2:00-4:30 p.m. meeting, hosted by TBA.*
- **EOC Annual Dinner:** TBA in conjunction with September or November 2021 in-person EOC meeting, if public health requirements allow.

**Board Meetings:**

- **Tuesday, April 13, 2021** (2:00-4:00 p.m.; Virtual Meeting possibly followed by CAFII Webinar).
- **Tuesday, June 8, 2021** (2:00-5:00 p.m., immediately preceded by 2021 CAFII Annual Meeting of Members, and possibly followed by CAFII Webinar).
- **Tuesday, October 5, 2021** (2:00-4:00 p.m.; Virtual Meeting possibly followed by CAFII Webinar). *If in-person meeting is possible, switch to 2:20-4:00 p.m. meeting, immediately following liaison lunch and Industry Issues Dialogue with AMF staff executives, hosted by Desjardins Insurance in Levis, Quebec.*
- **Tuesday, December 7, 2021** (2:00-4:00 p.m.; Virtual Meeting possibly followed by CAFII Webinar). *If in-person meeting is possible, switch to 2:00-5:00 p.m. meeting, followed by Reception, hosted by CIBC Insurance.*

**2021 Annual Members Luncheon:**

- **Tentative Date:** Tuesday, March 9, 2021 from 12 Noon to 1:30 p.m. EST (Virtual-only Webinar)

**2020 Board meetings Hosted by:**

None, due to COVID-19 pandemic situation

**2019 Board meetings Hosted by:**

CUMIS (National Club), Manulife Financial, National Bank Insurance, TD Insurance

**2018 Board Meetings Hosted by:**

CAFI; ScotiaLife Financial; BMO Insurance; The Canada Life Assurance

**2017 Board Meetings Hosted by:**

TD Insurance; CAFI; Desjardins; CIBC Insurance

**2016 Board Meetings Hosted by:**

CUMIS Group; Assurant Solutions; RBC Insurance; BMO Insurance

**2015 Board Meetings Hosted by:**

CIBC Insurance; ScotiaLife Financial; Desjardins; Canadian Premier

**Recent Years' Annual Members' Luncheons****2020 Annual Members Luncheon Webinar**

Date: Wednesday, October 21, 2020 from 12 Noon to 1:00 p.m. EDT

Topic: "Setting the Bar Higher: How the Financial Consumer Protection Framework Sets a New Standard for Fairness and Transparency"

Speaker: Frank Lofranco, Deputy Commissioner, Supervision and Enforcement, Financial Consumer Agency of Canada

Venue: Virtual-Only Webinar

**2019 Annual Members Luncheon**

Date: Tuesday, February 19, 2019 from 11:45 a.m. to 2:15 p.m.

Topic: "The Changing Regulatory Environment – Challenges, Risks and Opportunities"

Panelists: Stuart Carruthers, Partner, Stikeman Elliott LLP, Koker Christensen, Partner, Fasken, Jill McCutcheon, Partner, Torys LLP. Panel Moderator: Nicole Benson, CEO, Canadian Premier Life / valeyo

Venue: Arcadian Loft, 401 Bay St., Simpson Tower, 8<sup>th</sup> Floor, Toronto, ON

**2018 Annual Members Luncheon**

Topic: "Leading For Success in A Volatile World"

Speaker: Richard Nesbitt, CEO, the Global Risk Institute

Venue: Arcadian Loft, 401 Bay St., Simpson Tower, 8<sup>th</sup> Floor, Toronto, ON

**2017 Annual Members Luncheon**

Topic: Tomorrow is Today: Insurtech Disruption in the Life and Health Insurance Sector

Speaker: Keegan Iles, Director, Insurance Consulting Leader, PwC Canada

Venue: Arcadian Loft, 401 Bay St., Simpson Tower, 8<sup>th</sup> Floor, Toronto, ON

**2016 Annual Members Luncheon**

Topic: Innovation in Insurance: Opportunities in a Changing Market

Speaker: Alison Salka, Ph.D, Senior Vice President and Director Research, LIMRA

Venue: Arcadian Loft, 401 Bay St., Simpson Tower, 8<sup>th</sup> Floor, Toronto, ON

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 3(a)**

#### **Financial Management Matters--CAFII Financial Statements as at June 30/21**

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#### **Purpose of this Agenda Item – Update**

To explain/elaborate on the Association's financial statements as at 30 June, 2021.

#### **Background Information**

Treasurer Tony Pergola will provide an update on the CAFII Financial Statements as at 30 June, 2021.

#### **Recommendation / Direction Sought – Update**

This is an update only.

#### **Attachments Included with this Agenda Item**

1 attachment.

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 3(b)**

#### **Financial Management Matters—Forecast For CAFII 2021 Fiscal Year as at June 30/21**

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#### **Purpose of this Agenda Item – Update**

To update the EOC on the 2021 fiscal year forecast for the Association as at June 30/21.

#### **Background Information**

Treasurer Tony Pergola will provide an update on the CAFII 2021 fiscal year forecast.

#### **Recommendation / Direction Sought – Update**

This is an update only.

#### **Attachments Included with this Agenda Item**

1 attachment.

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 4(a)(i)**

#### **Committee Updates—Research & Education: In-Development Proposal From Research & Education Committee for a Follow-Up CAFII Research Initiative on Trends, Consumer Demands/Expectations, and Best Practices in Digitization of Insurance**

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#### **Purpose of this Agenda Item – Update/Discussion**

This is an update on a recommendation to the EOC around a new research initiative on digitization.

#### **Background Information**

The recently released Pollara consumer research study on digitization has received positive feedback and good trade press coverage. While it was released in the spring of 2021, it was funded from the 2020 budget. There is a Board-approved 2021 research budget of \$60K for a new initiative in the current fiscal year.

A CAFII Board member has suggested that research on the best practices in the delivery of digital experiences with consumers would be valuable. Furthermore, the Pollara research identified a series of consumer expectations with respect to their digital experience, but research on how to fulfil those could be insightful. Several regulators have also expressed interest in the regulatory implications of digitization.

CAFII's Research & Education Committee discussed this option at a 7 July, 2021 meeting of the Committee, and supported bringing this idea forward to the EOC. CAFII management and R&E Chair Andrea Stuska also met with Melissa Carruthers of Deloitte to discuss whether her firm might be interested in making a proposal around this research.

#### **Recommendation / Direction Sought – Update/Discussion**

This is an update only.

#### **Attachments Included with this Agenda Item**

No attachments.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 4(b)(i)**

**Committee Updates—Media Advocacy: Development of Two CAFII New Motion Graphics Website Videos on (i) Results of Research Project On Insurance Consumers' Digitization Preferences; and (ii) Job Loss CPI**

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### **Purpose of this Agenda Item – Update**

At the 8 June, 2021 CAFII Board meeting, the Board approved the Association's moving forward on motion graphics videos to publish on its website on the recently released Pollara digitization research project, and a formerly shelved video on job loss credit protection insurance (CPI).

### **Background Information**

CAFII produces educational videos as part of its strategy to develop content on its consumer-facing website. These two videos will be produced to highlight a research project undertaken by CAFII (the digitization preferences of consumers), and to outline a product offered by CAFII members (job loss CPI).

### **Recommendation / Direction Sought – Update**

This is an update.

### **Attachments Included with this Agenda Item**

No attachments.




**Agenda Item 4(b)(i)**  
**July 20/21 EOC Meeting**

**Development of Two New CAFII Motion Graphics Website Videos**


**WEBSITE VIDEO – Pollara Research study on COVID-19 impact**  
**“Pandemic changing the way Canadians conduct financial and insurance transactions”**  
**Draft 3 – June 15, 2021**

<b>Audio Comment</b>	<b>Story Board Description</b>	<b>Time</b>	
The COVID-19 pandemic has changed the way many Canadians prefer to handle their financial and insurance transactions.		7 sec	
According to a survey of Canadians with Credit Protection Insurance, or CPI, more than 8 in 10 say the pandemic has made them more comfortable conducting financial and insurance transactions online. And 72% say it has changed the way they want to conduct those transactions in future.	Show Pollara logo and words that say:  <b>Pollara Strategic Insights survey, March, 2021</b>  Show stats mentioned	18 sec	
However, the study also shows that consumers put a high value on personal contact. Almost two-thirds of Canadians with CPI are looking forward to returning to their bank or credit union branch at some point. And 88% say in-branch is how they want to obtain insurance coverage.		17 sec	
Furthermore, 77% of Canadians say they would prefer to submit an insurance claim with the assistance of a branch representative.		8 sec	

The pandemic has also increased consumer interest in obtaining CPI, with almost 7 in 10 Canadians saying they are more likely to obtain it now for a mortgage or Home Equity Line of Credit than before the pandemic.		13 sec	
In terms of customer experience during the pandemic, a full 96% of people who purchased CPI say they are somewhat or very satisfied with the process, a 9 percentage points increase over a similar survey conducted in 2018.		14 sec	
The Pollara survey was commissioned by CAFII to help its members better understand the expectations, preferences, and satisfaction levels of insurance consumers.	Spell out Canadian Association of Financial Institutions in Insurance in the image Insert wording that says: <b>See the full survey results at</b> <a href="https://www.cafii.com/research/">https://www.cafii.com/research/</a>	9 sec	
CAFII: Making insurance simple, accessible and affordable		6 sec	
Total:		1 min, 32 seconds	

**CAFII WEBSITE VIDEO – JOB LOSS INSURANCE**  
**“What is job loss credit protection insurance?”**  
**Final Draft, June 9, 2021**

<b>Audio</b>	<b>Story Board Description</b>	<b>Time</b>	
Like many families, Dave and Susan have debt obligations and a number of payments to make each month. These include a mortgage, a car loan, a home equity line of credit, and a credit card.	Put family names on storyboard graphic: <b><i>Dave, Susan and a child named Todd</i></b>	13 sec	
As the main income earner, Dave is worried that should he lose his job, he and his family won't be able to make their monthly debt payments. So he asks his financial institution about Job Loss Credit Protection Insurance.		12 sec	
Dave discovers that this type of insurance is included with balance protection coverage, which he can purchase for his credit card. He also learns that some banks and credit unions also offer job loss protection as an “add on” to life insurance on mortgages and some types of personal loans.		18 sec	
Job loss insurance can help people such as Dave make certain debt payments for a period of time should he involuntarily lose his employment.		9 sec	
Dave's financial institution offers job loss insurance on some credit products. So he buys balance protection coverage on his credit card, and adds job loss coverage to his life insurance on his mortgage.		12 sec	

This means that should Dave involuntarily lose his employment, his job loss insurance will cover some or all of the monthly payments on his insured debt. These payments will continue for a specific period of time, or until Dave returns to work – whichever comes first.		18 sec	
Knowing they have Job Loss credit protection insurance in place gives Dave and Susan peace of mind. And they are not alone.		8 sec	
According to research, COVID-19 has raised the profile of insurance as an important option for consumers. This includes Job Loss Insurance, with 40% of survey respondents saying they had purchased it during the pandemic, an increase of 17% over 2018.		19	
CAFII: Making insurance simple, accessible and affordable		5 sec	
Total:		1 min, 54 sec*	

\* Last version was 1 min, 31 seconds

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 4(c)**

**Committee Updates—Market Conduct & Licensing: FSRA Follow-up Consultation on Revised UDAP Rule, with August 11/21 Submission Deadline**

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### **Purpose of this Agenda Item – Update**

An update on a regulatory consultation to which CAFII will make a submission.

### **Background Information**

FSRA has announced that it will seek input on its revisions to the Unfair or Deceptive Acts or Practices Rule, which will be posted on the FSRA website on 14 July, 2021 with an 11 August, 2021 deadline for comments.

### **Recommendation / Direction Sought – Update**

This is an update.

### **Attachments Included with this Agenda Item**

2 attachments.

**Agenda Item 4(c)(i)(1)  
July 20/21 EOC Meeting**

**From:** Jennifer Chan <Jennifer.Chan@fsrao.ca>

**Sent:** July-12-21 9:44 AM

**To:** Neil Paton <neil.paton@edgebenefits.com>; Mike McClenahan <mike.mcclenahan@bbd.ca>;  
eskwarek@advocis.ca; gpollock@advocis.ca; Danica Sergison <DSergison@advocis.ca>; James Ryu  
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Erica Hiemstra <Erica.Hiemstra@fsrao.ca>; Kevin Lim <Kevin.Lim@fsrao.ca>

**Subject:** Update: Proposed UDAP Rule Upcoming Second Consultation

Hello All,

Thank you for participating in FSRA's first public consultation on the Proposed Unfair or Deceptive Acts or Practices (UDAP) Rule this past Winter and Spring. We appreciate the feedback that you provided through your written submissions and follow-up meetings.

I am sending you this email to provide you with advance notice that FSRA will be initiating a second consultation on revisions to the Proposed UDAP Rule on July 14, 2021. The new consultation will be hosted on FSRA's website and will include the revised Rule. The [web page](#) for the first consultation will also be updated with a document that includes a summary of feedback received and FSRA's responses.

The amended UDAP Rule is intended to deliver on FSRA's commitment to promoting safety, fairness and choice for Ontario's insurance consumers. The Proposed Rule has been drafted in an outcomes-focused manner that enhances consumer protection and provides clearer definitions of UDAP. Once approved, the new UDAP Rule will be a key step towards principles-based regulation that encourages innovation, competition and choice.

FSRA welcomes any further feedback from you on the Proposed Rule. We encourage you to visit our [website](#) on or after July 14 and submit feedback through the online portal no later than August 11.

Thank you again for your engagement on this important rule.

**Jennifer (Jenn) Chan**

(she/her)

Senior Policy Analyst, Market Conduct Policy Division  
Financial Services Regulatory Authority (FSRA)

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[www.fsrao.ca](http://www.fsrao.ca)

**Financial Services Regulatory Authority of Ontario**  
**Notice of Changes and Request for Further Comment**  
**Proposed Rule 2020-002**  
**Unfair or Deceptive Acts or Practices (UDAP)**

**Introduction**

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the **FSRA Act**), the Financial Services Regulatory Authority of Ontario (**FSRA** or the **Authority**) is proposing Rule 2020-002 – *Unfair or Deceptive Acts or Practices* (the **Proposed Rule**) under the *Insurance Act*.

FSRA posted a Notice and Request for Comment on the Proposed Rule (the **Original Notice**) on December 18, 2020, for a period of 90-days as required by the FSRA Act. FSRA is now proposing amendments to the Proposed Rule based on submissions and comments received through the consultation, which closed on March 18, 2021. Amendments to the Proposed Rule are set out below and provided in Appendix B.

With this Notice of Changes and Request for Further Comment, FSRA is seeking public comment on the Revised Rule in accordance with section 22(9) of the FSRA Act. Interested persons are invited to make written representations to FSRA with respect to the Revised Rule by August 11, 2021.

A Summary of Comments and FSRA Responses has been posted on [FSRA's webpage for the 90-day consultation](#).

**Purpose of the Proposed Rule**

The Proposed Rule is intended to define conduct which constitutes a UDAP through rulemaking authority for the purposes of section 439 of the *Insurance Act*. The [Original Notice](#) provides an expanded explanation of the substance, purpose and development of the Proposed Rule.

FSRA is exercising rulemaking authority provided under paragraph 67 of section 121.0.1(1) of the *Insurance Act* to prescribe, “any activity or failure to act that constitutes an unfair or deceptive act or practice under the definition of “unfair or deceptive acts or practices” in section 438 of the *Insurance Act* and prescribing requirements that, if not complied with, are considered UDAP.

UDAP are currently prescribed in O. Reg 7/00 (**the Regulation**) under the *Insurance Act*, which the Proposed Rule is intended to replace. According to the Regulation, actions defined as a UDAP may apply to insurers (including the officers, employees or agents of insurers), brokers, intermediaries, adjusters and providers of goods and/or services engaged in the insurance sector.

## Concise Statement of Purpose of Proposed Changes

The Proposed Rule is based on the Regulation and provides a regulatory framework more in keeping with the FSRA Act and current market conditions. Amendments to the Proposed Rule are intended to align with the guiding principles set out in the Original Notice and advance the following statutory objects, as stated in the FSRA Act:

- Regulate and generally supervise the regulated sectors;
- Contribute to public confidence in the regulated sectors;
- Deter deceptive or abusive conduct, practices and activities by the regulated sectors;
- Promote high standards of business conduct;
- Promote transparency and disclosure of information by the regulated sectors;
- Protect the rights and interests of consumers; and
- Foster strong, sustainable, competitive and innovative financial services sectors.

## Summary of Written Comments Received

FSRA requested input from all interested parties in the Original Notice, which emphasized five target questions concerning drafting, implementation and consumer protection. FSRA received 27 submissions, 24 comments and 10 questions from interested members of the public, including insurers, brokers, agents, lawyers, health care professionals, car rental operators and consumer advocates. After the consultation period closed, FSRA held follow-up meetings with industry associations, insurers, consumer advocacy groups and organizations representing service providers. A list of those who provided written submissions is outlined in Appendix A.

Stakeholders comments on the Proposed Rule included feedback on the following topics (not exhaustive):

- **Outcomes-focused Drafting / Reasonable Person Test** – Stakeholders expressed support for and sought clarity respecting FSRA’s outcomes-focused drafting, including the reasonable person test, the use of general or subjective terms, liability under the proposed rule and the consideration of size and type of business in assessments of reasonableness.
- **Rebating / Incentives – Property and Casualty Insurance Sector** – Stakeholders expressed general support for the new provision on incentives, although some raised concerns about relaxing the prohibition on incentives, including in relation to anti-competitive practices, potential consumer harm,



adding complexity to the sector and possible conflict with the Ontario *Registered Insurance Brokers Act* and associated regulations.

- **Rebating / Incentives – Life and Health Insurance Sector** – Stakeholders in the life and health insurance sector raised concerns about unsuitable sales, unfair sales practices, rate instability, creating an unlevel playing field and taxation issues, with some recommending that incentives be prohibited in the case of life insurance companies, agents and group insurance products.
- **Prohibited Conduct in Auto Insurance** – Stakeholders raised various concerns respecting prohibited conduct in the auto insurance sector, including the use of credit scores, standards related to rating and risk classification, the variance of processes and affiliated insurer conduct.
- **Implementation** – Several stakeholders raised questions about the implementation of the Proposed Rule, including public engagement and FSRA’s approach to compliance and enforcement.
- **Gaps** – Stakeholders identified perceived gaps in the Proposed Rule, including improved referencing and better capturing the substance of the Regulation as intended in with respect to certain provisions.
- **Other Issues**– Stakeholders raised a range of other issues including harmonization, noncompliance with the law, definitions, unfair conduct, the exemption for lawyers and paralegals and FSRA’s approach to regulating.

A more detailed summary, including a restatement of FSRA’s intent given stakeholder feedback, is provided in the [Summary of Comments and FSRA Responses](#).

## Reasons for Proposed Changes

FSRA proposes to make the following amendments to the Proposed Rule.

### 1. Amended the definitions, including with respect to:

- i. **“contract of insurance” under s. 1(1)(v) to properly reference life insurance and accident and sickness insurance definitions under the Insurance Act.**

This change is being made in response to recommendations that the Proposed Rule reference s. 171(1) and s. 290 to ensure that all relevant types of insurance contracts are clearly in scope.

- ii. **the clarification under 1(2) by substituting the words “proportionate to the nature, size, complexity, operations and risk profile” for “commensurate with the insurer’s size and type of business” and removing provision (ii).**

s. 1(2)(i) is being amended in response to stakeholders seeking clarity or expressing concern about considerations of size and type of operations in relation to the “reasonable person” test. The change is intended to further clarify the sorts of considerations that FSRA would consider in assessing liability for action or inaction that could reasonably be expected to result in UDAP outcomes.

FSRA is removing s. 1(2)(ii) of the Proposed Rule as the entire *Human Rights Code* is intended to be in scope of the Proposed Rule, whereas the proposed clarifying provision could be interpreted as providing an exclusive list of provisions.

**2. Expanded the scope of the exemptions for lawyers and paralegals under s. 2(3) so that it applies to all of s. 6 of the Proposed Rule; and, for clarity, added a definition for Authorized Representatives under s. 1 and corresponding changes throughout.**

This change is being made in response to a stakeholder listing situations under s. 6(4) and s. 6(5) where lawyers and paralegals may be legitimately involved in matters that relate to the signature of claims forms or communicating related information that warrant exemption from requirements under the Proposed Rule.

**3. Reordered language in s. 5(1) to improve clarity and added the word “adjudication” to the activities listed in the provision.**

This change is being made in response to a stakeholder recommending that the word “adjudication” be added to the Proposed Rule given that the terms “adjust” and “settle claims” do not apply to the life and health insurance sector.

**4. Expanded the scope of 5(1)(vi) to include providing claimants “clear, comprehensive and accurate information.”**

This change is being made in response to stakeholder concerns that information be provided to claimants in a manner that is both timely, as the section already required, and of high quality.

**5. Broadening the reference under s. 7(1)(ii) to incentives prohibited by the law and corresponding changes under s. 7(1) to enhance clarity throughout the provision on incentives.**

These changes are intended to cover off prohibitions under other legislation, such as the *Registered Insurance Brokers Act*, ensure that the provision remains appropriately focused given broadened reference to “law”; and enhance clarity respecting the provision’s intent as it concerns the promotion or sale of insurance.

FSRA will be monitoring automobile insurance incentive program uptake as part of its ongoing supervision and take action when required. FSRA may request information from insurers using its authority under the *Insurance Act*.

**6. Continue to prohibit life insurance and accident and sickness insurance in relation to s. 7(1)(i)-(iv).**

This change is being made in response to life and health insurance stakeholder concerns regarding potential consumer harms associated with removing the Regulation's prohibition against incentives. Through the course of examining received input, FSRA concluded that further stakeholder input and discussion are required in order to fully assess and address potential consumer risks. Therefore, the existing prohibition against incentives in the life and health sector will remain in force in the Proposed Rule.

**7. Added provisions to preserve the substance of the Regulation as intended by the Proposed Rule:**

- i. **s. 8(2) to prescribe persons being charged for any premium or fee other than as stipulated in a contract of insurance; and**
- ii. **s. 6(4)(ii) to prescribe claimants signing forms prior to their completion in full.**

These changes are being made in response to gaps noted by stakeholders where the new provisions did not sufficiently preserve the substantive intent of the Regulation under s 1.8 and s. 3(2)7 as intended by the Proposed Rule.

**8. Added a coming into force clause, which would bring the Proposed Rule into force on the date that supporting consequential amendments to the *Insurance Act* related to the enforcement of the Proposed Rule come into force.**

These changes are being made to provide a trigger for the coming into force of the Proposed Rule. According to this clause, the proposed rule will come into force when unproclaimed amendments to the *Insurance Act* brought forward in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* are proclaimed into force.

**9. Technical, consequential and/or stylistic changes throughout the Proposed Rule to align with drafting conventions or the legislation, provide correct referencing, ensure consistency, enhance clarity and other minor improvements.**

FSRA identified additional recommended non-substantive and technical improvements throughout the Proposed Rule while carrying out its review in response to received stakeholder feedback.

A more detailed summary of stakeholder feedback informing proposed amendments is provided in the [Summary of Comments and FSRA Responses](#).

## **Text of Revised Rule**

For the text of the amended Proposed Rule, please see Appendix B.

## **Comments**

Interested parties are invited to make written representations with respect to amendments to the Proposed Rule. Submissions received by August 11, 2021 will be considered.

Submissions should be submitted through the submission system on [FSRA's website](#).

Under the FSRA Act, FSRA is required to make all written representations publicly available. As a result, all submissions received will be posted on [FSRA's website](#) in a timely manner.

Appendix A – List of commenters

Appendix B – Revised UDAP Rule (Blackline Version)

Appendix C – Revised UDAP Rule (Clean)

## **Appendix A – List of Submissions**

The following stakeholders provided written submissions on the Proposed Rule

### **Public Interest Advocacy Groups**

Citizens Against Unfair Insurance Practices  
FAIR Association of Victims for Accident Insurance Reform.

### **Insurance Industry Associations**

Canadian Association of Direct Relationship Insurers (CADRI)  
Canadian Association of Financial Institutions in Insurance (CAFI)  
Canadian Life and Health Insurance Association (CLHIA)  
Insurance Bureau of Canada (IBC)  
Ontario Mutual Insurance Association (OMIA)  
Travel Health Insurance Association of Canada (THIA).

### **Brokers / Advisors Industry Associations**

Advocis  
Canadian Association of Independent Life Insurance Brokerage Agencies(CAILBA)  
Independent Financial Brokers of Canada (IFB)  
Insurance Brokers Association of Ontario (IBAO)  
Conference for Advanced Life Underwriting (CALU)  
Canadian Group Insurance Brokers (CGIB)

### **Other Associations**

Associated Canadian Car Rental Operators (ACCRO)  
Coalition of Health Professional Associations in Ontario Automobile Insurance Services  
Canadian Society of Chiropractic Evaluators  
College of Chiropractic Orthopaedic Specialists  
Ontario Association of Social Workers(OASW)  
Ontario Trial Lawyers Association(OTLA)  
Third-Party Administrators' Association of Canada (TPAAC).

### **Insurers**

Allstate  
Aviva  
CAA Insurance  
Canada Life  
Desjardins  
The Co-operators  
Wawanesa

### **Self-Regulatory Organizations**

The Law Society of Ontario (LSO)

## Appendix B – Amended Proposed Rule [2020-002] Unfair or Deceptive Acts or Practices (Blackline Version)

### 1 Interpretation

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,

(iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf.

(iii)(iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,

(iv)(v) “Contract of insurance” means:

- (a) for a contract of life insurance, has the meaning ascribed to such term in s. 174171(1) of the Act,
- (b) for a contract of group accident and sickness insurance, has the meaning ascribed to such term in s. 293290 of the Act, and
- (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,

(v)(vi) “Credit information” means information about a person’s creditworthiness, including ~~the~~ that person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from ~~his or her~~ such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,

(vi)(vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,

(vii)(viii) “Prohibited factor” means:

- (a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under

the Act, insurers are prohibited from using in the manner described in that section,

- (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990, (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or
- (c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),

~~(viii)~~(ix) “Reasonable person” means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,

~~(ix)~~(x) “Schedule” means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are ~~still~~ active claims,

~~(x)~~(xi) “Substantially deficient” means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the ~~purpose~~purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of ~~the~~those goods or services,

~~(xi)~~(xii) “Unfair discrimination” means discrimination which contravenes the ~~provisions of the~~ Ontario *Human Rights Code* or any other discrimination which FSRA, ~~in its published guidance~~, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and

~~(xii)~~(xiii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of ~~the~~those goods or services, would not charge or seek, or would not expect a reasonable person, who is in the position of the recipient of the goods or services, to accept.

1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.

~~1(2)~~ — For greater clarity:

1(3) in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise

commensurate ~~with~~to that ~~insurers~~insurer's nature, size, complexity, operations and type of business, and risk profile.

~~(i) Sections 22, 25(2), 25(2.1), 25(2.2) and 25(3)(a)-(b) of the Ontario Human Rights Code are applicable in assessing whether discrimination amounts to unfair discrimination under this Rule.~~

1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or legal authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or legal authorized representative,

(i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person; or

(ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.

1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

## 2 Unfair or Deceptive Act or Practice

2(1) For the purposes of the definition of "unfair or deceptive act or practice" in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.

2(2) For the ~~purpose~~purposes of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule:

(i) if the action or conduct, including inaction or omission is committed by:

(a) an agent, broker, adjuster, insurer or any director, officer, employee or legal authorized representative of an agent, broker, adjuster or insurer, or

(b) any person, or any director, officer, employee or legal authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,



then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances ~~thethat~~ person knew about or, with reasonable diligence under the circumstances, ought to, have known~~-,~~ or

- (ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances ~~thethat~~ person knew about or ought to, with reasonable diligence under the circumstances, have known.

- 2(3) ~~Section S.~~ 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in ~~sections 6(1), 6(2) and 6(3).~~ s. 6 of this Rule.

### **3 Non-Compliance with Law**

- 3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.
- 3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.
- 3(3) Non-compliance with ~~the requirements~~ any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

### **4 Unfair Discrimination**

- 4(1) Unfair Discrimination~~:-~~ 1
  - (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
  - (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

### **5 Unfair Claims Practices**

5(1) ~~Resolution~~Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim ~~which would be considered unreasonable or unfair, such as, including~~ but not limited to:

- (i) treating a claimant in an arbitrary, capricious or malicious manner,
- (ii) not acting in good faith,
- (iii) seeking a result which is inequitable or inconsistent with ~~the~~a claimant's rights ~~of the claimant~~ under the contract,
- (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
- (v) communicating in an untimely manner or misrepresenting the rights of ~~the~~a claimant or obligations of ~~the~~an insurer under the contract, or
- (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

5(2) With respect to automobile insurance:

- (i) non-compliance with the Schedule, including but not limited to:
  - (a) payment for goods or services not being made, or
  - (b) the cost of an assessment not being paid,without reasonable cause, within the time period prescribed in the Schedule.
- (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if ~~the~~that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or
- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

## **6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant**

6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.

- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.

6(4) With respect to ~~auto~~automobile insurance,

- (i) a claimant signing or being asked to sign ~~a claim~~any form or any other document,
- (a) in a form approved by the Chief Executive Officer, or
- (b) that is specified in a guideline applicable for the purposes of the Schedule,
- before the goods or services related to such a form or document have been provided and which provides verification that a good or service was provided to such claimant, or
- (ii) a claimant signing, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a ~~Guideline~~guideline applicable for the purposes of the Schedule~~before the goods or services related to such a form or document have been provided.~~

~~6(4)~~6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person, who is in the position of the intended recipient, would consider false, misleading or deceptive.

## 7 Incentives

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
- (i) as an incentive or inducement for a person to take an action or make a decision ~~that would encourage that person~~relating to buy an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable ~~insurance product~~action or decision by a reasonable person licensed to sell such an insurance product,
- (ii) which is otherwise prohibited ~~under the Act, Regulations or Rules~~by law,
- (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,

(iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including, but not limited to, tied selling or predatory pricing, ~~or~~

(v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or

~~(v)~~(vi) if related to automobile insurance, which is, based, in whole or in part, on, or is calculated by reference to, prohibited factors.

7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.

~~7(2)~~7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.

~~7(3)~~7(4) For the ~~purpose~~purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.

~~7(4)~~7(5) For the ~~purpose~~purposes of this section, a gift or thing of value will not be considered an incentive or inducement if ~~the~~that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

## 8 Misrepresentation

8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of ~~the~~such recipient would consider to be inappropriate, inaccurate or misleading, respecting:

- (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
- (ii) an insurance claim, the claims process or whether a policy provides coverage, or
- (iii) any comparison of contracts of insurance.

8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

## 9 Prohibited Conduct in ~~Auto~~Automobile Insurance Quotations, Applications or Renewals

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to:
- (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
  - (ii) using credit information or a prohibited factor,
  - (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
  - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
  - (v) misclassifying a person or vehicle under the risk classification system used by ~~the~~an insurer or that ~~the~~an insurer is required by law to use,
  - (vi) making the issuance or variation of a policy of automobile insurance conditional on ~~the~~an insured having or purchasing another insurance policy,
  - (vii) engaging in unfair discrimination,
  - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
  - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
  - (x) communicating in an untimely manner or misrepresenting the rights of ~~the~~a claimant or obligations of ~~the~~an insurer under the automobile insurance contract, ~~or~~
  - ~~(xi) any other practice or conduct which the Authority has identified in published guidance as unfair treatment for the purpose of this section.~~
- 9(2) ~~credit~~Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than:

- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under subsections 227-(1) of the Act, or
- (ii) in accordance with the consent obtained in compliance with the ~~Personal Information Protection and Electronic Documents Act (Canada)~~ applicable privacy laws of the person to whom the information relates.

## **10 Affiliated Insurers**

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.
- 10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to ~~the~~an insured or potential insured, having regard to all of the circumstances, including but not limited to:
- (i) each insurer’s declination grounds,
  - (ii) each insurer’s rates and risk classification systems,
  - (iii) each insurer’s method of distribution; ~~or~~
  - (iv) whether the insurers only recently became affiliated.

## **11 Coming into Force**

- 11(1) This Rule comes into force on the date that the amendments set out in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures)*, 2021 come into force.

**Appendix C – Amended Proposed Rule [2020-002]  
Unfair or Deceptive Acts or Practices (Clean Version)**

**1 Interpretation**

1(1) In this Rule,

- (i) “Act” means the *Insurance Act*, R.S.O. 1990, c. I.8, as amended,
- (ii) “Affiliated insurer” means an insurer that is considered to be affiliated with another insurer under s. 414(3) of the Act,
- (iii) “Authorized representative” means a person who is authorized by another person to act on such person’s behalf,
- (iv) “Claimant” means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,
- (v) “Contract of insurance” means,
  - (a) for a contract of life insurance, has the meaning ascribed to such term in s. 171(1) of the Act,
  - (b) for a contract of accident and sickness insurance, has the meaning ascribed to such term in s. 290 of the Act, and
  - (c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to “contract” in s. 1 of the Act,
- (vi) “Credit information” means information about a person’s creditworthiness, including a person’s credit score, credit-based insurance score, credit rating and information about or derived in whole or in part from such individual’s occupation, previous places of residence, number of dependants, educational or professional qualifications, current or previous places of employment, estimated income, outstanding debt obligations, past debt payment history, cost of living obligations and assets,
- (vii) “Declination grounds” means the grounds on which an insurer is authorized under the Act to decline to issue or to terminate or refuse to renew a contract of automobile insurance or to refuse to provide or continue a coverage or endorsement,
- (viii) “Prohibited factor” means,

- (a) any reason or consideration that, under section 5 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), made under the Act, insurers are prohibited from using in the manner described in that section,
  - (b) any fact or factor that, under section 16 of Regulation 664 of the Revised Regulations of Ontario, 1990 (Automobile Insurance), insurers are prohibited from using as elements of a risk classification system, or
  - (c) any other factor that the Authority determines is an estimate of, a surrogate for or analogous to a prohibited factor referred to in clause (a) or (b),
- (ix) “Reasonable person” means a reasonable and prudent person in the same or similar circumstances as, and in the position of, and/or with the same licensing status of, the person in question, having regard to any applicable professional standards, best industry practices or codes of conduct, who has full knowledge of all and any relevant facts or circumstances,
  - (x) “Schedule” means the Statutory Accident Benefits Schedule — Effective September 1, 2010 and all previous Statutory Accident Benefit Schedules for which there are active claims,
  - (xi) “Substantially deficient” means that the delivery of goods or services fell below the standard required in the oral or written agreement to provide those goods or services to an extent or in such a manner that a significant part or the whole of the goods or services was unfit for the purposes intended from the perspective of a reasonable person who is in the position of the intended recipient of those goods or services,
  - (xii) “Unfair discrimination” means discrimination which contravenes the Ontario *Human Rights Code* or any other discrimination which FSRA, has identified as not being reasonable or bona fide in the provision or administration of insurance or goods or services related to insurance, and
  - (xiii) “Unreasonable consideration” means an amount being paid or sought for goods or services provided to a claimant that a reasonable person, in the position of the provider of those goods or services, would not charge or seek, or would not expect a reasonable person who is in the position of the recipient of the goods or services, to accept.
- 1(2) In addition to s. 1(1) of this Rule, if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.
- 1(3) For greater clarity, in determining what amounts to a reasonable person who is an insurer, the reasonable person will be deemed to have a level of knowledge and expertise commensurate to that insurer’s nature, size, complexity, operations and risk profile.



- 1(4) If a person has committed an unfair or deceptive act or practice, then every director, officer, employee or authorized representative of that person shall be deemed to have committed an unfair or deceptive act or practice if that director, officer, employee or authorized representative,
- (i) causes, authorizes, permits, acquiesces or participates in the commission of an unfair or deceptive act or practice by the person, or
  - (ii) fails to take all reasonable care in the circumstances to prevent the person from committing an unfair or deceptive act or practice.
- 1(5) References in this Rule to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018 came into force until the Chief Executive Officer approves a subsequent form for the purposes of this section.

## **2 Unfair or Deceptive Act or Practice**

- 2(1) For the purposes of the definition of “unfair or deceptive act or practice” in section 438 of the Act, conduct, including inaction or omission, which results in, or could reasonably be expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule is prescribed as an unfair or deceptive act or practice.
- 2(2) For the purposes of determining what conduct, including inaction or omission could be reasonably expected to result in the outcomes, events or circumstances set out in s. 3 through s. 10 of this Rule,
- (i) if the action or conduct, including inaction or omission is committed by,
    - (a) an agent, broker, adjuster, insurer or any director, officer, employee or authorized representative of an agent, broker, adjuster or insurer, or
    - (b) any person, or any director, officer, employee or authorized representative of that person, who provides goods or services to a claimant which are fully or partially expected to be paid for through the proceeds of insurance, including for greater clarity and without limitation, automotive repair, towing and storage services,
- then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's business or profession with full knowledge of all and any facts and circumstances that person knew about or, with reasonable diligence under the circumstances, ought to, have known, or

- (ii) if the action or conduct, including inaction or omission is committed by a person not listed in (i) then an outcome, event or circumstance will be deemed to be reasonably expected if it would be expected by a reasonable person in that person's position with knowledge of all and any relevant facts and circumstances that person knew about or ought to, with reasonable diligence under the circumstances, have known.
- 2(3) S. 2(1) of this Rule does not apply to conduct by a lawyer or paralegal with respect to activities that constitute practising law or providing legal services, as the case may be, as authorized under the *Law Society Act* which results in the outcomes listed in in s. 6 of this Rule.

### **3 Non-Compliance with Law**

- 3(1) The commission of any act prohibited under the Act, or under any regulation or Authority rule made under the Act.
- 3(2) Any provision of the Act, or a regulation or Authority rule made under the Act, not being complied with resulting in the unfair treatment or unfair discrimination of a person.
- 3(3) Non-compliance with any requirement under the Act or a regulation or Authority rule made under the Act, by the subject of an examination or purported examination.

### **4 Unfair Discrimination**

- 4(1) Unfair Discrimination,
  - (i) between individuals of the same class and of the same expectation of life, in the amount or payment or return of premiums, or rates charged for contracts of life insurance or annuity contracts, or in the dividends or other benefits payable on such contracts or in the terms and conditions of such contracts, or
  - (ii) in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification.

### **5 Unfair Claims Practices**

- 5(1) Unreasonable or unfair resolution or delay in the adjudication, adjustment or settlement of any claim, including but not limited to,
  - (i) treating a claimant in an arbitrary, capricious or malicious manner,
  - (ii) not acting in good faith,
  - (iii) seeking a result which is inequitable or inconsistent with a claimant's rights under the contract,

- (iv) imposing unreasonable or unfair costs or expenses on the (1) claims handling or dispute resolution processes, (2) goods or (3) services,
- (v) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the contract, or
- (vi) any adjuster or insurer not following fair, simple and accessible claims handling procedures or not providing a claimant timely, clear, comprehensive and accurate information about the status of its claim, the process for settling its claim or reasons for a decision made respecting its claim.

5(2) With respect to automobile insurance,

- (i) non-compliance with the Schedule, including but not limited to,
  - (a) payment for goods or services not being made, or
  - (b) the cost of an assessment not being paid,

without reasonable cause, within the time period prescribed in the Schedule,
- (ii) the making of a statement by or on behalf of an insurer for the purposes of adjusting or settling a claim if that insurer knows or ought to know that the statement misrepresents or unfairly presents the findings or conclusions of a person who conducted an examination under section 44 of the Schedule, or
- (iii) a conflict of interest not being disclosed to a person who claims statutory accident benefits.

## **6 Fraudulent or Abusive Conduct Related to Goods and Services Provided to a Claimant**

- 6(1) Consideration being paid or sought for goods or services in connection with a claim under a contract of insurance which were not provided to a claimant or were provided in a substantially deficient manner.
- 6(2) A referral fee being solicited, demanded, paid or accepted in connection with goods or services provided to a claimant.
- 6(3) Unreasonable consideration being paid or sought for goods or services provided to a claimant.
- 6(4) With respect to automobile insurance,
  - (i) a claimant signing or being asked to sign any form or any other document,

- (a) in a form approved by the Chief Executive Officer, or
- (b) that is specified in a guideline applicable for the purposes of the Schedule,
  - before the goods or services related to such a form or document have been provided and which provides verification that a good or service was provided to such claimant, or

- (ii) a claimant signing, before it has been fully completed, any form or any other document that is required to be in a form approved by the Chief Executive Officer or any form or document that is specified in a guideline applicable for the purposes of the Schedule.

6(5) Information, being communicated about the business, billing practices or licensing status of a person who provides or offers to provide goods or services to a claimant which a reasonable person who is in the position of the intended recipient, would consider false, misleading or deceptive.

## **7 Incentives**

- 7(1) Payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, to an insured or person applying for insurance,
- (i) as an incentive or inducement for a person to take an action or make a decision relating to an insurance product which would not, considering the options generally available in the marketplace, be recommended as a suitable action or decision by a reasonable person licensed to sell such an insurance product,
  - (ii) which is otherwise prohibited by law,
  - (iii) in a manner which a reasonable person licensed to sell such a product would not consider to be clearly and transparently communicated to intended recipients or applied consistently,
  - (iv) in a manner which involves unfair discrimination or contributes to an anti-competitive practice, including but not limited to, tied selling or predatory pricing,
  - (v) as an incentive or inducement to purchase, renew or retain an insurance product, which provides coverages within the classes of life or accident and sickness insurance, or
  - (vi) if related to automobile insurance, which is, based, in whole or in part, on, or is calculated by reference to, prohibited factors.

- 7(2) For greater clarity, s. 7(1)(i) to 7(1)(v) of this Rule apply to any payment, rebate, consideration, allowance, gift or thing of value being offered or provided, directly or indirectly, as an incentive or inducement to purchase, renew or retain automobile insurance.
- 7(3) An agreement being made or offered to be made, directly or indirectly, for a premium to be paid that is different from the premium set out in the contract of insurance.
- 7(4) For the purposes of this section, clear and transparent communication includes but is not limited to providing an explanation of how the amount or value of any payment, rebate, consideration, allowance, gift or thing of value is calculated.
- 7(5) For the purposes of this section, a gift or thing of value will not be considered an incentive or inducement if that gift or thing of value is a good or service reasonably related to reducing the risk insured by the contract of insurance to which it is related.

## **8 Misrepresentation**

- 8(1) A person receiving information, promotional materials, or advice in any form, including audio, visual, electronic, written and oral means, which a reasonable person in the position of such recipient would consider to be inappropriate, inaccurate or misleading, respecting,
  - (i) the terms, benefits or advantages of any contract of insurance issued or to be issued,
  - (ii) an insurance claim, the claims process or whether a policy provides coverage, or
  - (iii) any comparison of contracts of insurance.
- 8(2) A person being charged for any premium or fee other than as stipulated in a contract of insurance.

## **9 Prohibited Conduct in Automobile Insurance Quotations, Applications or Renewals**

- 9(1) Unfair treatment by an agent, broker or insurer to a consumer with regard to any matter relating to quotations for automobile insurance, applications for automobile insurance, issuance of contracts of automobile insurance or renewals of existing contracts of automobile insurance, including but not limited to,
  - (i) variance of formal or informal processes and procedures which make it more difficult for certain persons to interact with an insurer, broker or agent for the purpose of discouraging or delaying such persons from applying for, renewing or obtaining automobile insurance,
  - (ii) using credit information or a prohibited factor,

- (iii) asking or requiring a person to provide consent to the collection, use or disclosure of any credit information, other than for the sole purpose of considering whether to provide premium financing,
  - (iv) applying any other information in a manner that is subjective or arbitrary or that bears little or no relationship to the risk assumed or to be assumed by the insurer,
  - (v) misclassifying a person or vehicle under the risk classification system used by an insurer or that an insurer is required by law to use,
  - (vi) making the issuance or variation of a policy of automobile insurance conditional on an insured having or purchasing another insurance policy,
  - (vii) engaging in unfair discrimination,
  - (viii) treating a consumer in an arbitrary, capricious or malicious manner,
  - (ix) not acting in good faith or behaving in a way that causes consumers to have a reasonable apprehension of bias, or
  - (x) communicating in an untimely manner or misrepresenting the rights of a claimant or obligations of an insurer under the automobile insurance contract.
- 9(2) Credit information about a person being collected, used or disclosed in any manner in connection with automobile insurance, other than,
- (i) for the limited purposes, if any, described in the form of application for insurance approved by the Chief Executive Officer under s. 227(1) of the Act, or
  - (ii) in accordance with the consent obtained in compliance with applicable privacy laws of the person to whom the information relates.

## **10 Affiliated Insurers**

- 10(1) An agent, broker or insurer providing a quote or renewal for automobile insurance from an insurer, and not offering the lowest rate available from amongst that insurer and its affiliated insurers.
- 10(2) In this section “lowest rate available” is the lowest rate amongst an insurer and its affiliates which is reasonably available to be offered to an insured or potential insured, having regard to all of the circumstances, including but not limited to,
- (i) each insurer’s declination grounds,

- (ii) each insurer's rates and risk classification systems,
- (iii) each insurer's method of distribution, or
- (iv) whether the insurers only recently became affiliated.

#### **11 Coming into Force**

- 11(1) This Rule comes into force on the date that the amendments set out in Schedule 5 of the *Protecting the People of Ontario Act (Budget Measures), 2021* come into force.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 4(c)(ii)**

**Committee Updates—Market Conduct & Licensing: FSRA Inter-Related Consultations on (i) Proposed Sound Business and Financial Practices of Credit Unions and Caisses Populaires Rule; and (ii) Credit Union Market Conduct Framework Approach and Interpretation Guidance**

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### **Purpose of this Agenda Item – Update**

An update on this in-progress FSRA consultation on two market conduct-related documents covering credit unions and caisses populaires; followed by a brief EOC discussion about them.

### **Background Information**

EOC member Isabelle Choquette of Desjardins Insurance has brought these two FSRA inter-related credit unions/caisses populaires market conduct-related consultations to CAFII's attention, and would like to find out what EOC members think of what FSRA is proposing.

### **Recommendation / Direction Sought – Update**

This is an update, followed by a brief EOC discussion.

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### **Attachments Included with this Agenda Item**

3 attachments.

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***Agenda Item 4(c)(ii)(1)  
July 20/21 EOC Meeting***

**FSRA consultation on Proposed Sound Business and Financial Practices of Credit Unions and Caisses Populaires Rule**

ID

2021-004

Type

Policy

Sector

Credit Unions and Caisses Populaires

Status

Open

Date

June 14, 2021

Comment Due Date

September 14, 2021

Summary

The Financial Services Regulatory Authority of Ontario (FSRA) is making the supervision of Ontario's credit unions more transparent and effective.

FSRA is holding a 90-day consultation on its Proposed Sound Business and Financial practices of Credit Unions and Caisses Populaires Rule.

**Overview**

The Sound Business and Financial Practices of Credit Unions and Caisses Populaires Rule introduces a principles-based approach to business and financial practices by setting outcomes for:

- Member governance
- Board of Directors governance
- Senior management
- Operational management
- Internal audit, compliance, and finance functions
- Enterprise risk management
- Subsidiary governance

The Proposed Rule will be made under the new Credit Unions and Caisses Populaires Act, 2020, once proclaimed into force. It will replace Deposit Insurance Corporation of Ontario (DICO) By-Law No. 5.

## Participate

FSRA is holding a 90-day consultation. FSRA invites comments from **June 14, 2021 to September 14, 2021**. FSRA is hosting a technical briefing on **June 24, 2021** for interested parties. Please register at [FSRA's Live Webinar on Ontario's Proposed New Credit Union Rules](#)

Review the Proposed Rule and provide your comments by selecting "[Submit a comment or ask a question.](#)"

### **FSRA Consultation on Credit Union Market Conduct Framework Approach and Interpretation Guidance**

ID

2021-007

Type

Policy

Sector

Credit Unions and Caisses Populaires

Status

Open

Date

June 28, 2021

Comment Due Date

August 12, 2021

Summary

The Financial Services Regulatory Authority of Ontario (FSRA) continues to promote high standards of business conduct and protect credit union members' interests.

FSRA is holding a 45-day consultation on its [Proposed Market Conduct Framework Approach and Interpretation Guidance](#).

## Overview

The proposed Interpretation and Approach Guidance aims to:

- Protect members and depositors.
- Improve standards and best practices; and
- Enhance confidence in the sector.

The proposed Interpretation and Approach Guidance interprets the existing Standards of Sound Business and Financial Practices (By-law No. 5) and section 102 of the Credit Unions and Caisses Populaires Act, 2020, once proclaimed to come into force.

It clarifies that credit unions must have a framework in place that meets minimum market conduct standards. It also sets out FSRA's supervisory approach.

The Canadian Credit Union Association (CCUA) has created a Market Conduct Code (MCC) to standardize conduct and protect member interests. The CCUA MCC meets the FSRA requirements. Credit unions that adopt the CCUA model will complete an annual self-assessment of, and attestation to, compliance with the MCC and report on the results to their boards.

### **Participate**

FSRA invites the public and sector stakeholders to share feedback from June 28, 2021 to August 12, 2021.

Review the proposed Approach and Interpretation Guidance and provide your comments by selecting "Submit a comment or ask a question."

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF PROPOSED RULE UNDER THE  
*CREDIT UNIONS AND CAISSES POPULAIRES ACT, 2020*

RULE 2021 – 001  
SOUND BUSINESS AND FINANCIAL PRACTICES

June 14, 2021

**Introduction**

The Financial Services Regulatory Authority of Ontario (**FSRA**) is updating the regulation of Ontario's credit unions and caisses populaires (**credit unions**) and making it more transparent, dynamic, and flexible. The proposed new Sound Business and Financial Practices Rule (the **Proposed Rule**) made under the *Credit Unions and Caisses Populaires Act, 2020* (the **CUCPA 2020**) would support a principles-based supervisory approach that is proportionate and adaptable to changing circumstances.

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the **FSRA Act**), FSRA is publishing the Proposed Rule for comment on its website. The text of the Proposed Rule is set out in Appendix A to this Notice of the Proposed Rule (**Notice**). In accordance with subsection 22(4) of the FSRA Act, interested persons are invited to provide written representations to FSRA with respect to the Proposed Rule within 90 days of the Proposed Rule's publication.

**Background**

On June 8, 2019, FSRA was amalgamated with the Deposit Insurance Corporation of Ontario (**DICO**) and assumed substantially all of the regulatory functions of DICO and the Financial Services Commission of Ontario (**FSCO**). Upon amalgamation, FSRA inherited DICO By-Law No. 5 – Standards of Sound Business and Financial Practices (**By-Law No. 5**) – made under the *Credit Unions and Caisses Populaires Act, 1994* (**CUCPA 1994**). By-Law No. 5 has the force of a FSRA rule and currently sets out standards for credit unions with respect to corporate governance, risk management and enterprise risk management.

FSRA is provided express statutory authority to make a new rule establishing standards of sound business and financial practices for credit unions, which could replace the existing By-Law No. 5 under clause (1) of subsection 285(1) of CUCPA 2020, which received Royal Assent on December 8, 2020 and will come into force on proclamation. FSRA intends to develop and implement a new rule containing outcomes-focused requirements for sound business and financial practices for Ontario's credit unions under CUCPA 2020.

The Proposed Rule is intended to establish principles-based and outcomes focused requirements for sound credit union governance, including operational management, enterprise risk management and oversight functions.

The Proposed Rule is consistent with FSRA's priority to support the modernization of the credit union framework, as stated in FSRA's Proposed FY2021-2022 Statement of Priorities.

The Proposed Rule also supports particular FSRA statutory objects, set out in section 3 of the FSRA Act, including:

1. To regulate and generally supervise the regulated sectors,
2. To contribute to public confidence in the regulated sectors,
3. To promote high standards of business conduct,
4. To promote and otherwise contribute to the stability of the credit union sector in Ontario with due regard to the need to allow credit unions to compete effectively while taking reasonable risks, and
5. To pursue the objects set out in clauses 3(4)(a) and 3(4)(b) for the benefit of persons having deposits with credit unions and in such a manner as will minimize the exposure of the Deposit Insurance Reserve Fund to loss.

It is expected that the Proposed Rule will come into force under CUCPA 2020, subject to the approval date of the Minister of Finance.

### **Substance and Purpose of the Proposed Rule**

A purpose of the Proposed Rule is to replace By-Law No. 5 and, in conjunction with FSRA's new Risk-Based Supervisory Framework (**RBSF**) currently under development, replace other related documents inherited by FSRA from DICO (e.g., Reference Manual on Sound Business and Financial Practices, Self-Assessment Workbooks and other guidance).

Further purposes include providing clarity on matters that are not explicitly addressed in By-Law No. 5, such as governance structure, internal audit, oversight functions, and subsidiary governance. The Proposed Rule emphasizes the increasing importance of the oversight role of credit union boards. As well as permitting FSRA to apply requirements in a proportionate manner based on the nature, size, complexity of operations and risk profile of a particular credit union. FSRA's supervisory approach in relation to the Proposed Rule's requirements, will be incorporated into the RBSF. Both the Proposed Rule and the RBSF reflect the increased sophistication and maturity of the credit union sector and their ability to make sound business and risk management decisions that serve their members and adapt to an evolving financial services sector, subject to ongoing and prudent supervisory oversight.

The substance of the Proposed Rule is to provide comprehensive principles-based requirements in relation to: Governance Matters Related to Members, the Board of Directors, Senior Management, Operational Management, Internal Audit Function, Enterprise Risk Management, Compliance Function, Finance Function and Subsidiary Governance.

## **Summary of the Proposed Rule**

The following provides a summary of the Proposed Rule's sections.

### *Section 1: Interpretation*

This section defines key terms used in the Proposed Rule and provides direction as to how the Proposed Rule will be interpreted.

### *Section 2: Co-operative Principles*

This section requires the board of directors and senior management to ensure that a credit union is operated, managed, and governed in a manner consistent with international co-operative principles, and provides that FSRA may elaborate upon such principles, to give them effect in Ontario.

### *Section 3: Governance Matters Related to Members*

This section requires that all credit union governance related communications which are sent to members to clearly and transparently identify the democratic rights of members. Credit unions must also ensure that all activities and communications relating to members' meetings and voting are fair, transparent, and free from misrepresentation, fraud, and undue influence.

### *Section 4: Composition of the Board*

Given the heightened importance of good governance and effective oversight with a principles-based rule, this section requires the credit union to have a board with an appropriate size and structure, and composed of directors with appropriate skills, education, experience, and commitment to effectively discharge their responsibilities, in proportion to a credit union's nature, size, complexity and risk profile.

### *Section 5: Responsibilities of the Board of the Credit Union*

This section sets out duties of the board of directors of a credit union and specifies the manner in which the board must discharge them. The board of the credit union must oversee and approve particular matters, including the significant strategic initiatives, code of market conduct, business plans and strategies of the credit union and its subsidiaries and what constitutes a material or extraordinary event requiring board involvement.

### *Section 6: Responsibilities of Senior Management of the Credit Union*

This section sets out obligations and duties of a credit union's senior management. Senior management of the credit union is responsible for creating and implementing a board approved policies and processes which establish and implement roles and responsibilities necessary for overseeing the credit union's business and operations.

#### *Section 7: Ethical and Responsible Action*

This section sets out obligations for the board and senior management of a credit union to ensure that the policies, procedures, and processes of the credit union are consistent with its ethics and code of market conduct. It also imposes an obligation on a credit union to adopt and ensure compliance with a whistleblower policy.

#### *Section 8: Integrity in Reporting and Disclosure*

This section requires the board and senior management of a credit union to implement reporting processes and controls, present assessments and disclosures, and maintain a reporting system which provides timely, accurate and reliable information on particular matters, including material risk residing in the credit unions subsidiaries.

#### *Section 9: Fair and Responsible Compensation*

This section requires the board to implement a remuneration program for board members, board committees and senior management, which is sufficient to retain high quality directors and senior management. Additionally, senior management is required to implement a board approved remuneration program for all other employees of the credit union, which is sufficient to retain high quality employees.

#### *Section 10: Status, Authority and Independence of the Oversight Functions*

Given the importance of the "three lines of defense" and internal controls and good governance, this section requires a credit union to establish and maintain appropriate oversight functions either within its organizational structure or through a board approved outsourcing arrangement. The oversight functions must be provided sufficient resources, status, authority, and independence to perform designated roles. Further, the heads of the oversight functions must be entitled to participate in internal meetings, to monitor and evaluate the activities of the credit union and its subsidiaries. In addition, individuals working for an oversight function must possess relevant professional competence and an appropriate level of experience for their oversight role.

#### *Section 11: Internal Audit Function*

This section sets out obligations relating to a credit union's "third line of defense" internal audit function and head of the internal audit function. The internal audit function must provide accurate, reliable, and risk-based audits to those responsible for the corporate governance and other oversight functions of the credit union. In addition, the head of the internal audit function must annually create and deliver to the board an audit plan, which takes into account certain matters including the particular characteristics and business objectives of the credit union and its subsidiaries.

### *Section 12: Risk Management Function*

This section sets out obligations relating to a credit union's "second line of defense" risk management function and requires the head to be appointed by the board. The head of the risk management function must implement a board approved enterprise risk management (**ERM**) framework which facilitates and protects the credit union's stability and viability, by managing risks and uncertainties which may arise from the business and operations of the credit union and its subsidiaries.

### *Section 13: Compliance Function*

This section requires the compliance function to provide oversight of compliance risk to a credit union as a whole and within its specific business lines and units. The head of the compliance function must report to the board of the credit union or to a person in another oversight role.

### *Section 14: Finance Function*

This section sets out obligations relating to a credit union's finance function and the head of the finance function. A particular obligation requires providing oversight of all the credit union's governance and operational requirements in relation to financial reporting and corporate financial services. As well as a duty to provide accurate, reliable and risk-based financial reporting and corporate financial services to the credit union.

### *Section 15: Operational Management*

This section requires senior management to implement a board approved management and control system and framework to govern the "first line of defense". Specific obligations are also placed upon the operational management of the credit union, including requirements to oversee employees and to execute approved business plans and strategies, develop and implement processes for appropriate controls, and comply with the credit unions approved policies.

### *Section 16: Subsidiary Governance*

This section sets out the obligations of senior management and the board of directors of the credit union with respect to the oversight of subsidiaries. A specific obligation requires senior management to implement board approved policies, procedures, and processes, in respect of oversight of a subsidiary, including subsidiaries' boards or management. In addition, credit unions would be required to have board-approved policies, procedures and processes respecting any material business, strategic or operational function which is outsourced to a subsidiary.

### *Section 17: Coming into Force*

This section sets out that the Proposed Rule will come into force on the day that clause 1 of subsection 285(1) of CUCPA 2020 comes into force.



## Authority for the Proposed Rule

Clause 1 of subsection 285(1) of CUCPA 2020 provides FSRA with the required statutory authority for the Proposed Rule, by allowing FSRA to make a rule, “Establishing standards of sound business and financial practices.”

Although CUCPA 2020 is not yet in force, subsection 10(1) of the *Legislation Act, 2006* provides FSRA with statutory authority to exercise a power conferred by an Act of the Legislature, after it receives Royal Assent but prior to it coming into force. CUCPA 2020 is contained in Schedule 7 of the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020, c. 36 (formerly known as Bill 229) (the **PSRC-19 Act**), which received Royal Assent on December 8, 2020 and will come into force on proclamation.

In addition to clause 1 of subsection 285(1) of CUCPA 2020, please refer to Appendix B for FSRA’s additional specific rule-making authorities in CUCPA 2020 under which FSRA relies upon in making the Proposed Rule.

## Research and Consultation

In December 2020, FSRA established a working group comprised of representatives from the credit union sector and the Ministry of Finance, to provide input into the development of the Proposed Rule. Between January and March of 2021, FSRA received input from the working group which reflected the following themes:

- Clarity in distinguishing between oversight function and operational management, as well as board oversight responsibilities relating to risk management.
- Recognition of proportionality and acknowledgement of differences in resources for credit unions of different sizes.
- Clarity on the need for oversight functions (e.g., internal audit, risk management, compliance, finance), the extent to which such functions may be outsourced, and flexibility for boards to determine appropriate qualifications and professional competencies for such functions.
- Clear articulation of concepts of transparency and independence.

In addition, FSRA considered the frameworks for assessing governance, oversight and risk management used by other regulators, supervisors and associations in other jurisdictions, including:

- Canada Deposit Insurance Corporation
- Office of the Superintendent of Financial Institutions
- Saskatchewan – Credit Union Deposit Guarantee Corporation
- BC Financial Services Authority

- UK Business Council of Co-operatives and Mutuals
- Basel Committee on Banking Supervision
- Office of Comptroller of Currency (U.S.)
- Federal Reserve (U.S.)
- National Credit Union Administration (U.S.)
- International Credit Unions Regulators Network

FSRA has considered the input of the working group and the findings of its research in the development of the Proposed Rule.

### **Unpublished Materials**

FSRA did not rely on any significant unpublished study, report, decision, or other written material in making the Proposed Rule.

### **Alternatives Considered**

FSRA considered the following alternatives to developing the Proposed Rule:

1. Replace By-Law No. 5 with FSRA guidance. Since FSRA has explicit authority to make a rule governing the standards of sound business and financial practices under CUCPA 2020 and since a Rule is legally binding and this subject matter is of crucial importance to the protection of members and the stability of the credit union sector, it is appropriate for FSRA to use this authority. By-Law No. 5 currently serves as a critical component of Ontario's framework for credit unions and has the force of law under CUCPA 1994. It is important that the modernized standards and requirements replacing those in By-Law No. 5 have at least the same degree of prominence and enforceability which would not be the case if FSRA relied solely upon guidance.
2. Adopt By-Law No. 5 as a rule under CUCPA 2020, without any changes. CUCPA 2020 will implement a modern framework for Ontario's credit unions, with increased flexibility, compared to the CUCPA 1994. By-Law No. 5 does not contemplate the modern framework set out in the CUCPA 2020. FSRA's statutory objects and mandate also contemplates a principles-based, outcomes focused and dynamic regulator which is, in certain cases, inconsistent with By-Law No. 5. The Proposed Rule adopts an approach to supervising business and financial practices, which is consistent with the CUCPA 2020 and FSRA's mandate.

### **Anticipated Costs and Benefits**

#### Qualitative Benefits and Costs

There are numerous qualitative benefits associated with the Proposed Rule, and relatively few qualitative costs.

The first qualitative benefit is advancing FSRA's cross-sectoral priority of transitioning to principles-based regulation. The Proposed Rule assists in fulfilling this priority by providing principles-based standards for the credit union sector, thereby decreasing FSRA's reliance on prescriptive legal requirements. Principles-based regulation ultimately generates a number of beneficial qualitative outcomes for Ontario's credit unions, including greater flexibility in protecting and serving members, enhanced authority, and responsibility for credit union directors and managers and a more dynamic and competitive sector. Credit unions will be expressly authorized and encouraged to comply with the Proposed Rule in a manner proportionate to their nature, size, complexity and risk profile. A principles-based framework also facilitates a collaborative regulatory model, whereby Ontario's credit unions work harmoniously with FSRA to achieve desired regulatory outcomes.

An additional qualitative benefit is that, by replacing By-Law No. 5 with the Proposed Rule, FSRA is making strides towards modernizing Ontario's credit union framework, a sector specific priority set out in FSRA's 2020-23 Annual Business Plan. In addition, the Proposed Rule will support FSRA in providing transparent, efficient and effective regulation.

There are likely to be minimal qualitative costs associated with the Proposed Rule. Firstly, the Proposed Rule may not be sufficiently prescriptive from the perspective of credit unions that prefer a rules-based system of regulation. For such credit unions, the Proposed Rule may pose a cost, as they need to evaluate and upgrade their corporate governance and risk management processes and procedures in light of the Proposed Rule. Secondly, as a result of the principles-based framework and increased responsibility and accountability for credit union directors and managers, the Proposed Rule may necessitate the redistribution and reallocation of resources within credit unions.

### Quantitative Benefits and Costs

Well-run and mature credit unions are not expected to incur new material financial costs in order to ensure compliance with the Proposed Rule, although for less sophisticated credit unions additional investments may be required. Ontario's credit unions currently operate in accordance with sound business and financial practices and are subject to By-Law No.5 and related guidance documents. Although the Proposed Rule explicitly addresses some topics that are only implicit under By-Law No. 5, the Proposed Rule is principles-based and provides flexibility to credit unions in determining how they comply with outcomes-focused requirements. The rule also contemplates proportional application of requirements, which would be scaled to the nature, size, complexity and risk profiles of individual credit unions.

### **Implementation Considerations**

The Proposed Rule is expected to come into force on the day on which CUCPA 2020 is proclaimed into force, subject to the approval of the Minister of Finance (the **Minister**). FSRA's supervisory practices for the requirements set out in the Proposed Rule would be set out in FSRA's new RBSF, currently under development. FSRA will consult on guidance related to the RBSF during FY 2021-22.

### **Recommendation to the Minister**

FSRA is not proposing to make any recommendations to the Minister of Finance with respect to the amendment or revocation of a regulation or a provision in a regulation which relates to the Proposed Rule.

For greater clarity, FSRA intends to revoke By-Law #5 pursuant to subsection 285(5) of CUCPA 2020, which provides FSRA statutory authority to terminate By-Law #5 as a deemed by-law of FSRA pursuant to subsection 321.0.4(4) of CUCPA 1994.

### **Text of the Proposed Rule**

The full text of the Proposed Rule is contained in Appendix A.

### **Questions**

1. Does the Proposed Rule reflect principles-based, outcomes focused, and appropriate standards of sound business and financial practices for Ontario credit unions?
2. Is there any major topic or function that should be addressed by the Proposed Rule that is currently not included?
3. Is the Proposed Rule sufficiently clear to allow compliance with its requirements, but not so prescriptive that credit union growth and flexibility is unduly restricted? If not, please specify any additional clarifying language that should be considered?
4. Are there compliance costs that would be associated with the Proposed Rule which FSRA has not considered? If yes, please describe the specific costs, as well as the quantum.

FSRA would be pleased to answer any questions relating to the Proposed Rule. Questions may be submitted online.

## **Appendix A - Proposed Rule**

### **Draft Rule**

#### **Sound Business and Financial Practices**

##### **1. Interpretation**

1(1) In this Rule,

- (i) “Act” means the *Credit Unions and Caisses Populaires Act*, SO 2020, c 36, sch 7, and the regulations and rules promulgated thereunder,
- (ii) “management” means individuals who are responsible for planning, directing, controlling, overseeing and executing the day-to-day operations of a credit union.
- (iii) “oversight function” means a credit union’s:
  - (a) internal audit function,
  - (b) risk management function,
  - (c) compliance function, and
  - (d) finance function,
- (iv) “senior management” means the following members of management:
  - (a) the chief executive officer of a credit union,
  - (b) individuals who are responsible for the overall management of a material business or function of a credit union, including that of a subsidiary,
  - (c) the heads of the oversight functions of a credit union,
  - (d) other executives who have a functional reporting line directly to the board or chief executive officer of a credit union, and
  - (e) any other individuals that the board of a credit union designates to be part of that credit union’s senior management.

1(2) In addition to subsection 1(1), if a term or phrase used in this Rule is defined in the Act, that definition shall apply for the purposes of this Rule.

1(3) Any policy, procedure or process referred to in this Rule shall be required to be set out in writing.

1(4) All references in this Rule to an employee or employees of a credit union shall include any individuals who are:

- (i) employed by the credit union,
- (ii) a member of the senior management of the credit union, or
- (iii) retained by the credit union to perform all or part of an oversight function.

1(5) For the purposes of this Rule,

- (i) whether an individual or entity is independent is exclusively a question of fact,

- (ii) an independent individual is free from influences that compromise judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism, and
- (iii) an individual is independent of a credit union if the individual, or a related person of the individual, does not have a direct or indirect material or pecuniary relationship with a credit union, including a subsidiary, other than ordinary remuneration provided to an individual who is a director of the credit union or a subsidiary or as a member of the credit union, and has not been an officer of the credit union for at least twelve months.

## **2. Co-operative Principles**

- 2(1) The board and senior management of a credit union are responsible for ensuring that the credit union is operated, managed and governed in a manner consistent with the following co-operative principles:
- (i) voluntary and open membership,
  - (ii) democratic member control,
  - (iii) member economic participation,
  - (iv) autonomy and independence,
  - (v) education, training and information,
  - (vi) co-operation amongst co-operatives, and
  - (vii) concern for community,
- as such principles may be interpreted and defined from time to time by the Authority in writing.

## **3. Governance Matters Related to Members**

- 3(1) All communications sent to the members of a credit union related to its governance, including but not limited to, annual reports, notices of meetings and proxy solicitations, shall clearly and transparently identify the democratic rights of the members, including but not limited to the rights of members to be notified of, participate in and, if applicable, vote at meetings of the members.
- 3(2) A credit union shall take reasonable precautions to ensure that all of its activities and communications related to members' meetings and voting, including but not limited to the voting process itself, are fair and transparent, and free from misrepresentation, fraud and undue influence.

## **4. Composition of the Board**

- 4(1) Subject to subsection 4(6), a credit union shall have a board with an appropriate size and structure, composed of directors who have appropriate skills, education, experience and commitment to enable them to discharge their duties and responsibilities effectively, having regard to the nature, size, complexity, operations and risk profile of the credit union.
- 4(2) The board or senior management of the credit union, as applicable, shall only,

- (i) appoint an individual or individuals to become a director or directors of the board of the credit union, or
- (ii) propose or nominate an individual or individuals to be elected by the members as a director or directors of the board of the credit union,

who have appropriate skills, education, experience and a commitment to discharge their duties and responsibilities effectively, having regard to the nature, size, complexity, operations and risk profile of the credit union.

- 4(3) No individual, other than the chief executive officer of the credit union, may serve as a member of the board of the credit union unless such an individual is independent of senior management of the credit union.
- 4(4) Except for the chief executive officer of the credit union, no individual who is an employee of the credit union, or a related person of an employee of the credit union, may serve as a member of the board of the credit union.
- 4(5) The chief executive officer of the credit union shall not serve as the chairperson of the credit union's board or any board committee.
- 4(6) The board of the credit union shall not have less than five directors or more than seventeen directors.

## **5. Responsibilities of the Board of the Credit Union**

- 5(1) The board of the credit union shall discharge its responsibilities in a manner which:
  - (i) results in independent oversight of the credit union's management, and
  - (ii) permits and encourages directors to provide effective oversight of the decisions, plans, processes and policies proposed by the credit union's senior management and implemented by its management.
- 5(2) The board of the credit union shall establish and maintain a clear division between the roles and responsibilities of the board and those of senior management, to ensure the board complies with the Act's prohibition on the board directly managing, or being involved in, the day to day activities of the credit union.
- 5(3) The board of the credit union is responsible for providing oversight, supervision and direction to management, and shall oversee and approve:
  - (i) the credit union's and its subsidiaries':
    - (a) short-term and long-term business plan and strategy,
    - (b) material decisions made outside of the normal course of the credit union's operations,
    - (c) significant strategic initiatives,
    - (d) policies, processes and procedures as required by the Act, its regulations and rules,
    - (e) code of market conduct,
    - (f) plans related to capital and liquidity management,

- (g) mandates and budgets for the oversight functions, and
  - (h) risk management,
  - (ii) the appointment, setting of performance objectives, compensation, incentives, succession plans and reviews of the credit union's chief executive officer and other members of its senior management including the heads of the oversight functions, in accordance with subsection 9(1) of this Rule,
  - (iii) delegations of authority by the board and by the credit union's senior management, and
  - (iv) the establishment and use of committees to assist the board in discharging its responsibilities.
- 5(4) The board of the credit union is responsible for overseeing the adequacy of the credit union's and its subsidiaries' resources to conduct business, carry out its financial and risk management activities, and protect members, depositors and other stakeholders.
- 5(5) The board of the credit union shall approve a policy which defines the thresholds for what constitutes a material decision made outside of the normal course of the credit union's operations, having regard to the nature, size, complexity, operations and risk profile of the credit union.

## **6. Responsibilities of Senior Management of the Credit Union**

- 6(1) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve:
- (i) policies and processes establishing and governing the respective roles and responsibilities necessary to effectively manage, control and oversee all businesses, operations and activities of the credit union, and
  - (ii) the credit union's short-term and long-term business plans, budgets and strategies, referred to in subsection 5(3)(i)(a) which shall:
    - (a) identify strategic objectives, with measurable outcomes,
    - (b) identify an ethical framework for the credit union's operational management, and
    - (c) reflect the co-operative principles referred to in subsection 2(1).
- 6(2) The responsibilities of senior management of the credit union include,
- (i) providing recommendations, developing reports and analysis and making proposals to or for the board of the credit union,
  - (ii) recommending the policies, procedures and processes referred to in subsection 5(3)(i)(d) to or for the board of the credit union,
  - (iii) implementing the board of the credit union's directions and decisions, and
  - (iv) the day-to-day management and operation of the credit union within the parameters set by the board of the credit union.



## **7. Ethical and Responsible Action**

- 7(1) The board and senior management of the credit union shall ensure the credit union's:
- (i) policies, procedures and processes are consistent with its values, ethics and code of market conduct, and
  - (ii) members, employees and other stakeholders are able and encouraged to raise any matters of concern pertaining to the credit union to the appropriate person in the circumstances.
- 7(2) The credit union shall adopt, communicate internally, and ensure compliance with a whistleblower policy which:
- (i) identifies the protections offered to whistleblowers, including protection from reprisals, and
  - (ii) sets out procedures and processes for providing information regarding misconduct or fraud on a confidential basis to the auditor of the credit union and, if applicable, any other individuals identified in the credit union's whistleblower policy as appropriate recipients of information from whistleblowers.

## **8. Integrity in Reporting and Disclosure**

- 8(1) The board and senior management of the credit union shall implement appropriate reporting processes and controls, such that:
- (i) Members, regulators and other stakeholders of the credit union have timely access to information to which they are entitled respecting its business and operations, and
  - (ii) members of the credit union are able to exercise their membership rights on an informed basis.
- 8(2) The board and senior management of the credit union shall present a fair, balanced and understandable assessment and disclosure of the credit union's financial position, viability and prospects, and communicate that to members and other stakeholders in a timely, effective and transparent manner.
- 8(3) The credit union shall at all times maintain financial and operational management reporting systems and controls which provide timely, accurate and reliable information on both a consolidated and unconsolidated basis, including but not limited to material risk residing in its subsidiaries.

## **9. Fair and Responsible Remuneration**

- 9(1) The board of the credit union shall create, develop, update and implement remuneration programs, policies and practices for the members of the board, including board committees, and senior management of the credit union, and which is structured appropriately to attract, retain and motivate high-quality directors and members of senior management, proportionate to the credit union's nature, size, complexity, operations and risk profile.
- 9(2) Senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, remuneration programs, policies and practices for all other employees of the credit union, and structured appropriately to

attract, retain and motivate high-quality senior executives and employees, proportionate to the credit union's nature, size, complexity, operations and risk profile.

- 9(3) The credit union shall disclose to its members its policies and procedures regarding directors' and senior management's remuneration, including any bonuses, incentives or other forms of compensation.
- 9(4) The credit union shall ensure that its remuneration programs, policies and practices referred to in subsections 9(1) and 9(2) of this Rule, are consistent with the following:
- (i) employees engaged in the oversight functions are remunerated in a manner that is independent of the business areas they oversee and commensurate with their key role in the credit union,
  - (ii) remuneration is adjusted for all types of risk,
  - (iii) remuneration is symmetric with risk outcomes,
  - (iv) remuneration payout schedules are sensitive to the time horizon of risks, and
  - (v) forms of remuneration are be consistent with risk alignment.

#### **10. Status, Authority and Independence of the Oversight Functions**

- 10(1) The credit union shall establish and maintain oversight functions within its organizational structure, or through an outsourcing arrangement approved by the board of the credit union and documented in writing, such that these functions have sufficient resources, status, authority and independence to perform their roles and satisfy responsibilities.
- 10(2) The head of an oversight function of the credit union may be an individual employed by a third party to whom the credit union has outsourced that oversight function, so long as a member of the credit union's senior management remains accountable for the performance of such individual and oversight functions and such an arrangement has been approved by, and is overseen by, the board of the credit union.
- 10(3) The senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, a policy which,
- (i) defines the nature, roles and responsibilities of the credit union's oversight functions, and
  - (ii) mandates sufficient and reasonable coordination and co-operation between the credit union's oversight function and all management, employees, activities, operations, business units, short-term and long-term business plans and strategies, and objectives of the credit union and its subsidiaries.
- 10(4) The policy referred to in subsection 10(3) of this Rule shall specify all rights, duties and obligations of the credit union's oversight functions.
- 10(5) Individuals primarily responsible for conducting the activities of the credit union's oversight functions shall be independent of the credit union's and its subsidiaries' operational activities and businesses.
- 10(6) Individuals working for one of the oversight functions shall, having regard to the nature, size, complexity, operations and risk profile of the credit union and its subsidiaries, possess

relevant professional competency and an appropriate level of experience relating to an individual's role in the oversight function or functions.

- 10(7) The heads of the oversight functions of the credit union shall at all times have direct and unrestricted access to all individuals, facilities and information in respect of the credit union's and its subsidiaries' activities, operations and businesses, in order to perform their roles and satisfy their responsibilities, including access to all credit union or subsidiary:
- (i) computer systems, including any back-up systems,
  - (ii) documents, including the credit union's governing documents,
  - (iii) physical property,
  - (iv) employees of the credit union and its subsidiaries, including management, and
  - (v) documentation, emails, letters, recordings of telephone calls and any other form of communication with a governmental or regulatory body.
- 10(8) The heads of the oversight functions of the credit union shall be entitled to participate in all internal meetings, including those of senior management, of the credit union and its subsidiaries, on a reasonable basis, in order to reasonably monitor and assess the credit union's and its subsidiaries' activities.
- 10(9) The oversight functions of the credit union shall have, use and apply a reasonable range of resources to collect, possess, analyze and disseminate material information, in order to accurately, objectively and comprehensively understand, evaluate and report risks.

## **11. Internal Audit Function**

- 11(1) The internal audit function of the credit union shall provide senior management, the board of the credit union and the audit committee of the board with its evaluation and recommendations respecting the design, framework, implementation, and effectiveness of the credit union's and its subsidiaries' activities, processes, policies and procedures in its businesses, operations and activities and in its other oversight functions.
- 11(2) The internal audit function shall provide accurate, reliable and risk-based audits and support to those responsible for the corporate governance and other oversight functions of the credit union.
- 11(3) The head of the internal audit function of the credit union shall, on at least an annual basis, create and deliver to the board of the credit union and the audit committee of the board, upon recommendation by the audit committee of the board, a risk-based audit plan in written form, which takes into account the credit union's and its subsidiaries':
- (i) nature, size, complexity, operations and risk profile, and
  - (ii) strategies, operations, business objectives, activities and risk management processes.
- 11(4) The audit plan referred to in subsection 11(3) shall define the internal audit function's priorities and work.
- 11(5) The head of the internal audit function of the credit union shall:

- (i) review, amend and update the audit plan in response to any material changes in the credit union's or its subsidiaries' activities, risk operations, programs, systems and controls,
  - (ii) on at least an annual basis or upon request, report to the board, the audit committee of the board and senior management of the credit union on the internal audit function's mandate, authority, roles and responsibilities, taking into account the objectives of the internal audit plan and applicable professional standards and ethics, and
  - (iii) create, develop, update and implement processes, policies and procedures to:
    - (a) monitor audit reports and directly report all results and opinions in connection with an audit report to senior management and the board of the credit union, and
    - (b) oversee and monitor that reasonable actions have been implemented by senior management of the credit union in response to any risk identified in an audit report.
- 11(6) Any failure to respond to an issue identified in an audit report within a reasonable period of time, or any decision to assume the risk of not responding to an issue identified in an audit report, shall be brought to the attention of the board of the credit union at the earliest reasonable opportunity and documented in the meeting minutes of the board.
- 11(7) The head of the internal audit function of the credit union and internal auditors who are part of the internal audit function of the credit union shall not have any management responsibilities outside of the oversight functions.

## **12. Risk Management Function**

- 12(1) The head of the risk management function of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve:
- (i) an enterprise wide risk management program, which facilitates and protects the credit union's stability and viability, through the identification, assessment, mitigation and management of all risks and unforeseeable events which may arise from the business and operations of the credit union and its subsidiaries and have a potentially material impact on the credit union's financial performance, capital, liquidity, members, other stakeholders, reputation, operations or viability, and includes an enterprise-wide risk appetite framework which is appropriate relative to the risk profile of the credit union on an enterprise-wide basis, its long-term strategic plan and its operating environment, and
  - (ii) procedures, policies and processes to understand and evaluate all such risks, and to facilitate direct reporting to the board and senior management of the credit union by the head of its risk management function.
- 12(2) The head of the risk management function of the credit union shall be appointed by and report to the board of the credit union.

## **13. Compliance Function**

- 13(1) The compliance function of the credit union shall provide systematic, comprehensive and timely oversight of compliance risks through the identification, measurement, monitoring and reporting of compliance risks across the credit union as a whole and within its specific business lines and units and subsidiaries.

- 13(2) The head of the compliance function of the credit union shall report to the board of the credit union or to the head of another oversight function that reports to the board.

#### **14. Finance Function**

- 14(1) The credit union's finance function shall:

- (i) provide systematic, comprehensive and timely oversight of all of the credit union's governance and operational requirements in respect of budgeting, planning, financial reporting and analysis,
- (ii) provide accurate, reasonable, independent, reliable and risk-based financial reporting and analysis to the senior management and board of the credit union,
- (iii) provide accurate, reasonable and reliable corporate financial services to the credit union, and
- (iv) ensure that all financial analysis, reporting and communication on financial matters is timely, reasonable, impartial, independent and suitable, in order to assist the senior management, board and oversight functions of the credit union.

- 14(2) The head of the finance function of the credit union shall:

- (i) advise the chief executive officer and board of the credit union, including in relation to the matters described in subsection 14(1), and
- (ii) have reasonable knowledge of and opportunity to participate in all material functions of the credit union's and its subsidiaries' businesses and operations.

#### **15. Operational Management**

- 15(1) The senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve:

- (i) a reasonable and suitable management and control system and framework for the credit union's businesses, operations and activities and its management and employees, and
- (ii) policies, procedures and processes designed to ensure that senior management is sufficiently informed to monitor and be accountable for the credit union's and its subsidiaries' businesses, operations, activities, management and employees.

- 15(2) Management of the credit union shall:

- (i) perform and execute on, and ensure the credit union's employees understand and execute on, the credit union's approved business plans and strategies,
- (ii) create, develop, update and implement policies, procedures and processes providing for appropriate controls for the credit union and its subsidiaries and their businesses, operations and activities,
- (iii) comply with, and oversee the credit union's employees in compliance with, the credit union's approved policies, procedures, processes and controls,
- (iv) understand and manage, and ensure that the credit union's employees understand and manage, the risks for the areas in which they operate or provide services,

- (v) ensure that employees have sufficient resources, status and authority necessary to perform any roles and responsibilities related to risk management and compliance, and
- (vi) act, and ensure employees of the credit union act, in the best interests of the credit union and its members and in compliance with all laws and regulatory requirements.

## **16. Subsidiary Governance**

- 16(1) The senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, all policies, procedures and processes necessary to provide for effective oversight of any credit union subsidiary, including any board or management thereof.
- 16(2) If the credit union outsources a material business, strategic or operational function or activity to its subsidiary, then senior management of the credit union shall create, develop, update and implement, and the board of the credit union shall oversee and approve, policies, procedures and processes respecting the function or activity outsourced to the subsidiary.

## **17. Coming into force**

- 17(1) This Rule comes into force on the date that clause 1 of subsection 285(1) of the Act comes into force.

**Appendix B - Specific Rule-making Authority [NTD: section numbers will be updated once Rule is finalized]**

**Boards of Directors**

<b>CUCPA 2020 Provision Granting FSRA Rule-making Authority</b>	<b>Corresponding Section of the Proposed Rule</b>
<p><b>Composition of board</b>  <b>88</b> The board shall be composed in the manner provided in the Authority rules.</p> <p><b>Authority Rules</b></p> <p><b>285(1)</b> The Authority may make rules in respect of the following matters: ...</p> <p>18. Governing the composition of boards for the purposes of section 88.</p>	<p>Please refer to section 4 of the Proposed Rule.</p>
<p><b>Duties of the board</b>  <b>97(1)</b> The board shall manage or supervise the management of the business and affairs of the credit union and shall perform such additional duties as may be imposed under this Act, the regulations or the Authority rules respecting credit unions, or the by-laws of the credit union.</p>	<p>Please refer to sections 5, 7 and 8 of the Proposed Rule.</p>
<p><b>Remuneration of directors</b></p> <p><b>99</b> The procedures for setting, paying and disclosing the remuneration and expenses of directors and members of committees shall be established by Authority rule.</p> <p><b>Authority Rules</b></p> <p><b>285(1)</b> The Authority may make rules in respect of the following matters: ...</p> <p>25. Governing the remuneration of directors for the purposes of section 99.</p>	<p>Please refer to section 9 of the Proposed Rule.</p>

### **Internal Audit Function**

<b>CUCPA 2020 Provision Granting FSRA Rule-making Authority</b>	<b>Corresponding Section of the Proposed Rule</b>
<p><b>Audit committee</b></p> <p><b>104(2)</b> The audit committee has such powers and duties as are set out in this Act, prescribed by the Authority rules or set out in the by-laws of the credit union.</p> <p><b>Authority Rules</b></p> <p><b>285(1)</b> The Authority may make rules in respect of the following matters: ...</p> <p>27. Prescribing the powers and duties of audit committees for the purposes of subsection 104 (2).</p>	<p>Please refer to section 11 of the Proposed Rule.</p>

### **Matters relating to Members**

<b>CUCPA 2020 Provision Granting FSRA Rule-making Authority</b>	<b>Corresponding Section of the Proposed Rule</b>
<p><b>Notice of meetings</b></p> <p><b>175(1)</b> Unless the Authority rules provide otherwise, notice of the time and place for holding a meeting of the members of a credit union shall be given at the time and in the manner specified in the by-laws of the credit union to each member of the credit union who, on the record date for the notice, appears in the records of the credit union as a member.</p> <p><b>Same</b></p>	<p>Please refer to section 3 of the Proposed Rule.</p>



<p>(2) A notice under subsection (1) must meet the requirements set out in the Authority rules.</p> <p><b>Authority Rules</b></p> <p><b>285(1)</b> The Authority may make rules in respect of the following matters: ...</p> <p>50. Governing meeting notices for the purposes of section 175.</p>	
<p><b>Remote members' meetings by-laws</b></p> <p><b>185 (1)</b> Subject to such requirements as may be prescribed by Authority rule, the by-laws of a credit union shall set out a policy in respect of the rights of members to participate and vote at meetings remotely.</p> <p><b>Authority Rules</b></p> <p><b>285(1)</b> The Authority may make rules in respect of the following matters: ...</p> <p>54. Prescribing requirements for remote members' meetings by-laws under section 185.</p>	<p>Please refer to section 3 of the Proposed Rule.</p>



⑩ Interpretation

⑩ Approach

⑩ Information

⑩ Decision



**Effective Date:** [90 days after issuance of final guidance]

**Identifier:** CU0070INT

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# Guidance

## Proposed Credit Union Market Conduct Framework

### Purpose

This guidance<sup>1</sup> sets out the Financial Services Regulatory Authority of Ontario's (FSRA) expectations on how credit unions can ensure that they are treating their members / customers fairly. Specifically, it outlines FSRA's:

- i. Interpretation of both Deposit Insurance Corporation of Ontario (DICO) By-Law No. 5 "Standards of Sound Business and Financial Practices," and Section 102 of the *Credit Union's and Caisses Populaires Act, 2020 (the New Act)* when *the New Act* is proclaimed into force.



<sup>1</sup> The guidance is being published as an Interpretation and Approach under FSRA's Guidance Framework. Each different component is labelled for clarity.

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- ii. Approach to supervising and enforcing against market conduct frameworks (MCFs) adopted by credit unions.

An MCF includes (a) specific code and related policies, processes and procedures that a credit union establishes to guide its operations and interactions with members / and customers, and (b) governance and oversight processes to ensure the established code, policies, processes and procedures are implemented effectively throughout a credit union's operations.

Throughout this Interpretation and Approach guidance:

- The term "credit union" also refers to "caisse populaire" or "caisse".
- The term "Board" refers to either the entire Board of the credit union or a committee of the Board that has been delegated an element of Board oversight.
- The term "Senior Management" refers to the senior management of a credit union consisting of the Chief Executive Officer, the Chief Financial Officer, the Chief Risk Officer, and any other member of the Senior Management Team.

## Scope

This guidance affects the following entities regulated by FSRA:

- Credit unions.





## Rationale and background

By-Law No. 5<sup>1</sup>, established under the *Credit Unions and Caisses Populaires Act, 1994 (the Act)*<sup>2</sup>, sets out minimum requirements regarding sound business and financial practices for credit unions. However, it does not provide explicit details on how a credit union must achieve appropriate customer outcomes.

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Section 102 of *the New Act* will also, when it comes into force, require that each credit union:

- Adopt a code of market conduct<sup>3</sup>.
- File its code of market conduct and any amendments with FSRA<sup>4</sup>.
- Comply with its code of market conduct<sup>5</sup>.

The Interpretation section of this guidance outlines FSRA's interpretation of the requirements in By-Law No. 5 and section 102 of *the New Act*,<sup>6</sup> which credit unions have a legal obligation to follow.

The Approach section of this guidance describes how FSRA determines, according to its Interpretation of the requirements of By-Law No.5 and section 102 of *the New Act*, whether a credit union is meeting legal requirements with respect to the establishment of an MCF.

### For the industry

An MCF promotes better conduct for a credit union by:

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<sup>1</sup> Created under paragraph (g) of subsection 264(1) of the *Act*.

<sup>2</sup> By-law No. 5 was originally a by-law of the Deposit Insurance Corporation of Ontario. It is deemed to be a by-law of FSRA pursuant to subsection 321.0.4 (4) of the *Act*.

<sup>3</sup> Subsection 102(1) of the *New Act*.

<sup>4</sup> CUCPA 2020, subsection 102(2). For the purposes of this guidance, a reference to FSRA is deemed to be a reference to the Chief Executive Officer of FSRA and to FSRA.

<sup>5</sup> Subsection 102(5) of the *New Act*.

<sup>6</sup> All references in this guidance to section 102 of the *New Act* are relevant only if the *New Act* is proclaimed into force. All references to the *New Act* refer to how the *New Act* is currently written in the un-proclaimed *New Act* and are subject to change.





- Detailing how the credit union should behave to ensure fair outcomes for its members and customers by prioritizing treatment of members and customers across the entire organization.
- Promoting consistent conduct standards across the entire credit union and among all levels of its business.
- Setting clear accountability within the credit union for implementation and oversight.

- 
- Building trust amongst members / customers and the general public to protect the industry's reputation.

## For credit union members

An MCF enhances protection of members and customers of a credit union by:

- Ensuring fair treatment of all members and customers by establishing conduct requirements.
- Providing transparency to members and customers about their rights and the credit union's obligations.

## FSRA mandate

In supervising and regulating the credit union sector, FSRA administers and enforces compliance with *the Act* and its regulations, the FSRA Act and its regulations and applicable FSRA by-laws and rules. FSRA does so in furtherance of its statutory objects set out in section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016 (the FSRA Act)* which are also reflected in this guidance, including:





- To regulate and generally supervise the credit union sector.
- To contribute to public confidence in credit unions.
- To deter deceptive or fraudulent conduct, practices, and activities.
- To promote high standards of business conduct.
- To protect the rights and interests of consumers/members.

# Interpretation ♦ ♦♦

The Interpretation portion of this guidance, as an interpretation of:

- By-law No. 5, starts on the date that this guidance becomes effective and ends on the date that s. 102 of *the New Act* is proclaimed into force.
- Section 102 of *the New Act*, starts on the date that s. 102 of *the New Act* is proclaimed into force.

A credit union must comply with two specific actions in order to satisfy the requirements outlined in sections A.1, A.2, and A.3 of By-Law No.5<sup>7</sup> and section 102 of *the New Act*. Together, these requirements constitute an MCF.

## **1. Adoption of a code of market conduct and establishment of related policies, practices, and procedures.**

Section A.1 of By-Law No. 5 states that the Board is “ultimately responsible for ensuring that the credit union is operated in a safe and prudent manner and for ensuring adherence to these standards of sound business and financial practices.”

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<sup>7</sup> Pursuant to s. 321.0.4 (4) of *The Act*, By-Law No. 5 is deemed to be a FSRA rule.





In addition, By-Law No. 5 requires that the Board “establish standards of business conduct and ethical behaviour”.

Section 102 of *the New Act* will require that the board of each credit union adopt a code of market conduct and file it with FSRA. It will also require that each credit union comply with its market code of conduct as adopted.

FSRA's interpretation of these requirements is that the standards of business conduct and ethical behaviour required by By-Law No. 5, and the code of market conduct required by

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section 102 of *the New Act*, should both be designed in such a manner so as to (A) prevent a credit union from delivering poor or unfair outcomes for members or customers that will harm their interests, or result in a loss of confidence in the credit unions and (B) minimize risks to members or customers that they will be harmed by deceptive or fraudulent practices or activities, or by unacceptable standards of business conduct.

To achieve this, a credit union's standards of business conduct and ethical behaviour and its code of market conduct must, at minimum, address the following subjects:

- a) Access to deposits.
- b) Mis-selling.
- c) Tied selling.
- d) Misrepresentation of information to members / customers.
- e) Disclosure of material information.
- f) Complaints handling.
- g) Conflicts of interest, with an emphasis on managing / avoiding conflicts of interest.
- h) The protection of member / customer information.

## **2. Establishment of an effective governance structure and oversight processes**

By-Law No. 5 requires that the Board, Audit Committee, and Senior Management should ensure that the credit union adheres to sound business practices. FSRA interprets the





requirement to adhere to sound business practices as also requiring a credit union to effectively implement, govern and oversee its standards of business conduct and ethical behavior established, and the code of conduct adopted, under action 1.

Section 102(2) of *the New Act*, will also require that a credit union comply with its market code of conduct.

Responsibilities for ensuring alignment with action 1 are as follows:

- **The Board** - Section A.1 of By-Law No. 5 states that the Board is "ultimately responsible for ensuring that the credit union is operated in a safe and prudent manner and for ensuring adherence" to the standards of sound business and financial practices established under By-Law No. 5. Section 102 of *the New Act*, when it comes into force, will require that each Board adopt a code of market conduct and file it with FSRA.

To ensure a credit union meets its legal responsibilities discussed above:

- As part of the Board's responsibility for overall governance and supervision of management in its duties, the Board must establish appropriate controls and oversight measures to properly assess the adherence of the credit union to the requirements under action 1.
- A credit union must have an appropriate governance structure, compliance program, as well as controls and policies in place, for its Board to objectively assess adherence with the credit union's code of market conduct. A credit union must identify actual or potential deficiencies and remediate such deficiencies in accordance with the requirements under action 1 and intended market conduct outcomes.
- **Audit committee** - Section A.2 of By-Law No. 5 states that a credit union's audit committee shall "take all reasonable steps to ensure that the credit union is in compliance with *the Act*, its regulations and other legislative requirements". Section 102 of *the New Act*, when it comes into force, will require that the Board adopt a code







of market conduct and file it with FSRA. It will also require that each credit union comply with its filed code of market conduct.

To ensure a credit union follows the legal requirements described above, its Audit Committee must oversee independent assessments of the credit union's adherence to its standards of business practices and ethical behaviour and its code of market conduct and report its findings to the Board.

- **Senior management** - Section A.3 of By-Law No. 5 states that a credit union's Senior Management is responsible for ensuring that "the credit union applies the processes, procedures and controls necessary to prudently manage the risk and to provide the board of directors with timely, relevant, accurate and complete information to enable it to assess that delegated responsibilities are being discharged effectively." Section 102 of the *New Act*, when it comes into force, will require that each credit union comply with its market code of conduct.

To ensure a credit union follows the legal requirements described above, Senior Management must ensure that the credit union effectively implements its standards of business conduct and ethical behavior, its code of market conduct and establishes governance, controls and oversight responsibilities, policies and procedures to ensure such implementation continues to be effective. As such, Senior Management must:

- Implement the standards of business conduct and ethical behavior and the credit union's code of market conduct and related policies, practices, and procedures throughout the entire organization.
- Establish appropriate controls and measures to identify and address potential noncompliance with its standards of business conduct and ethical behavior and the credit union's code of market conduct.
- Develop a self-assessment program to effectively monitor the credit union's adherence to its standards and code, as well as a plan to address any areas identified when adherence should be improved.



- Report to the Board regularly on the credit union's overall adherence to the standards of business conduct and ethical behavior and its code of market conduct.

FSRA monitors adherence to By-law No. 5 and will monitor adherence to s. 102 of *the New Act*, including the requirements described in this Interpretation section, as part of its supervision as outlined in the Approach section and this guidance below.

# Approach ♦ ♦ ♦

This Approach defines the guiding principles, processes and practices that FSRA uses when assessing a credit union's adherence to the requirements of By-Law No. 5, section 102 of *the New Act*.

## Guiding principles

FSRA's uses a general supervision approach, which is consistent with its statutory objects, reflects the following:

- *Proactive and Risk-Based* – FSRA focuses its supervision on high-risk aspects of a credit union's operations, that pose the greatest member/customer harm.
- *Principles-Based and Outcome-focused* – FSRA uses a cooperative, principles-based approach embedded within the regulated sectors. As a result, less prescriptive requirements are specified to provide flexibility for entities and the regulator while improved outcomes are generated for consumers.
- *Governance* – FSRA relies on the governance structure, internal controls and supervision established by a credit union to assess adherence to legal requirements to the extent





these are effective. Effective structure, controls and supervision includes division between operations (the first line of defense), risk management/oversight functions (the second line of defense) and internal audit (the third line of defense) to promote a strong risk culture and mindset among their Senior Management and employees throughout their organization and in every branch. Credit unions will be assessed as to whether they have designed and implemented a governance structure and a MCF that reflects the nature, size, and complexity of their operations.

- *Proportional Approach to Discipline* – FSRA uses a range of compliance and enforcement tools to influence marketplace behaviour. The tools used depend on, for example, the nature and extent of risks to members, mitigating actions taken by credit unions, and past supervisory findings.

## Processes and practices

### Supervision

The objective of FSRA's supervisory approach is to assess the effectiveness of a credit union's MCF and its ongoing implementation, by determining whether:

- Its established standards of business conduct and ethical behaviour and code of market conduct are consistent with the Interpretation portion of this guidance, considering the nature, size, and complexity of its operations.
- The established standards are effectively implemented, governed, and controlled throughout a credit union's operations (including those of its subsidiaries) and among different levels of management and staff to achieve the outcomes intended, including the fair treatment for members / customers.
- Its governance and oversight processes effectively:
- Identify, report, and rectify non-compliance or issues with respect to a credit union's established standards and code in a timely manner.
- Ensure periodic reviews and refinements to the MCF e.g. periodically or when there are significant changes to its business.

FSRA considers that the Canadian Credit Union Association (CCUA)'s Market Conduct Code (MCC), August 2020, - properly implemented, governed and overseen - meets the minimum





requirements both for the standards of business conduct and ethical behaviour required by ByLaw No. 5 and the code of market conduct required by section 102 of *the New Act*. Credit unions may adopt the CCUA's MCC, another code, or establish their own if it is consistent with the interpretation portion of this guidance.

The following are different types of examinations that FSRA may conduct pursuant to section 228 of *the Act*, or section 201 of *the New Act*, to assess the effectiveness of a credit union's MCF and its ongoing implementation:

- *Comprehensive examinations* - FSRA assessment of documents and practices of a credit union against all aspects of its MCF and its implementation, governance and controls.
- *Targeted examinations* - FSRA focuses on specific potential risks to members / customers and the related aspect(s) of a credit union's MCF and its implementation, governance and controls.
- *Thematic examinations* - FSRA conducts examinations of several credit unions relating to all or some aspects of their MCF and their implementation, governance and controls to assess overall trends or compliance of the industry.

FSRA may conduct examinations on site at a credit union or remotely (known as desk examinations).

Where FSRA determines through its supervisory activities that a credit union has effective internal governance and oversight processes, FSRA may reduce the level of substantive direct testing to assess whether the credit union has implemented its established market conduct standards throughout its operations.

When a credit union has not fully implemented effective internal governance and oversight processes, FSRA will advise the credit union of deficiencies and the need to develop a corrective action plan to address shortcomings. However under section 102(3) of *the New Act*, and under FSRA's powers to enforce By-Law No. 5 through orders, FSRA may direct the Board to amend a deficient code of conduct, or to remediate ineffective implementation, governance, controls and oversight of a code and related business practices, at any time.

FSRA will rely on data and analysis of complaints, inquiries, examinations, and filings to identify current and emerging regulatory issues including issues of non-compliance in the credit union sector.

## Enforcement





FSRA may enforce the requirements for standards of business conduct and ethical behaviour required by By-Law No. 5, *the Act* and its regulations, the code of market conduct required by section 102 of *the New Act*, and *the FSRA Act*, including as these requirements are interpreted in the Interpretation portion of this guidance.<sup>8</sup> FSRA will consider non-compliance with its Interpretation set forth in this guidance as evidence that a credit union is conducting its affairs in a way that might prejudice or adversely affect the interests of a member, depositor or shareholder of the credit union.

Issues of non-compliance can lead to certain compliance or supervisory action, including, but not limited to:

- Issuance of order against any employee or credit union.

- 
- Remediation and reporting.
  - Placing a credit union under supervision or administration.
  - Suspension of business.

## Effective date and future review

The effective date of this Interpretation and Approach guidance – *Credit Union Market Conduct Framework*, is [90 days after issuance of final guidance].

Effective [upon effective date of this guidance], Guideline No. 03/18: Treating Financial Services Consumers Fairly Guideline no longer applies to credit unions. It is replaced by this Interpretation and Approach guidance.

The latest date for FSRA to initiate a review of this Interpretation and Approach guidance is [Three years after effective date of this guidance].

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<sup>8</sup> In accordance with, but not limited to, sections 225, 226, 234, 240, 279 to 281 and 294 to 295.1 of CUCPA, 1994 and sections 206-208 and 228 to 235 of the CUCPA 2020.





## About this guidance

Interpretation guidance sets out FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Approach guidance describes FSRA's internal principles, processes, and practices for supervisory work, action, and application of CEO discretion.



## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 4(d) Committee Updates—Travel Insurance Experts**

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#### ***Purpose of this Agenda Item – Update***

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An update on the work of the Travel Insurance Experts Committee.

#### ***Background Information***

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#### ***Recommendation / Direction Sought – Update***

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This is an update only.

#### ***Attachments Included with this Agenda Item***

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No attachments.

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 4(e)**

**Committee Updates—Networking and Events: Progress on Plans for Fall 2021 Webinar on “Climate Change and Its Implications For Life Insurance” including Background and Evidence; Causes and Consequences; Mortality and Morbidity Outcomes; Life Insurance Implications; and Risk Management Challenges (Presenters from RGA Life Reinsurance Company of America)**

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### **Purpose of this Agenda Item – Update**

An update on a CAFII webinar being planned for the fall of 2021.

### **Background Information**

CAFII has a series of Fall 2021 planned webinars, one of which is for RGA Life Reinsurance Company of America to present their findings around the implications of climate change for life and health insurance.

### **Recommendation / Direction Sought – Update**

This is an update only.

### **Attachments Included with this Agenda Item**

No attachments.



## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 5(a)**

**Recent and Upcoming Strategic and Regulatory Initiatives--July 21/21 CAFII Pre-Consultation Meeting with CCIR/CISRO FTC Working Group on its Draft “Incentives Management Guidance”**

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### **Purpose of this Agenda Item – Update**

CAFII has been notified that CCIR/CISRO are planning on conducting a consultation on a new guidance on incentives management.

### **Background Information**

A pre-consultation virtual meeting for CAFII representatives on the “Incentives Management Guidance” will take place on 21 July, 2021 from 2:15 to 3:15 p.m.

### **Recommendation / Direction Sought – Update**

This is an update only.

### **Attachments Included with this Agenda Item**

3 attachments.



July 2, 2021

Mr. Brendan Wycks, Executive Director  
Canadian Association of Financial Institutions in Insurance (CAFII)  
21 St. Clair Avenue West  
Suite 802  
Toronto ON M4T 1L9

[Brendan.wycks@cafii.com](mailto:Brendan.wycks@cafii.com)

**Re: Fair Treatment of Consumers – Incentives Management Guidance**

Dear Mr. Wycks:

As you may recall, the joint Canadian Council of Insurance Regulators (CCIR) and Canadian Insurance Services Regulatory Organizations (CISRO) Fair Treatment of Customers Working Group (FTCWG) had engaged with industry representatives, from both the manufacturing and distribution sides, to learn about compensation and incentive structures. Industry has volunteered to help the FTCWG better understand the practices currently in market. Some industry participants then indicated that additional clarification is needed from regulators to assist aligning incentive arrangement practices currently in market with the fair treatment of customer (FTC) principles.

Earlier this year, the FTCWG began work to develop an Incentives Management Guidance (Guidance). The draft Guidance is intended to complement CCIR-CISRO's *Guidance: Conduct of Insurance Business and Fair Treatment of Customers* released in 2018, and align with principles set out in that document. The FTCWG is now reaching out to our stakeholders to begin pre-consultation and obtain valuable feedback to the draft Guidance.

The FTCWG is inviting your organization to participate in pre-consultation meetings where we will present and discuss the highlights of such guidance. Industry consultation is a valuable part of our process to develop policies regulators expect to see in the market while mitigating unnecessary burdens to the industry.

The pre-consultation will be held virtually at this time. We are anticipating holding the kick-off meetings on July 21 and 22, 2021. Materials are expected to be distributed prior to the

meeting. A completely executed *Confidentiality undertaking* is expected by stakeholders prior to the distribution of a draft guidance.

The CCIR Secretariat will be reaching out to your organization soon to schedule the date and time. You can contact Tony Toy, Policy Manager, at [Tony.Toy@fsrao.ca](mailto:Tony.Toy@fsrao.ca) or by phone at 416-590-7257 to confirm your availability.

Regards,

Original signed by

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Louise Gauthier  
Co-Chair FTCWG  
Canadian Council of Insurance Regulators

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Ron Fullan  
Co-Chair FTCWG  
Canadian Insurance Services Regulatory  
Organizations

Cc: Keith Martin



## **FTC Stakeholder Kick-Off Meeting**

### **Incentives Management Guidance**

#### **CAFII**

Wednesday, July 21, 2021 2:15 PM – 3:15 PM ET

Microsoft Teams

### **AGENDA**

	ITEM
1.	<b>Welcome</b>
2.	<b>Introductions</b>
3.	<b>Incentives Management Guidance Overview</b>
4.	<b>Next Steps</b> <ul style="list-style-type: none"><li>• Delivery of Draft Guidance (subject to executed Confidentiality Undertaking)</li><li>• Meeting Intervals (Summer and Fall 2021)</li></ul>

Meeting Materials:

- Agenda
- Confidentiality Undertaking



## **Confidentiality Undertaking**

**WHEREAS** the Canadian Council of Insurance Regulators and the Canadian Insurance Services Regulatory Organizations (the “Regulators”), through its Fair Treatment of Customers Working Group (FTCWG) and or FTC Sub-Working Group (the “SubWG”), have agreed to develop guidance for the insurance industry that will set out Regulators’ expectations relating to incentive programs in market for the sale and servicing of insurance products for both insurers and intermediaries;

**WHEREAS** it is deemed appropriate that a draft of the FTCWG and SubWG guidance (“Draft Guidance”) be shared prior to its public release, with industry association members during virtual or in-person meetings to obtain their comments;

**WHEREAS** the undersigned member wishes to be informed regarding the Draft Guidance;

**WHEREAS** the undersigned member will receive or be provided with confidential information, including the Draft Guidance, as well as written or verbal information regarding the Draft Guidance, during or in relation with the virtual or in-person meetings;

**WHEREAS** is it essential to preserve the confidentiality and the integrity of the Draft Guidance before it is released for public consultation;

### **THE UNDERSIGNED AGREES TO THE FOLLOWING IN FAVOUR OF THE REGULATORS:**

1. The recitals form an integral part of this Confidentiality Undertaking.
2. The undersigned agrees to preserve the integrity of the Confidential Information and guarantees that all persons having access to such information in connection with their duties (listed in Schedule) are subject to confidentiality obligations towards the Regulators. For the purposes of this undertaking, the Confidential Information means all information regarding the FTCWG and or SubWG’s Draft Guidance setting out Regulators’ expectations relating to incentive programs in market for the sale and servicing of insurance products, written or otherwise, that has not been made publicly available by the Regulators.

3. This confidentiality obligation applies to any person employed by the undersigned, member of the undersigned, or any other person acting on its behalf.
4. The undersigned agrees unauthorized disclosure of Confidential Information will cause important damages to the Regulators.
5. The present Confidentiality Undertaking shall become effective upon its execution by the undersigned and remain effective until the FTCWG and or the SubWG post its Draft Guidance publicly.

**The Undersigned:**

<i>Organization:</i>	
<i>Authorized Signatory:</i>	<i>Signature:</i>
<i>Signed in:</i>	<i>Date: 2021 -</i>
<b><i>Schedule of All Other Members/Organizations Having Access to the Confidential Information</i></b>	
<b><i>Name</i></b>	<b><i>Authorized Signature</i></b>

## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 5(b)**

#### **Recent and Upcoming Strategic and Regulatory Initiatives— CAFII's Action Plan Arising from June 29/21 Special Purpose Board Meeting on Norton Rose's Legal Arguments/Opinion in Opposition to AMF's Interpretation on RADM's Applicability to Credit Card-Embedded Insurance Benefits and Resulting Regulatory Expectations**

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#### ***Purpose of this Agenda Item – Update***

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This is an update only.

#### ***Background Information***

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CAFII's Board has asked for an Action Plan to engage with Eric Jacob, the AMF's new Superintendent of Client Services and Distribution Oversight. This is an opportunity to update the EOC on that Action Plan.

#### ***Recommendation / Direction Sought – Update***

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This is an update only.

#### ***Attachments Included with this Agenda Item***

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1 attachment.

***Agenda Item 5(b)(1)  
July 20/21 EOC Meeting***

**Action Plan, CAFII with AMF Regarding Regulation respecting Alternative Distribution Methods and Credit Card-Embedded Insurance Benefits Coming out of the Norton Rose Legal Opinion**

**Background Information**

- CAFII has requested and been granted a three-month extension for posting Product Summaries and providing the AMF with an Action Plan, to 17 December 2021;
- A new Superintendent of Client Services and Distribution, Eric Jacob, has been appointed at the AMF and this may provide an opportunity to recalibrate the relationship;
- Mario Beaudoin has verbally told THIA President Richard Ollier that the AMF will not enforce providing the Fact Sheet to consumers in the short term, and will work with industry to make the Fact Sheet more appropriate for credit card-embedded insurance benefits by 1 May, 2022—but he will not put this in writing;
- CAFII members are still reluctant to provide consumers with a Fact Sheet that is incorrect and misleading;
- Norton Rose feels that there are very solid legal foundations for not providing consumers with the current version of the Fact Sheet.

**Proposed Next Steps**

- CAFII to reach out to Eric Jacob, requesting a one-hour “get acquainted” virtual (web platform) meeting as soon as possible, with Keith Martin and Brendan Wycks;
- At that meeting, we will share information about CAFII, about some recent initiatives like our digitization project, and will inquire about AMF priorities;
- CAFII will thank the AMF for the three-month extension;
- CAFII will tell Eric Jacob that CAFII’s members want to comply with the Regulation for credit card-embedded coverages, but are struggling with the requirement that a Fact Sheet be provided to consumers at time of offer, as that Fact Sheet contains false and misleading information;
- CAFII will share that to understand the options available to it CAFII has asked Norton Rose to provide a legal analysis of the RADM and credit card-embedded insurance benefits, and we would like to share some of the findings (see below for the arguments to be shared);
- CAFII will indicate that if the AMF would find it useful to get further information about the legal findings, we would be pleased to have Norton Rose develop a synopsis of some of the arguments and share those either in writing, through a presentation by Norton Rose to the AMF, or both;
- Conclude meeting.



## **Appendix A: Potential Legal Arguments to Share with the AMF**

- Norton Rose has suggested that CAFII may argue that the AMF should decline to apply certain provisions of the RRADM to credit card-embedded insurance benefits in order (i) to ensure that the object of the RRADM is attained, (ii) to avoid absurd and impracticable consequences, and (iii) to adopt an interpretation of the RRADM that does not conflict with other legislation purporting to protect Quebec consumers.
- CAFII may request that the RRADM should be amended in order to either (i) adapt its provisions to the specific situation of credit card-embedded insurance benefits, or to (ii) grant the AMF with the discretionary power to exempt certain situations from its application. **Being a mere regulation, the RRADM may indeed be amended by the AMF:**

*the RRADM is not a statute adopted by the Quebec legislative assembly, but a mere regulation adopted by the AMF pursuant to the provisions of the ARDFPS. The RRADM may thus be amended by the AMF via the adoption of an amending regulation.*

*The amending regulation may purport to either (i) adapt the provisions of the RRADM to the specific context of credit card-embedded insurance benefits, or (ii) provide the AMF with the power and discretion to exempt certain specific situations from the application of the RRADM.*

- CAFII may also claim that certain provisions of the RRADM are simply inoperative when it comes to credit card-embedded insurance benefits since their application would conflict with (i) the Act respecting the distribution of financial products and services (**ARDFPS**) i.e. RRADM's parent legislation—specifically to not mislead consumers or provide false information:

*In the present case, it is clear that the purpose of the RRADM is to protect consumers by ensuring that they receive true, sufficient and relevant information about the insurance coverage and their rights in that regard. In the Notice relating to the application of the Regulation respecting alternative distribution methods published by the AMF, the latter indeed makes the following remarks:*

*The premise of the regime governing distribution without a representative is that adequate, accurate and complete information is given to the client.*

*The Regulation provides that information be disclosed through more than one document. The information specific to distribution without a representative is provided in a fact sheet, the content of which is prescribed by the Authority. The information on the product offered, which helps the client make an informed decision about the product, is presented in a summary prepared by the insurer.*

*The strict application of the RRADM advanced by the AMF however defeats that purpose. As discussed above, the RRADM provides that the product summary that must be delivered to clients must inform them of their “right of cancellation, its duration and the procedures for exercising it” while the mandatory fact sheet that must also be delivered to clients informs them that they are allowed to “rescind the insurance contract, at no cost, within 10 days”.*

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 5(c)**

**Recent and Upcoming Strategic and Regulatory Initiatives—CAFII Outreach Request To CBA That It Engage in AMF Credit Card-Embedded Insurance Benefits Issue, Given Implications For Core Credit Card Offerings in Quebec**

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### **Purpose of this Agenda Item – Update**

This is an update only.

### **Background Information**

CAFII has reached out to the CBA requesting that it engage in the AMF credit card-embedded benefits issue. CAFII has learned that the CBA is exploring the possibility of making a presentation on these matters to Quebec authorities.

### **Recommendation / Direction Sought – Update**

This is an update only.

### **Attachments Included with this Agenda Item**

No attachments.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 5(d)**

**Recent and Upcoming Strategic and Regulatory Initiatives—CAFII Working Group on Industry Alignment Around Compliance With AMF's Expectations Re RADM's Applicability to Credit Card-Embedded Insurance Benefits**

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### **Purpose of this Agenda Item – Update/Discussion**

This is an update with an opportunity for discussion.

### **Background Information**

CAFII has struck a Working Group with a mandate to find industry alignment around compliance with the AMF's expectations regarding the RADM's applicability to credit card-embedded insurance benefits. The mandate of the Working Group has been developed and accepted by the Group, and weekly meetings have been held starting on 13 May, 2021. The Group is attempting first to identify how to respond to the AMF's expectations around Product Summaries, and then CAFII management will produce a template of such a Product Summary that members can reference. There has been excellent collaboration in the Working Group's meetings, with members who have been in touch with the AMF around its expectations sharing what they have learned. The Working Group is chaired by EOC members Karyn Kasperski, RBC Insurance; and Scott Kirby, TD Insurance.

### **Recommendation / Direction Sought – Update/Discussion**

This is an update with an opportunity for discussion.

### **Attachments Included with this Agenda Item**

1 attachment.

Agenda Item 5(d)

July 20/21 EOC Meeting

Working Group on AMF Embedded Credit Card Insurance Coverages—Options around Applying the RADM

<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/D-9.2,%20r.%2016.1>

March 6 2020 Notes in Red

March 13 2020 Notes in Blue

May 20 2021 Notes in Orange

May 27 2021 Notes in Green


June 3 2021 Notes Red-Purple GO TO THE BOTTOM OF THIS DOCUMENT


June 10 2021 Notes Green GO TO THE BOTTOM OF THIS DOCUMENT

June 17 2021 Notes Blue GO TO THE BOTTOM OF THIS DOCUMENT

June 24 2021 Notes Yellow GO TO THE BOTTOM OF THIS DOCUMENT

July 8 2021 Notes Red GO TO THE BOTTOM OF THIS DOCUMENT

<u>RADM #</u>	<u>Wording</u>	<u>Option “Creative Solutions”</u>	<u>Option “Compliance”</u>
19	<p><b>CHAPTER III</b> OFFER OF INSURANCE PRODUCTS THROUGH A DISTRIBUTOR M.O. 2019-05, c. III.</p> <p><b>DIVISION I</b> GENERAL PROVISIONS M.O. 2019-05, Div. I.</p> <p> <b>19.</b> This chapter applies to an insurer that offers insurance products through a distributor in accordance with Title VIII of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>). M.O. 2019-05, s. 19.</p> <p><b>DIVISION II</b> INFORMATION TO BE PROVIDED TO THE AUTHORITY M.O. 2019-05, Div. II.</p>	N/A	N/A

20	 <p><b>20.</b> Before offering an insurance product through a distributor, the insurer must, in addition to the information required under section 66 of the Insurers Act (<a href="#">chapter A-32.1</a>), disclose the following information to the Authority:</p> <p>(1) the name and contact information of the third party to which the insurer has entrusted the performance of the obligations of an insurer with respect to the distribution of a product through a distributor, if applicable;</p> <p>(2) the hyperlink or any other means to access the distributor's offer through the Internet, if applicable;</p> <p>(3) the contact information of the insurer's assistance service referred to in section 27.</p> <p>The insurer must notify the Authority of any change to the above information within 30 days of such change.</p> <p>An insurer that removes a distributor from its list of distributors must indicate to the Authority the reasons for such removal.</p> <p>M.O. 2019-05, s. 20.</p>	<p>Straightforward</p> <p>Insurers can change periodically</p> <p>Would not be hard to do</p>	<p>Straightforward—not an issue</p>
21	<p><b>21.</b> The insurer must disclose annually to the Authority the following information for each product offered through a distributor:</p> <p>(1) the number of insurance policies and certificates issued and the amount of premiums written;</p> <p>(2) the number of claims and the amount of indemnities paid;</p> <p>(3) the number of rescissions and cancellations;</p> <p>(4) the remuneration paid to all distributors and third parties referred to in subparagraph 1 of the first paragraph of section 20.</p> <p>M.O. 2019-05, s. 21.</p>	<p>Some of this information is not relevant</p> <p>Distributor pays insurer so does not make sense to report on item 4</p> <p>Explanation that there would have to be distinctions due to different nature of business</p> <p>Certificates are in bulk</p> <p>How is cancellation defined? Is it cancellation of credit card?</p> <p>No remuneration paid to distributors</p> <p>Reporting on cancellation is not useful insurance information to the AMF</p>	<p>Question: what happens if an individual credit card has multiple insurers for different imbedded products?</p> <p>Could try to focus on certificates and not the card itself, which is the product.</p> <p>Cancellations can be recorded as cancelled credit cards with the note that it may not be due to the embedded insurance</p> <p>Remuneration can be identified as none if remuneration is not paid.</p>

		<p>How deal with a card that has never been used?</p> <p>Align Annual Statement on Market Conduct with this reporting; much of this is in the Annual Report</p> <p>Support for this approach</p> <p>Should NOT report on premiums because it is not end customer premium it is distributor to insurer—need to see if it is covered in Annual Statement</p> <p>Loss ratio is not sensible measure when premium is not paid by customer</p>	
22	<p><b>DIVISION III</b></p> <p><b>DOCUMENTS AND INFORMATION TO BE PROVIDED TO THE CLIENT</b></p> <p>M.O. 2019-05, Div. III.</p> <p>🕒</p> <p><b>22.</b> Before offering a product through a distributor, the insurer prepares the product summary in accordance with sections 28 and 29. The insurer mandates the distributor to deliver the summary to the client at the time it offers the product to him, together with a fact sheet in the form set out in Schedule 2.</p> <p>M.O. 2019-05, s. 22.</p>	<p><u>PLAN A</u></p> <p>Could ask the AMF is could just post it on the website and tell the customers they can go look for it there</p> <p>There is a disclosure box where the link to the website could be seen – need to show APR and core fees</p> <p>PUT ON WEBSITE—DIRECT CARD APPLICANTS TO SITE</p> <p>ALTERNATIVELY:</p> <p><u>PLAN B</u></p> <p>When is the right time and what is the right method to offer it to the client?</p> <p>Can get consent to send it afterwards?</p> <p>(BPI – currently TD asks for consent to share it with the fulfillment package currently)</p> <p>ADD LINK TO DISCLOSURE</p> <p>ALTERNATIVELY:</p>	<p>Need to confirm that this can be done by website except for contact centre interactions where the customer needs to be directed to the website URL of the insurer</p>

		<p><u>PLAN C</u> Will provide documentation in mail after enrollment the Product Summary and Fact Sheet</p> <p>Not offered at time of sale</p> <p>But this would increase the size of the package</p> <p>MAIL OUT IN FULFULMMMENT PIECE</p>	
23	<p><b>23.</b> Where the means of communication used to offer the product does not enable the distributor to deliver the summary and the fact sheet at the time the product is offered, the insurer must include in the mandate it entrusts to the distributor the obligation to inform the client of such inability. The insurer must also ensure that the distributor is required to obtain at that time the client's consent to receive those documents no later than when the policy or insurance certificate is delivered and to mention the information contained in those documents to the client.</p> <p>M.O. 2019-05, s. 23.</p>	Dealt with already	See above
24	<p><b>24.</b> The insurer must be able to provide, at the client's or the Authority's request, all information and documents presented to the client at the time the insurance product was offered to him, particularly the summary and the fact sheet.</p> <p>M.O. 2019-05, s. 24.</p>	<p>Can not do this easily</p> <p>Can offer to send the product summary and fact sheet if the customer asks for it</p> <p>Could if customer asks for this information then a link can be provided to customer where they can find it</p>	If company's have an archival history with version control this can be managed
25	<p><b>25.</b> Where personal information of a medical or lifestyle-related nature is collected from the client, the notice of specific consent provided for in section 93 of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>), applicable under section 437 of that Act, must be delivered to the client if the distributor wishes to allow its clerks to use the information it holds</p>	<p>None of the information collected from a customer has any bearing on their insurance benefits in embedded credit card insurance</p> <p>"No personal information is collected for the insurance benefits"—N/A</p>	No such information is collected by distributors and is only used by insurers at time of claim

	on the client for purposes other than those for which it was collected and be in the form set out in Schedule 3. M.O. 2019-05, s. 25.	ALTERNATIVELY: Insurance company does not see anything about customer until a claim -- explain this to AMF  Any information collected must be compliant with PIPEDA	
26	<b>26.</b> Where the distributor offers the client financing that requires him to subscribe for insurance to secure the repayment of the financing, the notice of free choice provided for in section 443 of the Act respecting the distribution of financial products and services ( <a href="#">chapter D-9.2</a> ) must be delivered to the client and be in the form set out in Schedule 4. M.O. 2019-05, s. 26.	N/A	N/A
27	<b>27.</b> The insurer must have an assistance service to answer questions from the distributor regarding each product offered. M.O. 2019-05, s. 27. <b>DIVISION IV</b> <b>SUMMARY</b> M.O. 2019-05, Div. IV.	Not a problem to comply	Not a problem to comply.  Distributor needs to have a contact person, perhaps an insurer, who could answer questions.
28	<b>28.</b> The summary may pertain only to the product and must satisfy all the following conditions: (1) it must be concise; (2) it must explain the product; (3) it must be written in language that is clear, readable, specific and not misleading so as to highlight the essential elements for informed decision-making and not cause confusion or misunderstanding; (4) it must present accurate information; (5) it must not contain any advertising or promotional offer; (6) it must not be the insurance policy or certificate. Where necessary, the insurer may refer the client to the relevant sections of the insurance policy to obtain additional information not found in the summary. M.O. 2019-05, s. 28.	Provision is probably fine  It is what is in the summary that is the concern	NBI attempted to refer to certificate and got pushback from the AMF who wanted references in the summary itself.  Exclusions—NBI just wanted to include the main exclusions and referred to the certificate for additional exclusions; AMF said that all the exclusions needed to be in the Summary itself.  Desjardins—18 causes of cancellation that would lead to a claim payout—listed 5 of them and referred to the certificate for the remainder  As a result NBI's Summary is 15 pages.



			<p>Pre-existing conditions is a difficult exclusion to explain. Try to use clear language that is simpler than the certificate.</p> <p>Draft Summary review—see page 12.</p>
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29	<p><b>29.</b> The summary must present the following information:</p> <ol style="list-style-type: none"> <li>(1) the insurer's name and contact information;</li> <li>(2) the client number of the insurer registered in the Authority's register of insurers and the Authority's website address;</li> <li>(3) the name and type of product offered;</li> <li>(4) the eligibility criteria;</li> <li>(5) the name and contact information of the distributor that offers the product;</li> <li>(6) the product coverage, exclusions and limitations;</li> <li>(7) any other specific clauses that may affect the insurance coverage;</li> <li>(8) warnings about the consequences of misrepresentations and concealment;</li> <li>(9) the client's right of cancellation, its duration and the procedures for exercising it;</li> <li>(10) the rules applicable to the temporary insurance, if applicable;</li> <li>(11) the information that the client must be made aware of in accordance with section 434 of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>);</li> <li>(12) the premiums and other fees and expenses, including the applicable taxes, or, if an exact amount cannot be indicated, the criteria used to determine it;</li> <li>(13) an indication that the premium is fixed or likely to vary over time;</li> <li>(14) the insurer's website address providing access to the information on where the client can file a complaint with the insurer and a summary of the complaint processing policy provided for in the second paragraph of section 52 of the Insurers Act (<a href="#">chapter A-32.1</a>);</li> <li>(15) the manner in which the specimen of the policy or the insurance certificate can be accessed on the insurer's website.</li> </ol> <p>Where the policy provides for a formula to calculate the portion of the refundable premium in the event of cancellation, the insurer must indicate as such in the summary and include an example of its application.</p> <p>M.O. 2019-05, s. 29.</p>	<p>General thoughts on product summary: credit cards have different amounts of insurance coverage.</p> <p>One summary for each insurance product? Some in industry would prefer not to have a summary for each coverage.</p> <p>Some card issuers have certificates that are combined, some have them separate.</p> <p>Operationally, could have different sections in summary. Better perhaps to combine the information. AMF wants the Summary to be concise.</p> <p>AMF has indicated that one Summary for multiple coverages is acceptable.</p> <p>But could be difficult where different insurers for different components</p>	<ol style="list-style-type: none"> <li>1) Insurer's name and contact information—may have multiple insurers—so need each of them to be listed – should be straightforward</li> <li>2) Straight forward</li> <li>3) Straight forward</li> <li>4) Don't need to be eligible to enroll, you are automatically enrolled. NBI said that the principal cardholder was eligible. Concierge service should not need to be included—only insurance needs to be included.</li> <li>5) Straight forward (bank typically)</li> <li>6) Exclusions and limitations—with multiple benefits – could be a lot of pages and effort. How best to deal with this? Summary should not be a word for word replica of the certificate. Desire is to be high level and reference the certificate.</li> <li>7) Wrapped this around claim.</li> <li>8) Tied to 7. A bit broader.</li> <li>9) Client's right of cancellation is for credit card not embedded insurance. If enroll in this card you get these coverages; otherwise you can cancel the card.</li> <li>10) Not applicable to any embedded insurance.</li> <li>11) This is about claims and how to present it, what to do if the claim is refused. Must do more than just refer to certificates. AMF wants more detail than that. So added all the</li> </ol>
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		<p>of the credit card insurance benefits.</p> <p>Very difficult to operationalize the sharing of summaries.</p> <p>NEED to avoid providing this Summary at time of offer in branch. Provision #22 looks at that. Can be part of the package sent to customers.</p> <p>#1 OK #2 OK #3 PRODUCT NOT OFFERED #4 OK</p> <p>Scott Kirby feels problem elements are: #8,9,10 #8 has to not be at time of enrollment but is at time of claim #9 need to tell customer they can cancel by cancelling the card This is the recommended approach which had support from the group.</p>	<p>provisions that are in the certificate with respect to claims.</p> <p>12) Can just say there is no premium for the client.</p> <p>13) Premium is fixed at zero. Did not disclose card fees.</p> <p>14) Straight forward.</p> <p>15) A bit of a challenge. There is no refund calculation to show. "If the card is cancelled there is no refundable premium for the insurance coverages." Or...just be silent. Say nothing. "Where the policy provides for" gives a way out.</p> <p>FACTSHEET—at NBI for all summaries there is an introductory statement where the coverages are listed, premium is listed as zero etc. Notice of resolution (ck) at end. Notice of rescission—say that the first contract remains in force, notice of rescission is incorrect.</p>
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		<p>Alternatively, could try to ask for it to not be included at all.</p> <p>Perhaps provide an example—for example, you cannot cancel an element of a group policy and then pay less for the benefits. Same concept with credit cards.</p> <p>PLAN A: try to explain why customers cannot opt out, so this does not apply—confusing, not relevant</p> <p>PLAN B: say can cancel credit card if you don't want coverage</p> <p>Direct it back to Bank policies</p> <p>#10 N/A but don't need to worry about it</p> <p>#12 How solution this?</p> <p>There is no premium paid by the customer; it is paid by the bank. However, could use high-level phrasing to educate customer "How much am I paying for the insurance coverage" "This insurance coverage is an additional coverage at no additional price to you. Bank X pays</p>	
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		<p>the premium to provide coverage for all customers with the card.” Definitely do not want to get into the numbers. ALTERNATIVELY could simply say there are not fees for you the consumer.”</p> <p>PLAN A: “coverage is provided under benefits and no premium is charged to the card-holder”</p> <p>#13—can tie this into the same point “premium are not charged to card-holder”</p> <p>#12 and #13 can be addressed together</p> <p>#14 are there any concerns about providing the insurer’s website?</p> <p>Should replicate the approach we take with other products</p> <p>#15 Response: “Not applicable”</p> <p>There is no premium so not capability for a refund</p> <p>#9 is also applicable to #15</p>	
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30	<p><b>30.</b> The insurer must, as soon as the client has subscribed for or enrolled in the insurance contract, provide the client with the following documents:</p> <p>(1) a summary of the information collected from the client;</p> <p>(2) the policy, the insurance certificate or the temporary insurance.</p> <p>M.O. 2019-05, s. 30.</p>	<p>#1 Similar to provisions discussed earlier</p> <p>Information collected from client is not collected in relation to insurance it is in relation to the credit card application</p> <p>The information is relevant when the card is issued in relation to the insurance</p> <p>But would not know who is insured until there is a claim</p> <p>We can achieve this outcome without “conforming to regulation”</p> <p>“No information collected about client so not relevant”</p> <p>#2 providing certificate is not a problem (part of credit card package); temporary insurance is not applicable</p>	<p>This is related to insurance only. The only information collected is related to the card, so 30 (1) is N/A.</p>
31	<p><b>31.</b> The notice of rescission provided for in section 440 of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>), which must be delivered to the client by the distributor, must be in the form set out in Schedule 5.</p> <p>M.O. 2019-05, s. 31.</p>	<p>This is a challenge</p> <p>There are no cancellation rights</p> <p>Embedded in credit card</p>	<p>There are no cancellation rights.</p> <p>AMF wants this put into the <b>Summary</b>. It is at the very end.</p>
32	<p><b>32.</b> The insurer must make the product summary and a specimen of the policy or the insurance certificate accessible on its website for</p>	<p>Probably most customers would look at distributors’ websites</p>	<p>Straight forward.</p>

	<p>each product offered by a distributor, as well as any available endorsement, if applicable. M.O. 2019-05, s. 32.</p> <p><b>NOTE</b> This section will come into force on 13 June 2020 excluding the been in force since 13 June 2019.</p>	<p>But probably already doing this so is fine</p>	<p>Will this be posted for everyone or just for Quebec residents?</p> <p>Do not say it is for Quebec only for embedded products.</p> <p>NBI has not included the Fact Sheet and the AMF has not said anything.</p>
33	<p><b>In force: 2020-06-13</b> <b>DIVISION V</b> <b>SUPERVISION OF DISTRIBUTORS</b> M.O. 2019-05, Div. V. <b>In force: 2020-06-13</b> 🕒 <b>33.</b> The insurer must monitor and supervise the offering of insurance products by its distributors. To that end, it must adopt and implement procedures that enable the supervision and training of its distributors and the natural persons to whom they entrust the task of dealing with clients in order to ensure compliance with the requirements under the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>) and this Regulation. M.O. 2019-05, s. 33.</p>	<p>#33 and #34 go together Cannot supervise because there is no offering; can do training on what is included in benefit Supervision of offering does not apply</p> <p>Distribution of credit card—can indicate what is the coverage, and that is the extent of it; if there are questions about exclusions, how it works, provide them with number of provider and they can speak to them</p> <p>Risk inviting conversations that cannot be held with non-licensed individuals Training could be coverages and details can be sent to provider (insurer)</p>	

		<p>#34 I) is asking for quite specific details          “This is not possible for embedded coverages, training is just to indicate the coverages”          Training needs to be less prescriptive than in regs          Training for embedded coverages would be different          PROVIDING INFORMATION TO THE DISTRIBUTION CHANNEL ABOUT THE PRODUCT— not classrooms etc.          “What is training?”          perhaps need to show samples</p>	
34	<p><b><i>n force: 2020-06-13</i></b></p> <p> <b>34.</b> The training provided by the insurer must cover the following:          (1) the insurance product, particularly the coverage offered, the eligibility criteria and the applicable exclusions and limitations;          (2) the distributor’s legal obligations;          (3) the insurer’s complaint processing policy;          (4) the practices promoting the fair treatment of clients;          (5) the filing of a claim.          M.O. 2019-05, s. 34.</p>	See #33	
35	<p><b>DIVISION VI</b>  <b>PROHIBITIONS</b>          M.O. 2019-05, Div. VI.</p> <p></p>	<p>#1)          Distributor is not being compensated so this is entirely not applicable</p>	



	<p><b>35.</b> For insurance products referred to in paragraph 5 of section 424 and paragraph 1 of section 426 of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>), no insurer may:</p> <p>(1) enable the distributor to keep its remuneration within a time period not commensurate with the term of the product, which time period may not, however, be less than 180 days;</p> <p>(2) pay to the distributor a bonus or a share in the profits based on contract experience;</p> <p>(3) set different commission rates applicable to a distributor for products with similar insurance coverage.</p> <p>M.O. 2019-05, s. 35.</p>	<p>Works the opposite way</p> <p>#2)</p> <p>Not applicable</p> <p>Not really about profits</p> <p>#3)</p> <p>Not applicable</p>	
36	<p><b>CHAPTER IV</b> TRANSITIONAL AND FINAL PROVISIONS M.O. 2019-05, c. IV.</p> <p> <b>36.</b> This Regulation replaces the Regulation respecting distribution without a representative (<a href="#">chapter D-9.2, r. 8</a>). M.O. 2019-05, s. 36.</p>	<p>Transitional</p>	
37	<p><b>37.</b> For the period from 13 June 2019 to 12 June 2020, any delivery to the client of a distribution guide forwarded to the Authority before 13 June 2019 in accordance with section 414 of the Act respecting the distribution of financial products and services (<a href="#">chapter D-9.2</a>), including, if applicable, delivery to the client of the fact sheet in accordance with the Notice regarding the offering of insurance products by automobile and recreational and leisure vehicle dealers, is equivalent to the delivery of a summary and a fact sheet in accordance with section 22 of this Regulation.</p> <p>Similarly, access to such a distribution guide on the insurer's website during that period is equivalent to access to the summary in accordance with section 32 of this Regulation.</p> <p>M.O. 2019-05, s. 37.</p>	<p>Transitional</p>	

## [FACT SHEET](#)

Just address the problems with the Fact Sheet  
Do not provide solutions  
Can forward any issues to the AMF  
Address however all the problems with the Fact Sheet

“It’s your choice” wrong  
Etc.  
First section is misleading  
Remuneration – just wrong  
Wrong information

Right to Cancel – just not correct  
Does not apply  
Perhaps have our own version of a Fact Sheet that is more accurate?

#### **Approach to the AMF**

Written submission?  
Themes of issues

Product Summary and Fact Sheet / Disclosures  
Training

Trying to explain what we addressed and why we addressed items in a specific way

Better informing customers is critical  
Here is how we would distribute these documents

Have our plan B and C

“These pieces are not relevant”

Annual Statement on Market Conduct

Written submission

Try to address their concerns in a way that is much better

## FACT SHEET

The purpose of this fact sheet is to inform you of your rights. It does not relieve the insurer or the distributor of their obligations to you.

### LET'S TALK INSURANCE!

Name of distributor: \_\_\_\_\_

Name of insurer: \_\_\_\_\_

Name of insurance product: \_\_\_\_\_



#### IT'S YOUR CHOICE

**You are never required to** purchase insurance:

- that is offered by your distributor;
- from a person who is assigned to you; or
- to obtain a better interest rate or any other benefit.

Even if you are required to be insured, **you do not have to** purchase the insurance that is being offered. **You can choose** your insurance product and your insurer.



#### HOW TO CHOOSE

To choose the insurance product that's right for you, we recommend that you read the summary that describes the insurance product and that must be provided to you.



#### DISTRIBUTOR REMUNERATION

A portion of the amount you pay for the insurance will be paid to the distributor as remuneration.

The distributor **must** tell you when the remuneration exceeds 30% of that amount.



## RIGHT TO CANCEL

The Act allows you to rescind an insurance contract, **at no cost**, within 10 days after the purchase of your insurance. However, the insurer may grant you a longer period of time. After that time, fees may apply if you cancel the insurance. **Ask** your distributor about the period of time granted to cancel it **at no cost**.

If the cost of the insurance is added to the financing amount and you cancel the insurance, your monthly financing payments might not change. Instead, the refund could be used **to shorten the financing period**. **Ask your distributor for details**.

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**The *Autorité des marchés financiers* can provide you with unbiased, objective information.**

Visit [www.lautorite.qc.ca](http://www.lautorite.qc.ca) or call the AMF at 1-877-525-0337.

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**Reserved for use by the insurer**

**This fact sheet cannot be modified**

**Participants, 6 March 2020 Meeting**

Scott Kirby, Chair  
Keith Martin  
Karyn Kasperski, RBC Insurance  
Isabelle Choquette, Desjardins  
Charles Andre Roy, Desjardins  
Brendan Wycks, CAFII  
Michelle Butler, Scotiabank  
Peter Thorn TD  
Greg Shirley Manulife  
Monika Spudas Manulife

**Participants, 13 march 2020 Meeting**

Isabelle Choquette, Desjardins  
Scott Kirby, TD Insurance  
Peter Thorn, TD Insurance  
Martin Boyle, BMO  
Monika Spudas, Manulife  
Greg Shirley, Manulife  
Tracey Torkopolous, Assurant  
Michelle Butler, Scotiabank  
Keith Martin, CAFII

General Comment—trying to meet the outcomes expected from AMF, but not trying to comment  
If comply, implies that regulation applies and is an offer

### **Working Group Members Embedded Credit Card Coverages**

Scott Kirby, Chair

Martin Boyle, BMO Insurance

Isabelle Choquette, Desjardins (to be assisted by two people)

Mandy Rutten, CIBC

Michelle Butler, Scotiabank

Karyn Kasperski, RBC Insurance

Pete Thorn, TD Insurance

Monika Spudas, Manulife

Greg Shirley, Manulife

Tracey Torkopoulos, Assurant

Brendan Wycks, CAFII

Keith Martin, CAFII

### **Summary Notes of the 3 June 2021 Working Group Meeting**

These notes are not captured in a column in the RADM document because this meeting mostly concentrated on reviewing some documents related to the Product Summary. There is a template of the Product Summary produced by CAFII that was reviewed, but most of the discussion was around the response that National Bank Insurance had received from the AMF to their proposed revised Product Summary. The AMF said that if there were more than one type of insurance then a separate Product Summary was required. By way of example, travel insurance (health/medical, baggage, trip interruption, trip cancellation) could be covered in one Product Summary, but a different product like purchase insurance required a separate Product Summary. There was much discussion about how to fulfil on multiple Product Summaries, as it was difficult to provide multiple documents to consumers. There was a consensus that the booklets that are sent to consumers when they take out a credit card could be combined into one.

#### **In Attendance:**

Karyn Kasperski	RBC Insurance <i>Co-Chair</i>
Scott Kirby	TDI <i>Co-Chair</i>
Silvana Capobianco	BMO Insurance
Greg Caers	BMO Insurance
Mandy Rutten	CIBC Insurance
Anu Bains	CIBC Insurance
Penny Cordogiannis	RBC Insurance
Trish Facciolo	RBC

Marie Nadeau	National Bank Insurance
Michelle Butler	Scotiabank
Tracey Torkopoulos	Assurant
Jennifer Russell	Assurant
Nadine Roy	Assurant
Isabelle Choquette	Desjardins
Monika Spudas	Manulife
Kuzio, Sherri	Scotiabank

Staff: Brendan Wycks, Keith Martin

### Summary Notes of the 10 June 2021 Working Group Meeting

These notes are not captured in a column in the RADM document because this meeting mostly concentrated on reviewing translated documents relating to the AMF’s response to National Bank Insurance’s (NBI) revised Product Template. The 12-page Product Summary and the AMF’s response were shared with Working Group members, and were the focus on discussion. Marie Nadeau of NBI summarized the AMF’s responses, which included that not all exclusions needed to be laid out—it was better to “bucket” them. The AMF also felt that there needed to be a separate Product Summary for each product category—so in NBI’s case, a product summary for purchase insurance, and a separate one for travel insurance (travel medical, baggage, trip cancellation, trip interruption etc.). There was much discussion among Working Group members about how to operationalize some of these expectations, noting that travel insurance could include life and health insurance as well as P&C insurance (e.g. car rental insurance). Nearly all members said that different product summaries would need to be added together in the fulfilment package (“booklets”) provided to consumers. There was concern that if the AMF did not “sign off” on the approach members took, this could lead to expensive and time-consuming processes being put in place and then potentially being told by the AMF that the approach taken did not meet its expectations.

### In Attendance:

Karyn Kasperski	RBC Insurance <i>Co-Chair</i>
Scott Kirby	TDI <i>Co-Chair</i>
Silvana Capobianco	BMO Insurance
Greg Caers	BMO Insurance
Mandy Rutten	CIBC Insurance
Anu Bains	CIBC Insurance
Penny Cordogiannis	RBC Insurance
Trish Facciolo	RBC
Marie Nadeau	National Bank Insurance
Michelle Butler	Scotiabank



Tracey Torkopoulos	Assurant
Jennifer Russell	Assurant
Nadine Roy	Assurant
Isabelle Choquette	Desjardins
Monika Spudas	Manulife
Kuzio, Sherri	Scotiabank
Susan Johnston	RBC Insurance
Pete Thorn	TDI

### **Summary Notes of the 17 June 2021 Working Group Meeting**

These notes are not captured in a column in the RADM document because this meeting was mostly focused on discussion around how CAFII members would implement the requirements associated with the AMF's expectations around the RADM and credit card-embedded insurance benefits. It was noted that Desjardins is not yet using a Product Summary and as such is still sharing the Distribution Guide with consumers. There was a wide-ranging discussion about how to get the product summaries to consumers at time of sale, noting that the phone channel was unique and for that channel customers needed to consent to be sent the product summary or told how to access it for example on the company's website. It was noted that there are multiple credit cards and products at play and one member said that this implementation would involve over 100 changes to process. It was noted that the Action Plans would also need to include timelines and milestones around communication, change management, and the training plan for frontline staff. It was emphasized that the product summaries are not to be shared with consumers at time of fulfilment, but at time of offer or sale. Legal and compliance departments will need to review the action plans. Some members said that they did not envision completing all the tasks associated with this implementation before Q3 or Q4 2022. At the branch level, probably branch personnel would need to hand a paper copy of the product summary to the customer. However, given how many cards there are available and that the product summaries may differ for different cards with different embedded coverages, some felt that this was not realistic. Given that some members' websites are national and that this regulation only applies to Quebec, probably there would be an icon on the website that says Quebec resident should click on the tab, and that would bring them to the product summary. There was discussion about whether it was advisable to ask for guidance from the AMF, or just do what seemed most plausible. While it would be unpleasant to implement a solution and then have the AMF say it was not adequate, asking also has risks and we may not like the answers they give. It was suggested that the action plans should be high level—channels that require new processes and the dates by which that will be done; timelines; the training plan.

### **In Attendance:**

Karyn Kasperski	RBC Insurance <i>Co-Chair</i>
Scott Kirby	TDI <i>Co-Chair</i>
Silvana Capobianco	BMO Insurance
Greg Caers	BMO Insurance

Mandy Rutten	CIBC Insurance
Trish Facciolo	RBC
Marie Nadeau	National Bank Insurance
Jennifer Russell	Assurant
Nadine Roy	Assurant
Isabelle Choquette	Desjardins
Monika Spudas	Manulife
Kuzio, Sherri	Scotiabank
Susan Johnston	RBC Insurance

CAFI:

Keith Martin

Brendan Wycks

#### **Summary Notes of the 24 June 2021 Working Group Meeting**

The meeting began with an update on what had been covered at the prior meeting and whether there were any questions arising from that meeting. The discussion then turned to the letter from the AMF formally indicating that the request from CAFI for a three-month extension had been granted, although for the listing of products and distributors in E-Services the deadline was still 17 September, 2021, with Mario Beaudoin indicating in his phone conversation with Keith Martin that this was to allow the AMF to provide guidance on how to capture products, as well as to ensure that everyone will be in a position to provide the data in the Annual Disclosure which is due on 1 May, 2022. It was noted that the letter sent to THIA was identical to the letter sent to CAFI, with two exceptions. The THIA letter includes, in response to a question from THIA, the comment:

*“The Authority does not expect product summaries to be provided retroactively to all existing cardholders in Quebec...”*

As well, THIA’s letter also includes the following statement that is not in the CAFI letter:

*“With respect to the fact sheet, we can continue discussing the issue.”*

It was pointed out that the 17 December 2021 deadline requires posting of the product summaries on the insurer’s websites, but only an action plan with respect to distributors. There was discussion of whether distributors would be head office only or all distributing branches, with most members saying that they believed the branch details were required. There was discussion on how to bucket the products in product summaries. There was discussion on how to deal with cancellations, and whether to report on credit card cancellations or list all cancelled certificates. It was noted that car rental insurance is non-travel related but might be best included in the travel insurance product summaries.

There was discussion of the main insurer and other insurers, and how to deal with that. If disclosure is on benefits not credit cards that may avoid some problems but be more complicated to report on. It was also noted that the notice of rescission also needs to be included in the action plans, and can probably be added to the end of the product summaries.

A link was provided on how to navigate through the annual disclosure:

<https://lautorite.qc.ca/en/professionals/e-services/training-capsules/files-management-of-dwr-and-disclosure-of-distributors/>

TD Insurance provided some screen shots of the AMF's E-Services:

⚠️ DID you "test" it earlier that the information been is accurate.

### Modification

Client information

Client No. \_\_\_\_\_  
Name of firm \_\_\_\_\_

Mailing address

CNIC No. \_\_\_\_\_ State / Fed. / Unit \_\_\_\_\_  
Street / Delivery installation \_\_\_\_\_  
Municipality \_\_\_\_\_ Province / State \_\_\_\_\_  
County \_\_\_\_\_ Postal code (Zip code) \_\_\_\_\_

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⚠️ You cannot add a new client information if the client information is already added.

### Client information

Client No. \_\_\_\_\_  
Name of firm \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Type of contract \_\_\_\_\_  
Contract start date \_\_\_\_\_  
Contract end date \_\_\_\_\_  
Contract status \_\_\_\_\_  
Contract type \_\_\_\_\_  
Contract value \_\_\_\_\_  
Contract currency \_\_\_\_\_  
Contract description \_\_\_\_\_  
Contract notes \_\_\_\_\_

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### Client information - 1

Client No. \_\_\_\_\_  
Name of firm \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Type of contract \_\_\_\_\_  
Contract start date \_\_\_\_\_  
Contract end date \_\_\_\_\_  
Contract status \_\_\_\_\_  
Contract type \_\_\_\_\_  
Contract value \_\_\_\_\_  
Contract currency \_\_\_\_\_  
Contract description \_\_\_\_\_  
Contract notes \_\_\_\_\_

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### Client information - 2

Client No. \_\_\_\_\_  
Name of firm \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Type of contract \_\_\_\_\_  
Contract start date \_\_\_\_\_  
Contract end date \_\_\_\_\_  
Contract status \_\_\_\_\_  
Contract type \_\_\_\_\_  
Contract value \_\_\_\_\_  
Contract currency \_\_\_\_\_  
Contract description \_\_\_\_\_  
Contract notes \_\_\_\_\_

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### Client information - 3

Client No. \_\_\_\_\_  
Name of firm \_\_\_\_\_  
Mailing address \_\_\_\_\_  
Type of contract \_\_\_\_\_  
Contract start date \_\_\_\_\_  
Contract end date \_\_\_\_\_  
Contract status \_\_\_\_\_  
Contract type \_\_\_\_\_  
Contract value \_\_\_\_\_  
Contract currency \_\_\_\_\_  
Contract description \_\_\_\_\_  
Contract notes \_\_\_\_\_

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In Attendance:

Karyn Kasperski	RBC Insurance <i>Co-Chair</i>
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Monika Spudas	Manulife
Sherri Kuzio	Scotiabank
Anu Bains	CIBC Insurance
Penny Cordogiannis	RBC Insurance
Pete Thorn	TD Insurance

CAFI:

Keith Martin

Brendan Wycks

#### **Summary Notes of the 8 July 2021 Working Group Meeting**

Keith Martin provided an overview of the presentation by Norton Rose to a Special Purpose Meeting of the Board on 29 June, 2021. Marc Duquette and Dominic Dupoy said that the AMF had full jurisdiction to change the regulation, or not apply it to credit card-embedded insurance coverages, without legislative change. Furthermore, they had the ability to immediately issue a “staff notice” that they would not be enforcing the Regulation for credit card-embedded insurance benefits. They felt that the Regulation should not apply to credit card-embedded insurance coverages as there is no distinct offer of insurance for these benefits, and that the requirement to provide a Fact Sheet that contained misleading information was inappropriate as it contradicted other Quebec regulatory and legislative requirements to not provide consumer with misleading or false information. Such a requirement led to an absurd consequence, they argued, and in fact was inconsistent with the legislation upon which the Regulation is based.

In terms of next steps, Keith Martin noted that the AMF had appeared more conciliatory of late, including issuing a three-month extension to comply with the Regulation, indicating flexibility on the Fact Sheet, and postponing consultations on other Regulatory initiatives to the fall of

2021. It was noted that these changes had all occurred in the timeline since a new Superintendent of Client Services and Distribution, Eric Jacob, had been appointed; possibly he was seeking to take a different approach than the AMF has been taking in the past few years. The Board asked CAFII management to therefore organize a virtual get-acquainted meeting with Mr. Jacob, to share his priorities, CAFII's priorities, and then to share that while CAFII members were seeking to comply with the Regulation for credit card-embedded insurance coverages, the Fact Sheet remained a source of concern, and as such CAFII sought legal counsel from Norton Rose through which it learned some of its options. CAFII will share the key findings noted above from Norton Rose, and will then offer to have Norton Rose send a written synopsis of those findings; organize a virtual presentation to the AMF on those findings; or both (in French).

Working Group members noted that the most onerous element of complying with the Regulation is the need to do so at the time of offering of the card, as insurance is typically not a top-of-mind consideration for those applying for a new credit card, and the documentation around insurance did not fit well into the process flow for the sale of credit cards. If possible, that matter will also be raised with the AMF.

Scott Kirby presented a variety of ways in which reporting requirements could be met in E-Services for the AMF, noting that the easiest approach might be to aggregate the data for similar products across multiple credit cards, but that the drawback of such an approach might be that some of the data is not strictly correct. The more accurate approach would be to supply data per card, but this would be an onerous reporting requirement.

In Attendance:

Karyn Kasperski	RBC Insurance <i>Co-Chair</i>
Scott Kirby	TDI <i>Co-Chair</i>
Silvana Capobianco	BMO Insurance
Greg Caers	BMO Insurance
Mandy Rutten	CIBC Insurance
Trish Facciolo	RBC
Jennifer Russell	Assurant
Nadine Roy	Assurant
Monika Spudas	Manulife
Sherri Kuzio	Scotiabank
Marie Nadeau	National Bank Insurance
Susan Johnston	RBC Insurance

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 5(e)  
Recent and Upcoming Strategic and Regulatory Initiatives—CAFII Working Group On Industry  
Interpretation of FCAC's Appropriateness Guideline's Application to Authorized Insurance  
Products/CPI; and Potential Approaches to Compliance**

---

### **Purpose of this Agenda Item – Update**

Update only.

### **Background Information**

CAFII has struck a Working Group with a mandate to find industry alignment around how to best respond to the FCAC's Appropriateness Guideline, especially with respect to provisions that may apply to credit protection insurance. The group is meeting every second week and is chaired by Martin Boyle, BMO Insurance.

### **Recommendation / Direction Sought – Update**

This is an update only.

### **Attachments Included with this Agenda Item**

1 attachment.

**Agenda Item 5(e)**  
**July 20/21 EOC Meeting**

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### **CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance--Terms of Reference**

#### **Mandate**

This Working Group will seek to develop a shared understanding of the application of the FCAC Appropriate Standard to Authorized Insurance Products/Credit Protection Insurance as well as an industry level position on what would be an acceptable and implementable approach to compliance with the FCAC Appropriateness Guideline for Authorized Insurance Products/Credit Protection Insurance, from the perspective of the federal Financial Consumer Protection Framework (FCPF) and the provincial insurance regulatory framework, including Fair Treatment of Consumers principles.

#### **Process**

Based on the federal Financial Consumer Protection Framework (FCPF), the provincial insurance regulatory framework, including Fair Treatment of Consumers principles, and emerging regulatory developments the Working Group will look to:



### **Explore what would constitute an “appropriate” or “inappropriate” enrolment**

Consider the information that would be required to determine whether an enrolment was appropriate  
Consider the changes required to current enrolment processes to account for product appropriateness  
Consider whether other processes (i.e., outside of the enrolment) that could be impacted by an appropriateness standard

As the Working Group will launch at a time when the FCAC Appropriateness Guideline is not available to CAFII, the work outlined above is expected to be completed without reference to it. When copy of the FCAC’s Appropriateness Guideline is available, the Working Group can then cross-reference its work against that document.

### **Participants**

Martin Boyle (BMO Insurance) will serve as the Chair of the Working Group.

CAFII EOC and Board members will be invited to nominate up to two representatives per Member company to serve on the Working Group.

### **Meetings**

Initially the Working Group will meet every second Wednesday from 2:30 to 3:30 p.m. via MS Teams.

### **CAFII Working Group On FCAC Appropriateness Guideline’s Provisions Related To Authorized Insurance Products/Credit Protection Insurance—Members**

Martin Boyle	BMO Insurance and Chair
Karam Al Saeygh	BMO Insurance
David D’Amico	BMO Insurance
Fernando Heleno	RBC Insurance
Penny Cordogiannis	RBC Insurance
Brad Kuiper	ScotiaLife Financial
Anu Bains	CIBC Insurance
Marie Nadeau	National Bank Insurance
Pete Thorn	TD Insurance
Aleks Omaljev NO LONGER ON WORKING GROUP	TD Insurance (legal)
Sara Motamedi	TD Insurance (legal)
Derek Andrews	Scotiabank
Ivana Veljovic	Assurant
Emily Brown	Sun Life
Louise Nash	CIBC Insurance

Staff:

Keith Martin, CAFII

Brendan Wycks, CAFII

Lyn Wallington, CAFII

## Approach of the Working Group

Working Group Chair Martin Boyle has recommended that the Working Group should structure its discussions around what a regulator might expect to see in an Appropriateness Guideline:

KYC (securities, insurance)  
KYP (securities, insurance)  
Needs-based sales (insurance)  
Documentation related to dealings with clients (insurance)  
Remuneration/incentives/conflicts of interest (insurance)

## A List of What Can and What Cannot be Included as a Credit Protection Insurance Appropriateness Standard

<b>Cannot Include</b>	<b>Can be Included</b>
Assessing financial/insurance needs	Eligibility requirements
Assessing adequacy of existing insurance	Need based on underlying credit
Insurance recommendation or advice	Effective compliance oversight
Description of how insurance meets any needs	Focus on optional nature of product
Collection of information beyond what is directly related to credit protection (e.g. financial goals/needs, time horizon, net worth, income, risk profile)	
Affordability assessment (credit test should be considered appropriate)	
Requirements that create noncompliance with other applicable rules	

## CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance—Summary Notes 16 June, 2021 Meeting

The CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance had a wide-ranging discussion at its 16 June, 2021 meeting. Working Group Chair Martin Boyle shared that a revised draft of the FCAC Appropriateness Guideline was expected to be tabled with the Canadian Bankers Association (CBA) in June, 2021, but that had not yet happened. There would be a reduction of principles from 7 to 5, but it was not clear if two principles would be dropped, or if some principles would be combined.

There was a discussion of the different interpretations of what appropriateness was. There was also discussion about consent and whether that concept should be introduced into this exercise.

It was noted that this exercise may be about confirming with or demonstrating to the regulator that we are in fact doing what we are already doing. We cannot give advice, but perhaps there can be an attempt to determine what customers need—a “guided approach” or interaction, perhaps focused on eligibility.

It was noted that the FCAC’s expectations need to be delivered by April 2022, and that will come around very quickly. The timeline is challenging. It would be helpful if members of the Working Group could share the different approaches they were planning on taking. In that spirit, several members shared their high-level approach. BMO Insurance wants to ensure customers can benefit from a product they purchase; they must be eligible for the product, and able to make a claim if necessary. So there is a need to assess eligibility criteria like age, residency, the principal person taking out the loan etc.

CIBC Insurance said they also were planning on asking eligibility questions. There will be one-by-one questions, and if any of the questions is not answered correctly (such that the customer is eligible for the insurance), then they are not offered the product. Online system is based on the in-person script where information is gathered from the customer to ascertain eligibility for the insurance.

RBC Insurance was also taking the same approach around eligibility including asking questions around health and other relevant matters, for example “are you working?”

An issue several members raised is how to deal with eligibility for pre-approval (pre-x). How confirm eligibility especially in digital channels? This was viewed as a challenge. Several members asked how to deal with misrepresentations, especially around health questions? On job loss, it was felt that if a person for example was not working full-time where that is a requirement for making a claim, they should be “knocked out” of being offered the product.

There was discussion of giving customers a “Fact Sheet” letting them know they have a choice around obtaining the insurance. The question was raised of whether the customer should be asked to acknowledge that the product they were being offered was appropriate?

It was noted that the FCAC did not view credit card-embedded insurance coverages as in-scope for its appropriateness guideline.

#### Attendees at the 16 June, 2021 Working Group Meeting

Martin Boyle	BMO Insurance and Chair
David D’Amico	BMO Insurance
Louise Nash	CIBC Insurance
Marie Nadeau	National Bank Insurance
Derek Andrews	Scotiabank
Emily Brown	Sun Life
Anu Bains	CIBC Insurance
Karam Al Saeygh	BMO Insurance
Fernando Heleno	RBC Insurance

CAFII:

Keith Martin, CAFII

Brendan Wycks, CAFII

## CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance— Summary Notes 2 June, 2021 Meeting

The CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance had a wide-ranging discussion at its 2 June, 2021 meeting. Working Group Chair Martin Boyle shared that a revised draft of the FCAC Appropriateness Guideline was expected to be tabled with the Canadian Bankers Association (CBA) in June, 2021. There would be a reduction of principles from 7 to 5, but it was not clear if two principles would be dropped, or if some principles would be combined.

There was more discussion on what appropriateness really meant. Was it just an eligibility requirement? There was a consensus that signing up a client for a product that they could not make a claim on was not appropriate. However, it can also be difficult to verify pre-existing conditions at the time of enrollment. It was emphasized that in the credit protection insurance space there is no ability to do a needs assessment or to offer advice.

Many members of the Working Group noted that it was important for the FCAC to understand that CAFII members had to adhere and abide by provincial licensing restrictions. But it would be possible to ask some questions of customers, to “get a picture” of the customer. Perhaps the approach to take is to focus on the sales process, which seems to be what the FCAC is most interested in—things like disclosure, consent. If there is an age limitation for BPI, then that must always be a trigger for the offering institution (do not offer a product someone is not eligible for). Free look period should be changed to “review period” and it might be part of an appropriateness expectation.

Financial goals, risk appetite are examples of the sort of information members should not be collecting. There is an interesting issue around affordability tests that was raised, where a member indicated that upon mortgage renewal there might be a requirement to determine if the customer can afford the insurance—although it was raised that if they can afford the loan instrument, how could they not afford the insurance? There might be a financial literacy test applied to customers—if they do not understand the product, should it be offered to them?

Members noted that there could be an emphasis on some of the sales approaches taken, including compliance, audits, controls, scripts etc. to ensure that sales are appropriate. Members could emphasize that they never practice tied selling, and always make it clear that the insurance is optional. There is no post claims underwriting and that should also be emphasized.

### Attendees at the 2 June, 2021 Working Group Meeting

Martin Boyle	BMO Insurance and Chair
David D'Amico	BMO Insurance
Brad Kuiper	ScotiaLife Financial
Marie Nadeau	National Bank Insurance
Pete Thorn	TD Insurance
Derek Andrews	Scotiabank
Ivana Veljovic	Assurant
Emily Brown	Sun Life
Anu Bains	CIBC Insurance

CAFII:

Keith Martin, CAFII

Brendan Wycks, CAFII

### CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance— Summary Notes 19 May 2021 Meeting

The CAFII Working Group On FCAC Appropriateness Guideline's Provisions Related To Authorized Insurance Products/Credit Protection Insurance held its first meeting on 19 May, 2021. The 30-minute meeting was mostly intended to be organizational, with the objectives and approach of the group being the key objective of this first meeting.

Working Group Chair Martin Boyle noted that it was recognized that not all participants would not all initially be on the same page in their work on or approach to the best response to the FCAC's Appropriateness Guideline, and that the intention was not to attempt to move everyone to the same position. However, there are common themes that the members may be able to agree upon. With an April 2022 implementation date for the FCAC's Appropriateness Guideline, it is advisable to try to get as much industry alignment as possible, and to agree on common views, such as the perspective that a needs analysis is not possible for credit protection insurance.

The FCAC has already indicated that it is working on a second preliminary draft of its Appropriateness Guideline, and the "word on the street" is that in it, the FCAC will scale back its original Seven (7) Appropriateness Principles to Five (5) Appropriateness Principles, although it is not clear whether that will mean that two principles will be cut entirely, or rather merged into other principles.

Working Group members noted the considerable ambiguity around the FCAC's approach, and the balance that needs to be struck between the FCAC's approach and provincial regulatory expectations and constraints which prohibit the offering advice in an unlicensed environment. The development of some common principles would be helpful, for example around industry's understanding of appropriateness, and around the constraints in credit protection insurance related to the Know Your Client and Know Your Product expectations which apply readily to other financial and insurance products. Incentives, remuneration, and other important issues could also be the subject of discussion. Topics could also include the principle of insurability/eligibility (the need to be able to claim on a product you are offered).

The Working Group also felt that approaches to compliance would be a useful subject of discussion. The issue of what the industry can do, and what the industry cannot do, could also be fruitful. Different members may have different risk appetites, but it would be good to get, at minimum, an industry baseline.

#### Attendees at the 19 May, 2021 Working Group Meeting

Martin Boyle	BMO Insurance and Chair
Karam Al Saeygh	BMO Insurance
David D'Amico	BMO Insurance
Fernando Heleno	RBC Insurance
Penny Cordogiannis	RBC Insurance
Brad Kuiper	ScotiaLife Financial
Marie Nadeau	National Bank Insurance
Pete Thorn	TD Insurance
Aleks Omaljev	TD Insurance (legal counsel)
Derek Andrews	Scotiabank
Ivana Veljovic	Assurant
Emily Brown	Sun Life

#### Staff

Keith Martin, CAFII

Brendan Wycks, CAFII

## **Briefing Note**

### **CAFII EOC Meeting 20 July 2021—Agenda Item 5(f)**

#### **Recent and Upcoming Strategic and Regulatory Initiatives—FSRA Consultation with Stakeholder Advisory Committee (SAC) Members on Renewal of SAC Structure**

#### **Purpose of this Agenda Item – Update**

Update only.

#### **Background Information**

FSRA has grouped life and health insurance sector stakeholder representatives into a Sectoral Advisory Committee (SAC), with which it meets to discuss FSRA initiatives related to life and health insurance. FSRA has engaged Environics to interview all of the members of the existing Life and Health Insurance SAC to get feedback on the Committee.

#### **Membership on the FSRA Stakeholder Advisory Group on Life and Health Insurance**

<b><u>Name</u></b>	<b><u>Organization</u></b>
Susan Allemang	Independent Financial Brokers of Canada
Nancy Carroll	McCarthy Tetrault
Dennis Craig	RBC Insurance
Chris Donnelly	Manulife Financial
Lyne Duhaime	CLHIA
Ali Ghiassi	Canada Life
Moira Gill	TD Insurance
Keith Martin	CAFII
Glenn O'Farrell	OLHI
Rosie Orlando	Primerica
Neil Paton	The Third Party Administrators' Association of Canada
Douglas Paul	SSQ
Greg Pollock	Advocis, The Financial Advisors Association of Canada
Russell Purre	Sun Life Financial
Eric Wachtel	CAILBA / IDC Worldsource Insurance Network Inc.
Timothy Witchell	HUB International

#### **Recommendation / Direction Sought – Update**

This is an update only

#### **Attachments Included with this Agenda Item**

1 attachment.



**Agenda Item 5(f)**  
**July 20/21 EOC Meeting**

**From:** Rachel Olaso-Pezeshkian <[Rachel.Olaso-Pezeshkian@fsrao.ca](mailto:Rachel.Olaso-Pezeshkian@fsrao.ca)>

**Sent:** July 6, 2021 9:05 AM

**To:** Keith Martin <[Keith.Martin@cafii.com](mailto:Keith.Martin@cafii.com)>

**Cc:** Huston Loke <[Huston.Loke@fsrao.ca](mailto:Huston.Loke@fsrao.ca)>; [victoria.sicilia@Environics.ca](mailto:victoria.sicilia@Environics.ca); [jodi.shanoff@environics.ca](mailto:jodi.shanoff@environics.ca)

**Subject:** Important Information regarding FSRA Stakeholder Consultation (LH SAC Member: CAFII - Keith Martin)

Dear Keith,

Good morning. I am pleased to share the following message from Huston Loke, EVP Market Conduct:

Thank you for your participation in FSRA's Stakeholder Advisory Committee (SAC). SACs were launched as part of FSRA's commitment to engagement and dialogue with industry.

When the SACs were launched they were initially for one year and then we extended the term for another year. We wanted to let you know that in the Fall we would like to use the current SAC structure to engage with you regarding FSRA's annual statement of priorities/budget.

We wanted to also let you know that we are launching an evaluation of the SACs to determine its effectiveness and any proposed changes (e.g., to terms of reference and membership).

**We want to hear from you about your experiences on the SAC.** This assessment is going to be done by a third-party vendor, Environics Research. Your feedback will be confidential. It will be presented as aggregate feedback to FSRA and we commit to sharing back with the SACs a summary of what we heard.

**In the next few days, you will receive an email or phone call from an Environics Research representative (who are cc'd on this email) asking to schedule a 30-minute confidential interview, to share your views.** I know your time is valuable and we appreciate the time you spend on the SAC and engaging with FSRA. I hope you will be able to provide this feedback to help inform our work.

If you would like more information about the SAC evaluation process, please let me know and I can arrange for a quick call.

All the best for the summer,

Huston Loke  
Executive Vice President, Market Conduct

**Rachel Olaso-Pezeshkian, C. Mgr.**  
Executive Assistant to the Executive Vice President, Market Conduct



## **Briefing Note**

### **CAFII EOC Meeting 20 July, 2021—Agenda Item 5(g) Recent and Upcoming Strategic and Regulatory Initiatives—CAFII Data Improvements Working Group With RSM Canada Around Quarterly CPI Benchmarking Study: Progress Report**

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#### **Purpose of this Agenda Item**

This is an update only.

#### **Background Information**

CAFII continues to work with RSM Canada to improve the data quality of the Quarterly CPI Benchmarking Study. A survey has been sent to study participants that will allow RSM Canada to understand some of the data quality issues better. In a recent meeting with new RSM Canada consulting lead Fabricio Naranjo, CAFII reiterated the importance of this project and requested a critical path of key milestones, which RSM Canada committed to provide in the near future.

Attached is an update on this initiative from RSM Canada.

#### **Recommendation / Direction Sought**

Update only.

#### **Attachments Included with this Agenda Item**

2 attachments.

**Agenda Item 5(g)(1)**  
**July 20/21 EOC Meeting**

**From:** Haymes, Matthew <[matthew.haymes@rsmcanada.com](mailto:matthew.haymes@rsmcanada.com)>  
**Sent:** July 12, 2021 1:53 PM  
**To:** Keith Martin <[Keith.Martin@cafii.com](mailto:Keith.Martin@cafii.com)>  
**Cc:** Naranjo, Fabricio <[fabricio.naranjo@rsmcanada.com](mailto:fabricio.naranjo@rsmcanada.com)>; Brendan Wycks <[brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com)>; Wong, Jamie <[jamie.wong@rsmcanada.com](mailto:jamie.wong@rsmcanada.com)>; Zhao, Erica <[Erica.Zhao@rsmcanada.com](mailto:Erica.Zhao@rsmcanada.com)>  
**Subject:** RE: Follow up

Good afternoon Keith,

Attached is an updated status report for the benchmarking improvement study, incorporating the progress made last week.

In summary, below are the key elements outlined in the attached:

- 1) We have made significant progress by developing a common definition of penetration that has been initially accepted by representatives of each of the participants;
- 2) These representatives are currently completing a more detailed review of the proposed methodology and were asked to provide any concerns or formal agreement on the approach within the next two weeks;
- 3) The proposal is based on data availability for each of the participants, and based on the discussions, we are optimistic that the proposed methodology will be accepted;
- 4) The targeted implementation date for the improvements is currently the Q4 2021 report (prepared in November). This timeline has been shared with the benchmark improvement group, and includes conservative estimates to allow participants flexibility in updating their necessary data adjustments/calculations. That said, the timing will depend on data adjustments completed by the participants which may delay the implementation to Q1 2022 (January).

If you could kindly let me know when you have some availability, we would be happy to discuss in detail.

Thanks,

Matt Haymes  
**Matthew Haymes ACIA**  
Manager | Actuarial Services

**RSM Canada**  
11 King St. W., Suite 700, Box 27, Toronto, Ontario, Canada, M5H 4C7  
**D:** 416.408.5377 | **E:** [matthew.haymes@rsmcanada.com](mailto:matthew.haymes@rsmcanada.com) | **W:** [www.rsmcanada.com](http://www.rsmcanada.com)

# Benchmarking Improvement Working Group

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## Purpose:

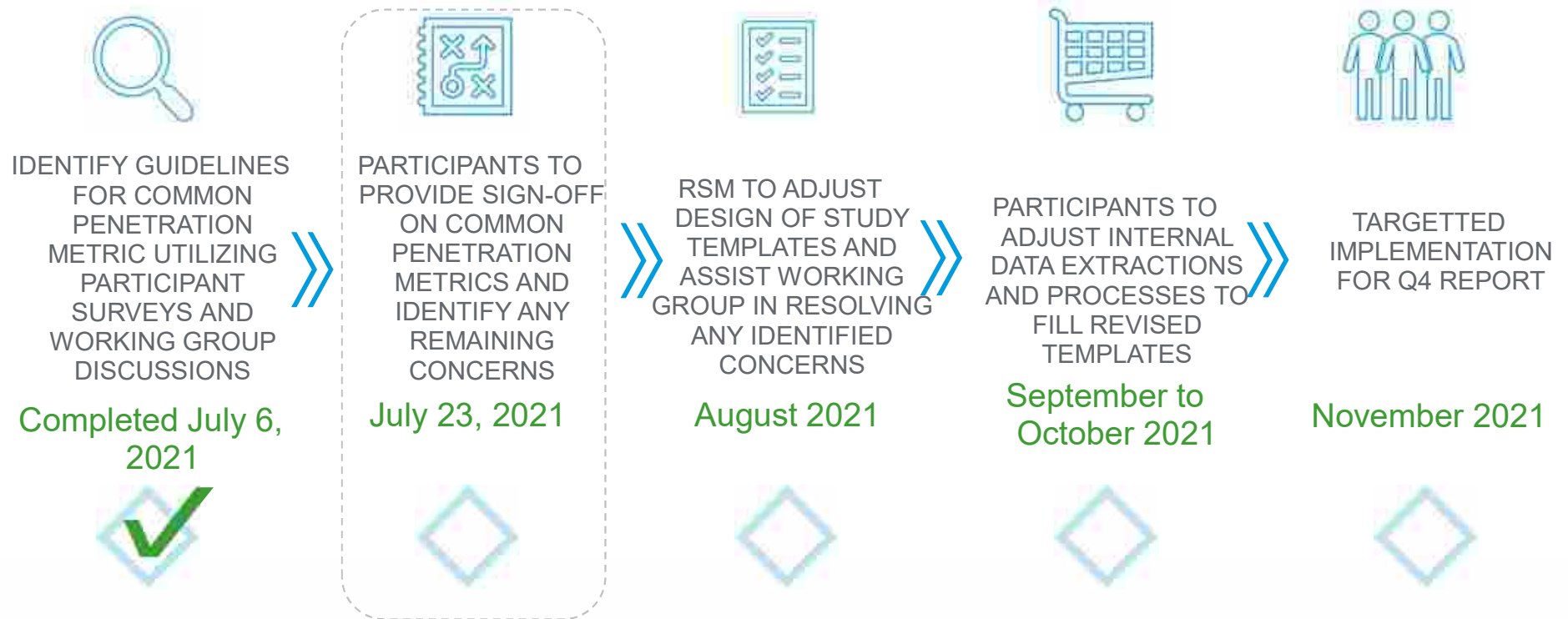
- Currently, the CAFII quarterly penetration benchmarking report provides a comparison of each participants' new business penetration rates. The penetration metrics provided in the report align with each participants' internal calculation methodologies and there is no consistent approach across participants. This reduces the comparability of the quarterly benchmarking report across participants;
- The benchmarking improvements working group is focused on developing a consistent methodology for the calculation of penetration rates to improve the comparability of the quarterly studies. These improvements will allow the participants in the study to better understand the sales performance of their creditor insurance products compared to other participating FIs and utilize the findings in the management of the insurance portfolios;

## Current Status:

- To date, RSM has utilized anonymous surveys of benchmarking participants to develop and propose a penetration methodology that aligns with participants' data availability and ensures that the study provides significant value to the participants;
- On July 6<sup>th</sup>, RSM proposed a revised penetration methodology to all participating FIs. Feedback during the discussions was positive with no immediate concerns raised by attendees;
- All participants have been asked to further review the proposal internally and provide either confirmation of the revised methodology, or identify any internal concerns/constraints related to the proposal by July 23<sup>rd</sup>

# Roadmap to Implementation

The roadmap to implementing a consistent penetration methodology:



## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 5(h)**

**Recent and Upcoming Strategic and Regulatory Matters—Insights Gained From CAFII/CLHIA/THIA  
Weekly Calls Re Impact of COVID-19 On Travel Insurance Industry**

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### **Purpose of this Agenda Item – Update**

Update only.

### **Background Information**

CAFII's Co-Executive Directors meet weekly with CLHIA and THIA representatives to discuss issues related to COVID-19's impact upon the travel and the travel insurance industry.

### **Recommendation / Direction Sought – Update**

This is an update only.

### **Attachments Included with this Agenda Item**

No attachments.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 6(a)**

**Governance Matters—Plans for Tentatively Scheduled Next EOC Meeting on August 17/21: Option to Cancel**

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### **Purpose of this Agenda Item – Update/Decision**

The EOC will be asked if it wishes to cancel the EOC meeting tentatively scheduled for August 17/21.

### **Background Information**

Although in recent years, CAFII has held EOC meetings in July and August, in prior years those tentatively scheduled meetings were cancelled.

### **Recommendation / Direction Sought – Update/Decision**

A decision will be requested of the EOC.

### **Attachments Included with this Agenda Item**

No attachments.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 6(b)**

**Governance Matters—Plans For Next Board Meeting On October 5/21**

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### **Purpose of this Agenda Item—*Update***

---

This is an update only.

### **Background Information**

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CAFII has, in the past, held its October Board meeting in Quebec City or Montreal so as to create an opportunity to meet in-person with AMF staff executives over a liaison lunch and an immediately ensuing Industry Issues Dialogue Session. This year, we are likely to again hold this meeting virtually, as we did in 2020.

### **Recommendation / Direction Sought – *Update***

---

Update only.

### **Attachments Included with this Agenda Item**

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No attachments.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 6(c)**

**Governance Matters—“Switching” of Hosting Responsibility For December 7/21 CAFII Board Meeting and Possible Immediately Ensuing, In-Person Holiday Season Reception**

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### **Purpose of this Agenda Item – *Update***

---

This is an update only.

### **Background Information**

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CIBC Insurance will have difficulty hosting this meeting in-person; and, as such, CAFII will look for a new host for the December 2021 Board meeting and reception.

### **Recommendation / Direction Sought – *Update***

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Update only.

### **Attachments Included with this Agenda Item**

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No attachments.



## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 6(d)**

**Governance Matters--Draft Minutes of June 22/21 EOC Meeting**

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### **Purpose of this Agenda Item—*Approval***

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Approval.

### **Background Information**

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The EOC is being asked to approve the minutes of the June 22/21 EOC meeting.

### **Recommendation / Direction Sought – *Approval***

---

Approval.

### **Attachments Included with this Agenda Item**

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1 attachment.

**EXECUTIVE OPERATING COMMITTEE VIRTUAL MEETING  
CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS IN INSURANCE**

**Tuesday, June 22, 2021, 2:00-3:30pm**

**MINUTES**

<b>EOC Present:</b>	Rob Dobbins	Assurant (Chair)
	Tony Pergola	ScotiaLife Financial (Treasurer)
	Corinne Gagné	Canadian Tire Financial Services
	Karyn Kasperski	RBC Insurance (Vice Chair)
	Anuraj Bains	CIBC Insurance
	Sharon Apt	The Canada Life Assurance Company
	Martin Boyle	BMO Insurance
	Emily Brown	Sun Life
	Penelope Cordogiannis	RBC Insurance
	Farhad Eslah	Canadian Tire Financial Services
	Maira Gill	TD Insurance
	Ben Gray	CIBC Insurance
	Aanchal Gulia	Sun Life
	Anaar Jessa	Sun Life
	Scott Kirby	TD Insurance
	Brad Kuiper	ScotiaLife Financial
	Edward Kuo	Sun Life
	Cassandra Litniansky	CUMIS/The Co-operators
	Anita Mukherjee	RBC Insurance
	Monika Spudas	Manulife Financial
	Andrea Stuska	TD Insurance
	Peter Thorn	TD Insurance
	Kamana Tripathi	TD Insurance

**Also Present:** Brendan Wycks, *Co-Executive Director*  
Keith Martin, *Co-Executive Director*  
Lyn Wallington, *Interim Association Coordinator*

**1. Welcome, Call to Order, and Priority Matters**

**1.a. Call to Order**

EOC Chair and Board Secretary Rob Dobbins called the meeting to order at 2.02pm.

**1.b. Welcome to New EOC Members**

Rob Dobbins welcomed two new EOC members from CAFII's newest member, Canadian Tire Financial Services: Corinne Gagné, and Farhad Eslah. Ms. Gagné and Mr. Farhad briefly introduced themselves.

**1.c. Appointment of New Networking & Events Committee Chair**

Rob Dobbins announced that Carmelina Manno was appointed as the new Networking & Events Committee Chair. Mr. Dobbins thanked outgoing Networking & Events member Scott Kirby for his efforts on the Committee.

## **2. Consent Items**

The following Consent Items that do not require any discussion or decision were tabled:

- a. Consultations/Submissions Timetable
- b. Regulatory Update
- c. Regulator and Policy-Maker Visit Plan
- d. Summary of Board and EOC Action Items
- e. Board-Approved Schedule of CAFII 2021 Meetings and Events

## **3. Financial Management Matters**

### **3.a. CAFII Financial Statements as at May 31/21**

CAFII Treasurer Tony Pergola reported there is a positive variance of \$4K for the month of May 2021, mostly due to higher membership dues due to more Associates joining the Association than budgeted for. The year to date numbers are revenue of \$391K, expenses of \$286K, for a surplus of \$104K, which is a positive variance to the budget of \$29K. The operating ratio is 58%, which is above the 25-50% range that the Association targets.

### **3.b. Forecast for CAFII 2021 Fiscal Year as at May 31/21**

CAFII Treasurer Tony Pergola reported that the forecasted revenue for 2021 was \$951K, which is higher than the budgeted \$919K; that expenses were forecasted at \$838K, for a surplus of \$115K, with a forecast operating ratio of 60% at the end of the year.

## **4. Committee Updates**

### **4.a. Research & Education**

#### **4.a.i Public Release Of Results From CAFII Research Project On Insurance Consumers' Digitization Preferences: June 15/21 Webinar Presentation to Insurance Regulators and Policy-Makers; Public Release Of Results On CAFII Website; and Media Release**

Andrea Stuska and Keith Martin reported on the public release of the CAFII results from the research project on insurance consumers' digitization preferences. On June 15, 2021 a presentation was made to insurance regulators and policy-makers on the research, and the next day a press release on the results was issued, and the results were posted on the CAFII website. There has been some trade press coverage of the release, and the research is generating positive feedback and interest.

### **4.b. Media Advocacy**

#### **4.b.i Development of Two CAFII New Motion Graphics Website Videos on (i) Results of Research Project On Insurance Consumers' Digitization Preferences; and (ii) Job Loss CPI**

Keith Martin noted that CAFII was working with its website consultants Operatic Agency to produce two new motion graphic videos, one on the research results of the Pollara digitization study, the other on job

loss. EOC members will be offered the opportunity to comment on and offer feedback on the two videos.

*[Action Item: Offer EOC members the opportunity to comment on two new motion graphic website video on the Pollara consumers' digitization preferences and job loss; B. Wycks, K. Martin, Summer, 2021.]*

#### **4.c. Marketing Conduct & Licensing**

##### **4.c.i CISRO Consultation On "Principles of Conduct For Intermediaries"**

EOC members agreed that CAFII should make a submission to CISRO on its consultation on the "Principles of Conduct for Intermediaries," even if it is high level, with part of the submission emphasizing that intermediaries offering credit protection insurance are prohibited by regulation from offering advice.

*[Action Item: Work with the Market Conduct Committee on the development of a submission to CISRO on "Principles of Conduct For Intermediaries"; B. Wycks, K. Martin, by 9 July, 2021.]*

##### **4.c.ii Possible Communication with NWT on Licensing Issues**

A new item was added to the EOC Agenda based on Pete Thorn of Toronto Dominion Insurance learning that the CLHIA was considering communicating with the NWT around the lack of a legislative basis for licenses for credit protection insurance, similar to the issue that had occurred some years back in Yukon. Many CAFII members expressed strong reservations around communicating about this with the NWT in the absence of their raising the issue themselves. It was suggested that CAFII discuss this with Dallas Ewen of Canada Life, who is the Chair of the credit protection insurance committee examining this at CLHIA; and share the reservations around communicating with NWT with the CLHIA.

*[Action Item: Share CAFII EOC members concerns about communicating on the licensing issue with NWT to Dallas Ewen and to the CLHIA; B. Wycks, K. Martin, immediately.]*

##### **4.c.iii Possible Communication with NWT on Licensing Issues**

A new item was added to the EOC Agenda based on Brendan Wycks receiving a communication from Tony Toy of the CCIR that they were planning a consultation on an incentives compensation management guideline. CAFII EOC members who are interested in commenting on the document they are producing on this issue will be asked to sign a non-disclosure agreement before they are sent the document.

*[Action Item: Reach out to EOC members for those who are interested in reviewing the CCIR document on incentives compensation management guideline to sign a non-disclosure agreement; B. Wycks, K. Martin, June/July 2021.]*

#### **4.d. Travel Insurance Experts**

There were no updates on this agenda item.

#### **4.e. Networking & Events**

##### **4.3.i Ways To Promote Greater CAFII Member Representative Attendance At CAFII Webinars**

Rob Dobbins noted that CAFII's series of recent webinars were very successful, and had received very positive feedback. Mr. Dobbins felt that higher CAFII membership participation would be beneficial for members and for the Association, and he encouraged members to actively promote future webinars.

#### **4.3.ii Topics and Presenters/Panelists for Fall 2021 CAFII Webinars**

Brendan Wycks shared some ideas around topics and speakers for CAFII webinars in the Fall of 2021, which EOC members generally were supportive of. CAFII plans a slate of three to four webinars in the Fall of 2021.

### **5. Recent and Upcoming Strategic and Regulatory Initiatives**

#### **5.a. Norton Rose's Development of Legal Arguments/Opinion to Oppose AMF's Interpretation on RADM's Applicability to Credit Card-Embedded Insurance Benefits and Resulting Regulatory Expectations**

Keith Martin noted that the Association had commissioned legal firm Norton Rose to develop arguments around the validity of the AMF position that the Regulation regarding Alternative Distribution Methods applies to credit card-embedded insurance benefits. The legal opinion would be shared soon with CAFII and a special purpose Board meeting was being organized to hear the arguments from Marc Duquette and Dominic Dupoy of Norton Rose, and discuss next steps coming out of the opinion.

#### **5.b. CAFII Submission Of June 7/21 Extension Request Letter To AMF Re September 17/21 Deadline For Affected Insurers To Submit Product Summaries and An Action Plan, Arising From AMF Position That RADM Fully Applies to Credit Card-Embedded Insurance Benefits**

Keith Martin reported that Mario Beaudoin called him on Friday, 18 June, 2021 to discuss CAFII's request for a three-month extension to the 17 September, 2021 deadline for producing Product Summaries and an Action Plan with respect to the RADM and credit card-embedded insurance benefits, with Mr. Beaudoin noting that the request would be approved shortly and a formal letter sent to CAFII so indicating. Richard Ollier of THIA had also spoken to Mr. Beaudoin, who verbally said that the AMF would work with industry to modify the Fact Sheet, and was aiming to do so by 1 May, 2022.

#### **5.c. CAFII Outreach Request To CBA That It Engage In AMF Credit Card-Embedded Insurance Benefits Issue, Given Implications For Core Credit Card Offerings in Quebec**

Several CAFII EOC members indicated that they had heard that the CBA was planning to reach out to the AMF on the credit card-embedded insurance benefits issue. CAFII management requested that any news that CAFII EOC members learn about this be shared with them.

#### **5.d. CAFII Working Group on Industry Alignment Around Compliance with AMF's Expectations Re RADM's Applicability to Credit Card-Embedded Insurance Benefits**

Co-Chairs of the Working Group Karyn Kasperski and Scott Kirby indicated that the Working Group had made very significant progress, and that it was now working on some of the implementation challenges of meeting the AMF's expectations.

#### **5.e. CAFII Working Group on Industry Alignment Re Interpretation of FCAC's Appropriateness Guideline's Application to Authorized Insurance Products/CPI; and Potential Approaches to Compliance**

Martin Boyle, Chair of the Working Group, noted that several meetings had been held of the Working Group and that significant progress had been achieved.

**5.f. CAFII Data Improvements Working Group With RSM Canada Around Quarterly CPI Benchmarking Study: Progress Report**

Keith Martin reported that RSM Canada was working with CAFII members on improvements to the data quality and comparability of the CPI benchmarking study. A plan with milestones would be shared with CAFII in the coming weeks and the EOC will be updated after that is received on timelines.

**5.g. Launch Of Saskatchewan Restricted Insurance Agent Advisory Committee**

Brendan Wycks reported that the Saskatchewan Restricted Insurance Agent Advisory Committee had now been launched, with an inaugural meeting held on 17 June, 2021.

**5.h. Proposal From CAFII Director Z. Fuerstenberg That CAFII Investigate Development and Launch of an Education/Master Class/Certification Program For Member Company Employees On “CPI Legislative and Regulatory Principles and Environment”: Next Steps**

An update was provided about a suggestion from CAFII Board member Zack Fuerstenberg that CAFII develop programs that provide educational material for its members. CAFII’s Board was supportive of the concept but was concerned about major new initiatives at a time when members are already resource-stretched. It was agreed that CAFII management would develop an analysis of the various options that could be undertaken along with their pros, cons, and resource implications.

**5.i. Insights Gained From CAFII/CLHIA/THIA Weekly Calls Re Impact Of COVID-19 On Travel Insurance Industry**

Brendan Wycks reported on the recent meetings on the impact of COVID-19 on the travel insurance industry, noting that the re-opening of the Canada-US border remained a contentious issue, and that information on this was limited as Global Affairs Canada had cancelled recent meetings with THIA and CLHIA.

**6. Governance Matters**

**6.a. Outcomes Highlights of CAFII 2021 Annual Meeting of Members and First Meeting of 2021-22 Board of Directors on June 8/21**

Brendan Wycks reported that the Annual Meeting of Members and the first meeting of the 2021-22 Board of Directors were successfully held on June 8, 2021.

**6.b. Application Review and Admission of Norton Rose Fulbright (NRF) As A New CAFII Associate**  
The EOC approved accepting Norton Rose Fulbright as a new CAFII Associate.

**6.c. Plans For Next CAFII Regularly Scheduled Board Meeting On October 5/21**

Brendan Wycks reported that CAFII is looking at a virtual-only meeting with the AMF on 5 October, 2021 in conjunction with the Board meeting on that date.

**6.d. Need To “Switch” Hosting Responsibility For December 7/21 CAFII Board Meeting and Possible Immediately Ensuing, In-Person Holiday Season Reception**

Brendan Wycks reported that CAFII was looking for a member to host the December 7, 2021 CAFII Board meeting and possible in-person holiday reception following the meeting.

**6.e. Draft Minutes of May 25/21 EOC Meeting**

The draft minutes of the 25 May, 2021 EOC meeting were approved.

**6.f. Draft Minutes of June 8/21 Board Meeting**

The EOC approved recommending adoption of the 8 June, 2021 Board meeting minutes.

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## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 6(e)**

**Governance Matters--Draft Minutes of June 29/21 Special Purpose Board Meeting**

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### **Purpose of this Agenda Item--*Endorsement***

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Endorsement.

### **Background Information**

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The EOC is being asked to endorse the minutes of the June 29/21 Special Purpose CAFII Board meeting, for presentation to the Board for approval at its next meeting.

### **Recommendation / Direction Sought – *Endorsement***

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Endorsement.

### **Attachments Included with this Agenda Item**

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1 attachment.



**SPECIAL PURPOSE VIRTUAL MEETING VIA MS TEAMS**  
**BOARD OF DIRECTORS**  
**CANADIAN ASSOCIATION OF FINANCIAL INSTITUTIONS IN INSURANCE**  
**Tuesday, June 29, 2021**  
**MINUTES**

<b>Board Present:</b>	Chris Lobbezoo	RBC Insurance; Chair
	Peter Thompson	National Bank Insurance; Vice-Chair
	Paul Cosgrove	Assurant Canada
	Janice Farrell-Jones	TD Insurance
	Zack Fuerstenberg	ScotiaLife Financial
	Louie Georgakis	Canada Life Assurance
	Peter McCarthy	BMO Insurance
	Mica Sweet	CIBC Insurance
	Wally Thompson	Manulife Financial
	Kelly Tryon	CUMIS/The Co-operators
	Rob Robinson	Canadian Premier Life Insurance Company
	Chantal Gagné	Desjardins Insurance
<b>Regrets:</b>	Sophie Ouellet	Sun Life
	Adam Vespi	Canadian Tire Bank
	Nicole Benson	Valeyo
<b>Also Present:</b>	Marc Duquette	Norton Rose Fulbright Corporation ( <i>for part</i> )
	Dominic Dupoy	Norton Rose Fulbright Corporation ( <i>for part</i> )
	Brendan Wycks	CAFII
	Keith Martin	CAFII

**1. Call to Order and Meeting Confirmation**

C. Lobbezoo welcomed all to this meeting of the CAFII Board of Directors, which was held virtually on the Microsoft Teams platform, and called the meeting to order at 12:31 p.m. Lyn Wallington acted as Recording Secretary.

**1.a. Declaration of Meeting Properly Called and Constituted**

R. Dobbins, Board Secretary, confirmed that notice of the meeting had been sent to all Directors in accordance with the Association's By-Law; and that a quorum of Directors was present.

C. Lobbezoo declared this meeting of the Board of Directors of the Canadian Association of Financial Institutions in Insurance duly convened and properly constituted for the transaction of business.

**1.b. Approval of Agenda**

On a motion duly made, seconded and unanimously carried **IT WAS RESOLVED** that the meeting Agenda be and is approved as amended.

## 2. Strategic and Regulatory Matters

### 2.a. CAFII's Next Steps On AMF Credit Card-Embedded Insurance Benefits Issue

C. Lobbezoo asked K. Martin to provide an update to begin the meeting, by summarizing recent developments at the AMF on the credit card-embedded insurance benefits issue.

Mr. Martin advised that there appeared to be some softening of positions at the AMF. Two consultations which the AMF was planning had been postponed to the Fall of 2021, seemingly to allow for a summer vacations hiatus. Mr. Martin received a phone call on 18 June, 2021 from AMF staff executive M. Beaudoin who indicated that the AMF was planning to grant CAFII its requested three-month extension to the deadline for affected insurers to submit Product Summaries and Action Plans for credit card-embedded insurance benefits; and on 23 June, 2021, a formal AMF letter granting the extension was received.

As well, CAFII had learned that Richard Ollier, President of the Travel Health Insurance Association of Canada (THIA) had spoken to Mr. Beaudoin, who indicated that the AMF was open to discussions about the Fact Sheet which could lead to its being modified in a way that made it more appropriate for credit card-embedded insurance benefits, and the regulator would aim to do that by 1 May, 2022.

Mr. Martin noted that these were significant changes and that while this was speculative, it was interesting that they had all occurred since Eric Jacob was appointed as the new Superintendent, Client Services and Distribution Oversight.

Mr. Lobbezoo then welcomed and thanked Marc Duquette and Dominic Dupoy from Norton Rose for their efforts on behalf of CAFII in preparing a legal arguments/opinion to counter the AMF's views on the applicability of Quebec's Regulation respecting Alternative Distribution Methods (RADM) to credit card-embedded insurance benefits, and turned the meeting over to Mr. Duquette.

Norton Rose had produced a 17-page legal opinion, and Mr. Duquette spoke to the major points in it. He noted that the legislation supporting the RADM does not mandate a Fact Sheet, and that the specific requirements of the Regulation are based on the AMF's efforts. As such, the AMF can freely revise the Regulation without any requirement that the source legislation be changed. He said that this might require a request to the Quebec Minister of Finance, but otherwise is within the jurisdiction of the AMF.

Mr. Duquette also noted that some of the requirements of the RADM, such as presentation of a Fact Sheet to customers that contains misleading and false information, contradict other regulatory requirements upon CAFII members. As such, such requirements are not appropriate, which is a view that a Court would likely support. Regulations cannot lead to absurd or impracticable consequences, which was surely the case with the RADM as currently drafted.

Mr. Duquette felt that it was within the power of the AMF to revise the RADM appropriately and, as well, the AMF could issue a "Staff Notice" which would indicate that it was not enforcing certain provisions of the Regulation.

In response to a Board question, Mr. Duquette opined that the AMF had presented interpretations of the RADM that were not appropriate; and that there seemed to be inadequate oversight of the activities of some of the AMF's personnel.

Mr. Duquette and Mr. Dupoy then departed the meeting, to allow CAFII Board members to discuss CAFII's next steps with respecting to utilizing the just-presented Norton Rose legal arguments/opinion.

Next step options were:

- Do nothing with the legal opinion at this time — with a new AMF Superintendent, Client Services and Distribution Oversight (Eric Jacob) in place, focus solely on relationship-building;
- In an early/imminent relationship-building meeting with Eric Jacob, ask whether the AMF might be interested in receiving a brief CAFII-sponsored legal presentation from Norton Rose (based on a legal opinion it has prepared for CAFII) or in receiving just a copy of the written legal opinion (abridged version) on the AMF's ability to change the RRADM and/or Fact Sheet without requiring a change to the parent legislation (ARDFPS);
- Write to the AMF and use excerpts from Norton Rose legal opinion to indicate that certain aspects of the RRADM (e.g. Rights of Rescission) and the Fact Sheet continue to be an issue for CAFII and the industry re credit card-embedded insurance benefits, such that we request formal, written amendment(s) which remove the likelihood of misleading or confusing consumers;
- Write to the AMF with some/all of the legal opinions developed by Norton Rose and indicate that we are considering all of our legal options;
- Court challenge; and/or
- Some mix of the above options.

In Board discussion, a strong consensus emerged that CAFII should initially take a “soft” approach that focuses on relationship-building with Eric Jacob, the AMF's recently appointed new Superintendent, Client Services and Distribution Oversight. It was suggested that a Get Acquainted and Dialogue Meeting involving Mr. Jacob and CAFII's Co-Executive Directors be set up, at which CAFII management would mention that its members intend to comply with the Regulation; are still concerned about the Fact Sheet; and had had a legal analysis done by Norton Rose. CAFII would then ask Mr. Jacob if he was interested in some of the findings of the Norton Rose legal analysis, which could be presented by Norton Rose in a virtual meeting, alternatively in a written summary only, or via both methods.

## **2.b. Insights Gained From Conversation With Stephen Frank, CLHIA Re CAFII-Relevant Federal Bank Act Matter**

Peter McCarthy reported that he had recently spoken with Stephen Frank, CEO of the Canadian Life and Health Insurance Association (CLHIA), with respect to how its members would respond to an effort by CAFII and/or the Canadian Bankers Association to obtain amendments to the Federal Bank Act to allow banks and other federally regulated financial institutions (FRFIs) to distribute non-Authorized Insurance Products in their branches. Mr. Frank said that he was of the view that many of CLHIA's major insurer members would oppose such an effort.

## **3. Governance Matters**

### **3.a. Board Motion To Amend CAFII Bylaw To Allow Email Votes of the Board of Directors, Outside of Board Meetings, on Time-Sensitive Approval and/or Decision Matters**

On a motion duly made, seconded and unanimously carried **IT WAS RESOLVED** that the CAFII Board hereby amends the Association's Bylaw No. 1 through the addition of the following new clause 5.13:

#### **5.13 Voting By Electronic Means, Outside Of A Board Meeting**

*At the discretion of the board chair – or in his/her absence, the board vice-chair – and in lieu of 5.13, a resolution in writing may be proposed to the directors via electronic means, outside of a properly constituted board meeting, for approval via electronic means. Where this option is exercised, a simple affirmative vote response by a director shall suffice and be as valid as if it had been cast at a board meeting. A two-thirds majority vote of all directors entitled to vote shall be required for approval of the resolution -- absent any vote against the resolution by a director entitled to vote, the occurrence of which shall immediately void the voting on the resolution by electronic means, outside of a board meeting. Voting by electronic means outside of a board meeting shall be reserved for matters requiring board approval which are of particular time-sensitivity and urgency. A copy of every such resolution in writing proposed to directors for voting by electronic means, outside of a board meeting, shall be kept with the minutes of the proceedings of the board or committee of directors.*

## **4. Meeting Termination**

On a motion duly made, seconded and unanimously carried **IT WAS RESOLVED** to terminate the meeting at 1:55 p.m.

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 7(a)**

**Read Only Items—Norton Rose Legal Arguments/Opinion in Opposition to AMF’s Interpretation on RADM’s Applicability to Credit Card-Embedded Insurance Benefits and Resulting Regulatory Expectations**

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### **Purpose of this Agenda Item**

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Read only items.

### **Background Information**

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This is the 17-page legal opinion developed by Norton Rose on the RADM and credit card-embedded insurance benefits, the arguments range from “soft” options to more aggressive options; along with follow-up correspondence related to that legal opinion between Keith Martin of CAFII and Dominic Dupoy of Norton Rose.

### **Recommendation / Direction Sought**

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Read only items.

### **Attachments Included with this Agenda Item**

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2 attachments.

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## memorandum

<b>From</b>	Marc Duquette Dominic Dupoy	<b>Date</b>	June 23, 2021
<b>Direct line</b>	+1 514.847.4508 +1 514.847.6102		
<b>Email</b>	<a href="mailto:marc.duquette@nortonrosefulbright.com">marc.duquette@nortonrosefulbright.com</a> <a href="mailto:dominic.dupoy@nortonrosefulbright.com">dominic.dupoy@nortonrosefulbright.com</a>	<b>Our ref</b>	1001098952
<b>To</b>	<b>CAFII's Board of Directors</b>	<b>Your ref</b>	●
<b>Copy</b>	<b>Keith Martin Brendan Wycks</b>		

Dear CAFII's board members:

### **Subject : Application of the RRADM to credit card-embedded insurance benefits**

You have asked for our opinion regarding various issues relating to the application of the *Regulation respecting Alternative Distribution Methods (RRADM)* to credit card-embedded insurance benefits.

More specifically, you have asked us to outline the legal arguments that the Canadian Association of Financial Institutions in Insurance (**CAFII**) or its individual members may raise in order to challenge the position of the Autorité des marchés financiers (**AMF**) that the provisions of the RRADM fully apply to credit card-embedded insurance benefits and that no exemption may be granted in that regard.

#### **1. SUMMARY**

CAFII may raise various types of arguments in order to challenge the position of the AMF. Firstly, CAFII may rely on the principles of statutory interpretation to propose a narrow and restrictive construction of the provisions of the RRADM.

More specifically, CAFII may argue that the AMF should decline to apply certain provisions of the RRADM to credit card-embedded insurance benefits in order (i) to ensure that the object of the RRADM is attained, (ii) to avoid absurd and impracticable consequences, and (iii) to adopt an interpretation of the RRADM that does not conflict with other legislation purporting to protect Quebec consumers.

CAN\_DMS: \139634188\1

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This approach based on the application of the principles of legislative interpretation may be labelled as a “soft” approach in the sense that it does not entail an amendment of the RRADM, nor a direct challenge of its applicability to credit card-embedded insurance benefits.

Secondly, CAFII may also insist that the RRADM should be amended in order to either (i) adapt its provisions to the specific situation of credit card-embedded insurance benefits, or to (ii) grant the AMF with the discretionary power to exempt certain situations from its application. Being a mere regulation, the RRADM may indeed be amended by the AMF.

According to the relevant legislation, any amendment proposed by the AMF must be confirmed by the Quebec Minister of Finance. To the extent that the AMF is not willing to propose any amendment to the RRADM, we may try to contact representatives of the Minister of Finance in order to convince them that amending the RRADM is in the best interest of Quebec consumers.

The approach suggesting an amendment to the RRADM may be characterized as an “intermediary” position since the AMF would be required to take action in order to implement the requested changes.

Finally, CAFII may also claim that certain provisions of the RRADM are simply inoperative when it comes to credit card-embedded insurance benefits since their application would conflict with (i) the *Act respecting the distribution of financial products and services (ARDFPS)* i.e. RRADM’s parent legislation and (ii) federal laws governing federally-regulated financial institutions distributing insurance products.

This last approach may be considered as the most “aggressive” position since it entails a direct challenge of the applicability of certain provisions of the RRADM to credit card-embedded insurance.

## 2. INTRODUCTION

Before examining the various arguments that CAFII may advance in order to challenge the position of the AMF, it appears relevant to briefly outline the factual and legislative context upon which the issue has arisen.

### 2.1 Credit card-embedded insurance benefits

Most credit cards provide for a wide variety of benefits, including insurance benefits. For example, cardholders may benefit from trip cancellation insurance, trip interruption insurance, lost baggage insurance, car rental insurance, purchase insurance, etc.

Such benefits are not offered as a separate product under a separate contract. The insurance benefits are rather *embedded* in the terms and conditions governing the use of the credit card.

Cardholders do not have the option to refuse the insurance benefits. Nor can they cancel or terminate the benefits once the credit card has been issued. The insurance benefits are automatically provided to cardholders as part of the benefits associated with the credit card. If the client is not interested in the insurance benefits, he or she may simply choose to decline the credit card or decide not to use the benefits.

Cardholders do not directly pay for the insurance benefits. The benefits are included in the terms and conditions governing the use of the credit card at no additional cost. The insurance coverage is provided by a third party insurance company under a group master policy. The credit card issuer is the policyholder. As such, it is solely responsible for the payment of the premium. The cardholder is a mere participant under the group policy. He or she is provided with an insurance certificate as a participant under the group policy.

## 2.2 The legislative scheme governing the distribution of insurance products

The distribution of insurance products is mainly governed by the provisions of the ARDFPS. As a general statement, the ARDFPS provides that insurance products are to be distributed *via* duly licensed representatives.<sup>1</sup>

Title VIII of the ARDFPS however provides for an exceptional regime allowing insurers to distribute insurance products without the assistance of a representative. Section 408 of the ARDFPS indeed provides that an insurer may, in accordance with the provisions of Title VIII, offer insurance products through a “distributor”.

Title VIII of the ARDFPS provides for the scope of application of the distribution without a representative (**DWR**) regime and imposes various obligations on both insurers and distributors. The details of the DWR regime are provided for under the RRADM.

## 2.3 The RRADM

Before the adoption of the RRADM, the details of the DWR regime were provided for under the *Regulation respecting distribution without a representative (RRDWR)*. The rules of the RRDWR were essentially similar to those contemplated under the RRADM. We, however, understand that the AMF never insisted that the provisions of the RRDWR were to be applied to credit card-embedded insurance benefits.

The RRADM was adopted by the AMF and subsequently approved by the Quebec Minister of Finance in 2019. It came into effect on June 13, 2019. This new regulation replaced the former RRDWR.

The scope of the RRADM is however wider than that of the RRDWR. The RRADM indeed applies to both the distribution of insurance products *via* Internet (chapter 2 of the RRADM) and to the distribution of insurance products through distributors (chapter 3 of the RRADM).

## 2.4 The position advanced by the AMF

The AMF takes the position that the provisions of the RRADM dealing with the distribution of insurance products through distributors (i.e. chapter 3 of the RRADM) fully apply to credit card-embedded insurance benefits and that no exemption could be granted in that regard.

We understand that discussions have been held between the AMF and CAFII regarding the application of the RRADM to credit card-embedded insurance benefits, but that these discussions have not yet been fruitful.

More specifically, we understand that CAFII and some of its individual members have proposed practical solutions to adapt the obligations imposed by the RRADM to the specific context of credit card-embedded insurance benefits, but that these solutions have been rejected by the AMF which insists on a strict application of the RRADM.

## 2.5 The practical consequences flowing from the position of the AMF

It appears rather clear that the Quebec legislator did not have credit card-embedded insurance benefits in mind when it adopted the DWR regime and that many provisions of the RRADM are ill suited to the offering of such benefits.

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<sup>1</sup> See sections 3 and 12 of the ARDFPS.



For example, section 22 of the RRADM provides that the distributor must, at the time it offers the product to a client, deliver a product summary outlining the main features of the insurance product, together with a mandatory fact sheet informing the client of its rights in that regard.

Some credit cards however offer more than ten (10) different embedded insurance benefits and it appears impracticable for card issuers - and potentially overwhelming and confusing for clients - to offer more than ten (10) product summaries and fact sheets to clients at the time they enroll for the credit card.

Section 29(9) of the RRADM also provides that the product summary that must be delivered to clients at the time they enroll with the credit card must inform them of their right to cancel the insurance coverage and of the procedures for exercising such a right.

The fact sheet that must be delivered to the client at the time that he or she enrolls with the credit card also provides for the following mandatory statements, which may confuse the consumer or which are simply false and misleading:

“Even if you are required to be insured, you do not have to purchase the insurance that is being offered. You can choose your insurance product and your insurer.”

“A portion of the amount you pay for the insurance will be paid to the distributor as remuneration.”

“The Act allows you to rescind an insurance contract, at no cost, within 10 days after the purchase of your insurance. However, the insurer may grant you a longer period of time. After that time, fees may apply if you cancel the insurance. Ask your distributor about the period of time granted to cancel it at no cost.”

We understand that, although the situation is far from ideal, some CAFII members have tried to comply with most of the provisions of the RRADM. We, however, understand that complying with all of the provisions of the RRADM may prove impracticable or would lead to false and misleading information being conveyed to clients.

### **3. PRELIMINARY COMMENTS REGARDING THE SCOPE OF THE DWR REGIME**

The RRADM was adopted pursuant to the provisions of the ARDFPS. Being subordinated to the ARDFPS, the RRADM cannot apply to contractual situations which are not covered by the ARDFPS. In other words, if the provisions of Title VIII of the ARDFPS do not apply to credit card-embedded insurance benefits, the provisions of the RRADM cannot apply to such benefits either.

In our view, a serious argument could be made that the provisions of Title VIII of the ARDFPS do not apply to credit card-embedded insurance benefits. Section 408 of the ARDFPS indeed defines the term “distributor” as follows:

408. An insurer may, in accordance with this Title, offer insurance products through a distributor.

A distributor is a person who, in pursuing activities in a field other than insurance, offers, as an accessory, for an insurer, an insurance product which relates solely to goods sold by the person or secures a client's adhesion in respect of such an insurance product.

As discussed above, credit card-embedded insurance benefits are not offered “as an accessory” to another good sold by the credit card issuer. These benefits are an integral part of the credit card and the cardholder does not have the option to decline the insurance benefits.

An argument could also be made that the credit card-embedded insurance benefits do not “relate solely” to goods sold by the credit card issuer. The benefits may indeed relate to goods sold by third parties. For example, the credit card-embedded insurance benefits may include purchase insurance with respect to goods sold by other merchants.

Our interpretation of the scope of the DWR regime appears to be confirmed by the examples of contractual situations contemplated by Title VIII of the ARDFPS. Section 424 of the ARDFPS indeed provides that the following products are deemed to be insurance products which relate solely to goods sold by the distributor:

424. For the purposes of this Title, the following types of products are deemed to be insurance products which relate solely to goods:

- (1) travel insurance;
- (2) vehicle rental insurance, where the rental period is less than four months;
- (3) credit card and debit card insurance;
- (4) funeral insurance;
- (5) replacement insurance, that is, property insurance under which the insurer guarantees the replacement of the insured vehicle or insured parts and the form and conditions of which are approved by the Authority pursuant to section 71 of the Insurers Act (chapter A-32.1).

In our view, the above examples show what kind of contractual situations the legislator had in mind when it adopted the provisions of Title VIII of the ARDFPS i.e. situations where a separate and optional insurance product is being offered to the client in relation to a product which he or she acquires.

Although serious arguments could be advanced to support the position that the DWR regime does not apply to credit card-embedded insurance benefits since credit card issuers do not fit the definition of “distributor”, this approach is, however, unlikely to prove of any assistance in the present case.

As discussed above, the DWR regime is an exception to the general regime. To the extent that credit card issuers cannot benefit from this exceptional regime, they will necessarily fall back into the general regime which provides that insurance products are to be distributed *via* duly licensed representatives.<sup>2</sup>

In that sense, challenging the applicability of the DWR regime to credit card-embedded insurance benefits may not be optimal from a strategic perspective. As more fully discussed below, CAFII may however raise other arguments to support the position that the application of the RRADM must be adapted to the specific circumstances of credit card-embedded insurance benefits.

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<sup>2</sup> See in that regard the letter from the AMF dated March 30, 2021:

The AMF takes note of your concerns but cannot grant any exemption under its regulations. As already mentioned to CAFII, insurance products must be offered as provided for by the *Act respecting the distribution of financial products and services* (“Distribution Act”), that is, through duly certified insurance representatives or via the distribution without a representative (“DWR”) regime. For the remainder of this letter, the AMF will assume that insurers who distribute insurance products embedded in credit cards chose the DWR regime.

#### 4. APPLICATION OF THE PRINCIPLES OF STATUTORY INTERPRETATION

We have examined the case law and the legal doctrine dealing with the RRDWR, the RRADM and the relevant provisions of the ARDFPS. We were, however, unable to identify any doctrine or judicial or administrative decisions which may be of assistance to our analysis.

We have also examined the legislative debates preceding the adoption of the ARDFPS and the various documents issued by the AMF and other interested stakeholders during the consultation process leading to the adoption of the RRADM. Those debates and documents were of no assistance either.

In our view, CAFII may however invoke the various principles of statutory interpretation in order to convince the AMF that the provisions of the RRADM must be interpreted in such a way as to ensure that its object is attained, that absurd and impractical results are being avoided, and that the RRADM does not conflict with other legislation purporting to protect Quebec consumers.

The application of the principles of statutory interpretation may be labelled as a “soft” approach in the sense that the AMF does not need to take action in order to adapt the provisions of the RRADM to the specific situation of credit card-embedded insurance benefits.

##### 4.1 Application of the principles of statutory interpretation to regulations

The RRADM is not a statute adopted by the Quebec legislative assembly. It is a regulation adopted by the AMF i.e. a regulatory body with supervisory and administrative powers. Canadian courts have however held that the principles of statutory interpretation which usually apply to legislation also apply to subordinated legislation such as by-laws and regulations.

For example, in *Perez (Litigation Guardian of) v. Salvation Army*, 1997 CanLII 12206 (ON SC), the Ontario Superior Court mentioned the following:

Clearly a hospital with a similar name to the actual one in question is listed in the regulation. The court has jurisdiction to correct minor drafting errors in statutes. Professor Ruth Sullivan in *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) notes at p. 106 that, while the court should not fill legislative gaps, it does have the authority to correct obvious drafting errors. In this instance, the error in the regulation can be characterized as a drafting error, not a legislative gap. The misnomer of a corporation appearing in a statute does not necessarily avoid the Act: see *Oxford v. Bishop of Coventry* (1615), 10 Co. Rep. 53b. Moreover, the same principles that apply to the interpretation of legislation also apply to the interpretation of regulations: [...]

In *Martin v. Beef Stabilization Appeal Committee (Sask.)*, 1986 CanLII 2888 (SK QB), the Saskatchewan Court of Queen's Bench also confirmed that regulations are subject to the same rules of interpretation as legislation enacted by legislative bodies:

[8] We are concerned with a matter of statutory interpretation. Regulations passed under statutory authority are subject to the same rules of interpretation as the statute itself: *Union Gas Co. of Canada Ltd. v. Township of South Cayuga*, [1952] O.W.N. 201.

It is therefore clear that the provisions of the RRADM are to be interpreted in light of the same principles of interpretation that are applicable to statutes adopted by the legislative assembly.

##### 4.2 Purposive analysis

Canadian courts have held on numerous occasions that statutes are to be construed in accordance with their purpose. For example, in *Novak v. Bond*, [1999] 1 SCR 808, the Supreme Court of Canada held that the cardinal

principle of statutory interpretation is that legislative provisions should be construed in a way that best furthers their objects. The Court explained that courts must first identify the purpose of the statute and then determine what is the interpretation that best furthers that goal:

63 Although the judicial debate about the proper interpretation of s. 6(4)(b) has assumed an independent life in British Columbia legal circles, it remains a question of statutory interpretation. The cardinal principle of statutory interpretation is that a legislative provision should be construed in a way that best furthers its objects: see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at paras. 21-22, per Iacobucci J., and *Interpretation Act*, R.S.B.C. 1996, c. 238, s. 8. Subsidiary rules of statutory interpretation provide that each part of an enactment must be given meaning, and that statutes must be construed in such a way that absurdities are avoided: see *Rizzo Shoes*, supra, at para. 27, per Iacobucci J. The task faced by the Court on this appeal is therefore to first identify the scheme and purpose of the Limitation Act and then identify the interpretation of s. 6(4)(b) that best furthers its goals.

In *Sidmay Ltd. et al. v. Wehltam Investments Ltd.*, 1967 CanLII 24 (ON CA) (confirmed by the Supreme Court of Canada in *Sidmay Ltd. et al. v. Wehltam Investments Ltd.*, [1968] SCR 828), the Ontario Court of Appeal relied on the relevant legal doctrine to conclude that the ordinary meaning of a provision may be modified in order to achieve the purpose of the statute or to avoid absurdity, hardship or injustice:

It becomes apparent that, in order to give scope to the Act, without sweeping away otherwise legitimate activities sanctioned under other legislation, a strictly literal interpretation cannot be demanded. Such an approach to the interpretation of a statute is not unknown. In Maxwell on the Interpretation of Statutes, 9th ed. at p. 236, appears the following passage:

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. . . . Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman’s unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of common sense.”

Section 41 of the Quebec *Interpretation Act* also provides that the provisions of a statute “shall receive such fair, large and liberal construction as will ensure the attainment of its object and the carrying out of its provisions, according to their true intent, meaning and spirit”.

In the present case, it is clear that the purpose of the RRADM is to protect consumers by ensuring that they receive true, sufficient and relevant information about the insurance coverage and their rights in that regard. In the *Notice relating to the application of the Regulation respecting alternative distribution methods* published by the AMF<sup>3</sup>, the latter indeed makes the following remarks:

The premise of the regime governing distribution without a representative is that adequate, accurate and complete information is given to the client.

The Regulation provides that information be disclosed through more than one document. The information specific to distribution without a representative is provided in a fact sheet, the content of which is prescribed by the Authority. The information on the product offered,

<sup>3</sup> Available at : <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/distribution/avis/2019mai15-avis-applicatif-rmad-en.pdf>

which helps the client make an informed decision about the product, is presented in a summary prepared by the insurer.

The strict application of the RRADM advanced by the AMF however defeats that purpose. As discussed above, the RRADM provides that the product summary that must be delivered to clients must inform them of their “right of cancellation, its duration and the procedures for exercising it” while the mandatory fact sheet that must also be delivered to clients informs them that they are allowed to “rescind the insurance contract, at no cost, within 10 days”.

In reality, clients are, however, not allowed to cancel the credit card-embedded insurance benefits without also cancelling the credit card. Informing them that they are allowed to cancel the insurance benefits is false and misleading. Such an application of the RRADM completely defeats the purpose of the regulation which is to provide clients with “adequate, accurate and complete information”.

In *Driedger on the construction of statutes*, Professor Ruth Sullivan explains that the purpose of a statute may be invoked to avoid the application of its provisions to facts which may otherwise be captured by an ordinary understanding of its words:

Rule-avoidance. Legislative purpose is also relied on by courts to justify an outright refusal to apply a provision to facts that are within any ordinary understanding of its words. [...] <sup>4</sup>

For example, in *Canadian Pacific Air Lines Ltd. v. British Columbia*, [1989] 1 SCR 1133, the British Columbia's *Social Service Tax Act* provided for a tax on goods purchased outside of the province and brought into the province by companies carrying on business in the province. The Province took the position that aircrafts coming into the province were captured by the words of the legislation and that, therefore, airlines companies were bound to pay the tax.

The Supreme Court of Canada acknowledged that aircrafts were goods purchased outside the province and brought into the province within the terms of the statute, but refused to apply the tax to aircrafts by relying on the true purpose of the act which was to impose a retail tax payable by the ultimate consumer of the goods:

While I would not, in the absence of a detailed examination, wish to categorize the Act as being solely intended to impose a retail tax payable by the ultimate consumer of the goods, there can be no doubt, as I mentioned before, that this is its predominant purpose. The Act, in its general structure and intent, closely resembles the type of enactment originally approved by the courts in *Atlantic Smoke Shops, Ltd. v. Conlon*, [1943] A.C. 550, and later generalized to include all tangible personal property; see *Cairns Construction Ltd. v. Government of Saskatchewan*, [1960] S.C.R. 619. This predominant purpose, in my view, is of considerable assistance in understanding the import of s. 2(4). [...]

In our view, a similar approach should prevail in the instance. The AMF must interpret the scope the RRADM in harmony with its predominant purpose i.e. to provide Quebec customers with adequate, accurate and complete information regarding the insurance benefits and their rights in that regard.

To the extent that the application of the RRADM to a specific set of facts results in the purpose of the regulation being frustrated, the AMF should refrain from applying it to such facts even though they may fall within the purview of the regulation under a strict reading of its provisions.

<sup>4</sup> R. Sullivan, *Driedger on the construction of statutes*, 3<sup>rd</sup> edition, Toronto, Butterworths, 1994, p. 72.

#### 4.3 Avoidance of absurd or impracticable consequences

Another cardinal rule of statutory interpretation is that legislation should be construed in such a way as to avoid absurd consequences. In *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 RCS 27, the Supreme Court of Canada explained that a specific interpretation may be labelled as “absurd” if it is incompatible with the object of the legislative enactment or if it defeats the purpose of the statute:

27 In my opinion, the consequences or effects which result from the Court of Appeal's interpretation of ss. 40 and 40a of the ESA are incompatible with both the object of the Act and with the object of the termination and severance pay provisions themselves. It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, supra, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, Construction of Statutes, supra, at p. 88).

It is to be noted that the concept of “absurdity” is not limited to illogical consequences, but that it also encompasses impractical or inconvenient results. For example, in *Lavis Contracting Co. Limited v. Coores Construction Inc. et al*, 2014 ONSC 5479, the Ontario Superior Court of Justice made the following observations in that regard:

[16] In *Wicken (Litigation Guardian of) v. Harssar*, [2004] O.J. No. 1935 (Div. Ct.), the Court reviewed certain basic principles of statutory interpretation. At paras. 27 and 28, the Court said this:

“If a statute is susceptible of two interpretations, the interpretation that avoids absurdity is to be preferred (*Datacalc Research Corp. v. Canada*, [2002] T.C.J. NO. 99, 2002 D.T.C. 1479 (Tax Ct.), at para. 54).

According to F. Bennion, *Statutory Interpretation*, 4th ed., (London: Butterworths, 2002), the concept of “absurdity” actually encompasses several components. The presumption against an “absurd” interpretation means the avoidance of (1) an unworkable or impractical result, (2) an inconvenient result, (3) an anomalous or illogical result, (4) a futile or pointless result, (5) an artificial result, or (6) disproportionate counter-mischief.

Therefore, any interpretation of the RRADM which leads to absurd or impracticable results ought to be avoided. For example, if a strict application of the RRADM may result in clients being misled regarding the nature and extent of their rights, it may be considered as leading to an absurd result since the RRADM purports to ensure that consumers are provided with adequate, accurate and complete information regarding the insurance benefits.

Similarly, if an interpretation of the RRADM leads to the client being “buried” with piles of documents, such an interpretation may be set aside on the ground that it leads to an impractical result.

In *Driedger on the construction of statutes*, Professor Ruth Sullivan explains that the rule against absurd results may serve to justify a restrictive interpretation of the legislative text:

Justifying a restrictive interpretation. Absurdity is often relied on to justify giving a restricted application to a provision. [...]

Unacceptable absurdity. Sometimes it is possible to give meaning to a provisions, but that meaning is so absurd that, in the view of the court, it cannot have been intended. If there is no way to interpret the provision so as to avoid the absurdity, the court has no choice but to redraft. [...]

It is easy to narrow the scope of a provision; the court simply declines to apply it to particular facts, even though the facts are within the ordinary meaning of the provision. This result is accomplished in a variety of ways : (i) by notionally introducing qualifications or exceptions into the provision; by creating legal "tests" for its application; by applying a presumption or special rule. In the end, the effect is the same: the provision is not applied to facts within its ordinary meaning. [...]<sup>5</sup>

In our view, the RRADM must be construed in such a way as to avoid absurd consequences i.e. consequences which are incompatible with its object. To the extent that a rigid interpretation of the RRADM may result in absurd consequences, the AMF has the obligation to adopt a narrow and restrictive interpretation which avoids such absurd consequences.

More specifically, the AMF must decline to apply certain provisions of the RRADM to credit card-embedded insurance benefits if such an application results in absurd consequences and the purpose of the RRADM being defeated.

#### **4.4 Adding qualifying terms**

Another principle of statutory interpretation provides that courts are allowed to add qualifying terms to the text of a statute in order to avoid absurd consequences and to ensure that the object of the legislation is being attained. In *Driedger on the construction of statutes*, Professor Ruth Sullivan explains that courts may rely on the purpose of the legislation to add certain qualifying features to the text of the statute:

Adding qualifying features to definition. Even where legislation is written in language that is not particularly vague, the courts may rely on purpose to justify their preference for a narrow rather than broad interpretation. [...]

Restrictive reading – conclusion. In *R v. Kudlip* the court notionally incorporated the legislative purpose into the provision to be interpreted by introducing a qualifying phrase. In the *Hills* case, it added a couple of qualifying features to the dictionary meaning of a word used in the provision. In *Canadian Pacific Airlines*, it simply declined to apply the provision to the facts of the case. Although these methods are formally distinguishable, the impact in all three cases is the same. The scope of the legislation is narrowed to exclude the inappropriate application. Once a court is satisfied that a proposed application of a provision is inadequately related to its purpose, it has a legitimate reason to reject the ordinary meaning, by re-formulating the provision, in effect, or refusing to apply it in this case.<sup>6</sup>

In the present case, the RRADM should be read as if the qualifying terms "where appropriate" or "where applicable" were included in the text of the provisions in dispute in order to avoid any inappropriate consequences and to ensure that the purpose of the regulation is attained.

#### **4.5 Statute paramountcy**

As mentioned above, the RRADM is a regulation i.e. a subordinate legislation. As such, it cannot conflict with its parent legislation. According to the relevant case law, subordinate legislation cannot conflict with other acts of the legislature either.

<sup>5</sup> R. Sullivan, *Driedger on the construction of statutes*, 3<sup>rd</sup> edition, Toronto, Butterworths, 1994, p. 94, 108, 125.

<sup>6</sup> R. Sullivan, *Driedger on the construction of statutes*, 3<sup>rd</sup> edition, Toronto, Butterworths, 1994, p. 70, 72-73.

In *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3, the Supreme Court of Canada mentioned that the provisions of a statute adopted by the legislative assembly must prevail over those of a regulation:

The basic principles of law are not in doubt. Just as subordinate legislation cannot conflict with its parent legislation (*Belanger v. The King* (1916), 1916 CanLII 87 (SCC), 54 S.C.R. 265), so too it cannot conflict with other Acts of Parliament (*R. & W. Paul, Ltd. v. Wheat Commission*, [1937] A.C. 139 (H.L.)), unless a statute so authorizes (*Re George Edwin Gray* (1918), 1918 CanLII 533 (SCC), 57 S.C.R. 150). Ordinarily, then, an Act of Parliament must prevail over inconsistent or conflicting subordinate legislation. However, as a matter of construction a court will, where possible, prefer an interpretation that permits reconciliation of the two. "Inconsistency" [...].

In the present case, sections 219 of the *Consumer Protection Act (CPA)*<sup>7</sup> provides that merchants are prohibited from making false or misleading representations to consumers:

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

If card issuers were to follow the position adopted by the AMF, they would automatically violate section 219 of the CPA since they would provide clients with false and misleading information about the nature of the insurance benefits and the extent of their rights.

Following the rule to the effect that subordinate legislation cannot conflict with statutes adopted by the legislature, the AMF must adopt an interpretation of the RRADM which is in harmony with section 219 of the CPA.

#### **4.6 Conclusion regarding the application of the principles of statutory interpretation**

The RRADM must be interpreted by the AMF in accordance with the principles of statutory interpretation. These principles provide that the AMF must adopt a narrow interpretation of the RRADM and decline to apply certain of its provisions to credit card-embedded insurance benefits since:

- (i) such a narrow and restrictive interpretation ensures that the objects of the RRADM are being attained;
- (ii) any other interpretation would result in absurd and impracticable consequences, and
- (iii) such a narrow and restrictive interpretation would not conflict with section 219 of the CPA.

In our view, the application of the principles of statutory interpretation discussed above should be sufficient to conclude that the rigid interpretation adopted by the AMF is ill-founded in law.

In addition to arguments based on principles of statutory interpretation, the AMF may also simply amend the RRADM in order to adapt its provisions to the specific context of credit card-embedded benefits or to grant the AMF with the discretionary power to grant exemptions in that regard.

This approach may be said to represent an "intermediary" position since the AMF would be required to take action in order to implement the requested changes.

<sup>7</sup> The CPA applies to credit card issuers. See in that regard the decision of the Supreme Court of Canada in *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725.



## 5. AMENDMENTS TO THE RRADM

As discussed above, the RRADM is not a statute adopted by the Quebec legislative assembly, but a mere regulation adopted by the AMF pursuant to the provisions of the ARDFPS. The RRADM may thus be amended by the AMF *via* the adoption of an amending regulation.

The amending regulation may purport to either (i) adapt the provisions of the RRADM to the specific context of credit card-embedded insurance benefits, or (ii) provide the AMF with the power and discretion to exempt certain specific situations from the application of the RRADM.

Section 440 of the ARDFPS indeed grants the AMF with the power to adopt a regulation prescribing the content of the notice that must be remitted to the client at the time the insurance contract is entered into:

440. A distributor that, at the time a contract is made, causes the client to make an insurance contract must give the client a notice, drafted in the manner prescribed by regulation of the Authority, stating that the client may rescind the insurance contract within 10 days of signing it.

Section 485(1) of the *Insurers Act* also provides that the AMF may adopt regulations determining the standards applicable to authorized insurers in relation to their commercial practices and their management practices:

485. In addition to other regulations that it may make under this Act, the Authority may, by regulation, determine the standards applicable

(1) to authorized insurers in relation to their commercial practices and their management practices; and

(2) to federations of mutual companies in relation to their management practices.

Section 194 of the ARDFPS provides that the regulations adopted by the AMF must be published in order to allow any interested person to submit comments regarding the draft regulation:

194. The Authority shall publish its draft regulations in the information bulletin and the draft regulation made by a Chamber under the fourth paragraph of section 312.

Every draft regulation must be published with a notice stating the time that must elapse before the draft regulation may be made or be submitted for approval, and stating the fact that any interested person may, during that time, submit comments to the person designated in the notice.

The Authority shall also publish in the information bulletin all the regulations approved by the Minister or the Government under this Act.

Once published, the draft regulation must be approved, with or without amendment, by the Minister of Finance pursuant to section 217 of the ARDFPS and section 486 of the *Insurers Act*.

To the extent that the AMF is not interested in initiating an amendment process, we may contact representatives of the Minister of Finance in order to convince them that amending the RRADM is in the best interest of Quebec consumers.

According to the provisions of the *Lobbying Transparency and Ethics Act*, we would need to register as lobbyists.<sup>8</sup> The fact that CAFII is lobbying the Quebec Minister of Finance in order to obtain amendments to the RRADM would thus become public.

## 6. INAPPLICABILITY OF THE RRADM

In addition to the above arguments, CAFII may also claim that certain provisions of the RRADM are simply inoperative when it comes to credit card-embedded insurance benefits since the application of such provisions directly conflicts with (i) the provisions of the ARDFPS dealing with the right to rescind an insurance contract and (ii) the provisions of federal legislation governing the distribution of insurance products by federally regulated entities.

This approach may be considered as more “aggressive” since it entails a direct challenge of the applicability of the RRADM to credit card-embedded insurance benefits.

### 6.1 Conflict with the provisions of the ARDFPS

It is a well-established principle of law that a regulation cannot conflict with the provisions of the statute under which it was enacted.

As mentioned by the Supreme Court of Canada in the above cited case of *Friends of the Oldman River Society v. Canada (Minister of Transport)*: “subordinate legislation cannot conflict with its parent legislation”. In *FFM Holdings Ltd. v. Lilydale Co-operative Ltd.*, 2001 ABCA 90, the Alberta Court of Appeal also expressed the rule as follows:

[25] However, there is a well-known presumption that an Act allowing one to pass subordinate legislation does not permit subordinate legislation which conflicts with an Act, especially that same Act. [...]

In the present case, the AMF takes the position that card issuers are required, under the provisions of the RRADM, to inform their clients of their right to cancel the insurance coverage and of the procedures for doing so.

Section 22 of the RRADM indeed provides that card issuers must deliver to the client (i) a product summary, and (ii) a fact sheet in the form set out in Schedule 2. Section 29(9) of the RRADM provides that the summary must inform the clients of their right of cancellation and of the procedures for exercising it while Schedule 2 of the RRADM provides that the fact sheet must inform clients of their right to rescind the insurance contract without penalty, within 10 days of its signature.

In our view, the application of sections 22 and 29 of the RRADM to credit card-embedded insurance benefits directly conflicts with the provisions of the ARDFPS dealing with the right to rescind an insurance contract.

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<sup>8</sup> Sections 2(1) and 4(1) of the *Lobbying Transparency and Ethics Act* provide as follows:

2. Any oral or written communication with a public office holder in an attempt to influence or that may reasonably be considered by the initiator of the communication as capable of influencing a decision concerning :

(1) the development, introduction, amendment or defeat of any legislative or regulatory proposal, resolution, policy, program or action plan, [...]

4. The following persons are considered to be public office holders for the purposes of this Act:

(1) government ministers and members of the National Assembly, as well as persons on their staff;

Section 440 of the ARDFPS indeed provides that distributors are bound to deliver a notice stating that the client may rescind the insurance contract within 10 days of signing it:

440. A distributor that, at the time a contract is made, causes the client to make an insurance contract must give the client a notice, drafted in the manner prescribed by regulation of the Authority, stating that the client may rescind the insurance contract within 10 days of signing it.

The scope of application of section 440 must, however, be determined by reference to the following provision i.e. section 441 of the ARDFPS which provides that a client may rescind an insurance contract made at the same time as “another contract” within 10 days of signing it:

441. A client may rescind an insurance contract made at the same time as another contract, within 10 days of signing it, by sending notice by registered mail.

Where such an insurance contract is rescinded, the first contract retains all its effects.

The first paragraph and section 440 do not apply to an insurance contract expiring within 10 days of its being signed.

Section 442 of the RRADM implicitly confirms that the right to cancel the insurance contract strictly applies where two distinct contracts are being signed. Section 442 indeed provides that the “principal” contract may not be amended for the sole reason that the “accessory” insurance contract is being cancelled. The second paragraph of section 442 even refers to the existence of “more than one contract”:

442. No contract may contain provisions allowing its amendment in the event of rescission or cancellation by the client of an insurance contract made at the same time.

However, a contract may provide that the rescission or cancellation of the insurance contract will entail, for the remainder of the term, the loss of the favourable conditions extended because more than one contract was made at the same time.

In our case, the “insurance contract” is not made at the same time as “another contract”. As discussed above, there is only one contract since the insurance benefits are embedded in the terms and conditions governing the use of the credit card.

A serious argument could thus be made that the application of sections 22 and 29 of the RRADM to credit card-embedded insurance benefits directly conflicts with the provisions of the ARDFPS dealing with the right to rescind an insurance contract and that, therefore, sections 22 and 29 of the RRADM are inoperative in that regard.

It is to be noted that the above position may also be fashioned as an interpretative argument justifying a narrow and restrictive construction of the RRADM. More specifically, CAFII may argue that the scope of application of the RRADM must be determined in light of the relevant provisions of the ARDFPS and that, since those provisions strictly apply to situations where two distinct contracts are being signed, sections 22 and 29 of the RRADM cannot be applied to credit card-embedded insurance benefits.<sup>9</sup>

<sup>9</sup> See in that regard *Ebert Howe and Assoc. v. B.C. Optometric Assn.*, 1985 CanLII 576 (BC CA):

[62] My second observation is that the benevolent interpretation that is to be given is a benevolent interpretation of the subordinate legislation, not a benevolent interpretation of the empowering legislation. That is, it should be presumed that the subordinate body that makes the subordinate legislation was taking a correct view of its powers and acting within its powers. So, if two alternative constructions of the subordinate legislation are available, one that is within those powers and one that is not, then the alternative construction that is within the powers of the subordinate body should be preferred. And If the subordinate legislation is perhaps too

## 6.2 Federal paramountcy

The doctrine of federal paramountcy is well entrenched into Canadian law. This doctrine is engaged where an operative conflict exists between provincial and federal law. In such a scenario, federal law must prevail.

In *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, the Supreme Court of Canada explained that the conflict between provincial and federal law may be established by (i) the impossibility for a party to comply with both laws, or (ii) if the application of provincial law frustrates the purpose of federal law<sup>10</sup> :

[70] The Banks additionally argue that ss. 12 and 272 of the CPA are inoperative with respect to banks as a result of the doctrine of federal paramountcy. Paramountcy is engaged where there is a conflict between valid provincial and federal law. In such cases, the federal law prevails, and the provincial law is rendered inoperative to the extent of the conflict. Conflict can be established by impossibility of dual compliance or by frustration of a federal purpose (*Canadian Western Bank*, at para. 73). The Banks argue that the provisions of the CPA frustrate the purpose of the federal banking scheme.

We have examined the legislative scheme established by federal law in order to determine whether an argument based on the doctrine of federal paramountcy may be raised by CAFII in the instance. More specifically, we have examined the provisions of the *Bank Act* and of the various regulations adopted under it.<sup>11</sup> We have also examined the provisions of the *Insurance Companies Act* and the various regulations enacted under it.<sup>12</sup>

As more fully discussed below, we are of the view that serious arguments could be advanced to support the position that the application of the RRADM to credit card-embedded insurance benefits leads to a conflict between provincial and federal legislation.

For example, section 452(2)b) of the *Bank Act* provides that where a bank has issued a credit card, it must disclose the particulars of the client's rights and obligations:

(2) Where a bank issues or has issued a credit, payment or charge card to a natural person, the bank shall, in addition to disclosing the costs of borrowing in respect of any loan obtained through the use of the card, disclose to the person, in accordance with the regulations,

broadly worded, then the beneficial construction should be one that would operate to read down the scope of the subordinate legislation to give it the same scope as the power conferred. [...].

<sup>10</sup> See also *Canadian Western Bank v. Alberta*, [2007] 2 SCR 3:

73 Nevertheless, there will be cases in which imposing an obligation to comply with provincial legislation would in effect frustrate the purpose of a federal law even though it did not entail a direct violation of the federal law's provisions. The Court recognized this in *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, in noting that Parliament's "intent" must also be taken into account in the analysis of incompatibility. The Court thus acknowledged that the impossibility of complying with two enactments is not the sole sign of incompatibility. The fact that a provincial law is incompatible with the purpose of a federal law will also be sufficient to trigger the application of the doctrine of federal paramountcy. This point was recently reaffirmed in *Mangat* and in *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13.

<sup>11</sup> Including the *Insurance Business (Banks and Bank Holding Companies) Regulations*, the *Cost of Borrowing (Banks) Regulations*, the *Disclosure of Charges (Banks) Regulations* and the *Credit Business Practices (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Foreign Insurance Companies) Regulations*.

<sup>12</sup> Including the *Cost of Borrowing (Canadian Insurance Companies) Regulations*, the *Credit Business Practices (Banks, Authorized Foreign Banks, Trust and Loan Companies, Retail Associations, Canadian Insurance Companies and Foreign Insurance Companies) Regulations*, the *Credit Information (Insurance Companies) Regulations*.

- (a) any charges or penalties described in paragraph (1)(b);
- (b) particulars of the person's rights and obligations;
- (c) any charges for which the person , becomes responsible by accepting or using the card;
- (d) at the prescribed time and place and in the prescribed form and manner, any prescribed changes respecting the cost of borrowing or the loan agreement; and
- (e) any other prescribed information, at the prescribed time and place and in the prescribed form and manner.

In our view, a bank cannot validly fulfill its obligation to disclose the particulars of the client's rights and obligations under section 452 of the *Bank Act* if it falsely informs that client that he or she may cancel the insurance.

The disclosure contemplated under section 452 must be accurate and not misleading. Otherwise, the bank would violate section 980.1 of the *Bank Act*:

980.1. Every person who knowingly provides false or misleading information in relation to any matter under this Act or the regulations is guilty of an offence.

It is interesting to note that an identical argument may be made under the provisions of the *Insurance Companies Act* since sections 482(2) and 1023.1 of this act respectively provide as follows:

482 (2) Where a company issues or has issued a credit, payment or charge card to a natural person, the company shall, in addition to disclosing the costs of borrowing in respect of any loan obtained through the use of the card, disclose to the person, in accordance with the regulations,

- (a) any charges or penalties described in paragraph (1)(b);
- (b) particulars of the person's rights and obligations;
- (c) any charges for which the person becomes responsible by accepting or using the card;
- (d) at the prescribed time and place and in the prescribed form and manner, any prescribed changes respecting the cost of borrowing or the loan agreement; and
- (e) any other prescribed information, at the prescribed time and place and in the prescribed form and manner.

1023.1 Every person who knowingly provides false or misleading information in relation to any matter under this Act or the regulations is guilty of an offence.

Based on the above provisions of the *Bank Act* and of the *Insurance Companies Act*, we are of the view that serious arguments could be made to support the position that the application of certain provisions of the RRADM to credit card-embedded insurance benefits results in a conflict between provincial and federal legislation and that such conflict must be resolved in favour of the federal legislation in accordance with the doctrine of federal paramountcy.

## **7. PROCEDURAL ISSUES**

To the extent that CAFII decides to challenge the position of the AMF before the courts, it may do so by following two distinct procedural paths.

Firstly, CAFII may wait for the AMF to issue a statement of offence in relation to a potential violation of the RRADM and challenge the penal charges before the Court of Quebec.

This approach is, however, not optimal since the statement of offence would not be issued to CAFII but to one of its members. At this stage, it remains unclear whether CAFII would be allowed to intervene before the Court in order to side with its member and challenge the AMF's position. Furthermore, the issuance of a statement of offence may draw unwanted negative publicity towards the issue.

In our view, the second approach is more appropriate in the circumstances. This second approach would consist in the filing by CAFII of a motion to obtain a declaratory judgement before the Quebec Superior Court under section 142 of the *Code of civil procedure*:

142. Even in the absence of a dispute, a judicial application may be instituted to seek, in order to resolve a genuine problem, a declaratory judgment determining the status of the plaintiff, or a right, power or obligation conferred on the plaintiff by a juridical act.

The declaratory judgement approach would allow CAFII to be "in the driver's seat". Although we did not conduct exhaustive research in that regard, we are confident that CAFII would have the proper standing to bring such a motion and that the dispute between CAFII and the AMF would be considered as a "genuine problem" within the meaning of article 142 of the *Code of civil procedure*.

#### 8. FINAL COMMENTS REGARDING SECTION 12 OF THE ARDFPS

You have asked us to consider whether the second paragraph of section 12 of the ARDFPS may be of assistance in challenging the position of the AMF regarding the application of the RRADM to credit card-embedded insurance benefits. Section 12 provides as follows:

12. Subject to the provisions of Title VIII, no person may act as or purport to be a representative without holding the appropriate certificate issued by the Authority.

However, a financial institution may, by giving out brochures or flyers or using direct mail or any other form of publicity, invite the public to purchase insurance products.

In our view, the second paragraph of section 12 of the ARDFPS merely allows financial institutions to distribute brochures or flyers by mail or otherwise or to make any other kind of publicity regarding the insurance products it distributes.

This provision does not deal with the conditions upon which insurance products may be distributed to the public, nor with the obligations of disclosure that card issuers must fulfill in order to enter into valid and binding contracts with their clients.

\* \* \*

**Agenda Item 7(a)(2)  
July 20/21 EOC Meeting**

**From:** Dupoy, Dominic <dominic.dupoy@nortonrosefulbright.com>  
**Sent:** July-07-21 9:49 AM  
**To:** Keith Martin <Keith.Martin@cafii.com>; Duquette, Marc  
<marc.duquette@nortonrosefulbright.com>  
**Cc:** Brendan Wycks <brendan.wycks@cafii.com>; Lyn Wallington <lyn.wallington@cafii.com>  
**Subject:** RE: Follow up from CAFII

Hi Keith,

Thanks for your email. This is much appreciated. I really like the “get-acquainted webinar session with Eric Jacob” approach.

Have a nice day !

**Dominic Dupoy**

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**NORTON ROSE FULBRIGHT**

**De :** Keith Martin <[Keith.Martin@cafii.com](mailto:Keith.Martin@cafii.com)>  
**Envoyé :** 6 juillet 2021 14:52  
**À :** Duquette, Marc <[marc.duquette@nortonrosefulbright.com](mailto:marc.duquette@nortonrosefulbright.com)>; Dupoy, Dominic  
<[dominic.dupoy@nortonrosefulbright.com](mailto:dominic.dupoy@nortonrosefulbright.com)>  
**Cc :** Brendan Wycks <[brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com)>; Lyn Wallington <[lyn.wallington@cafii.com](mailto:lyn.wallington@cafii.com)>  
**Objet :** Follow up from CAFII

Bonjour Marc, Dominic,

I am overdue thanking you both on behalf of Brendan and myself—and our Board members—for your excellent presentation on our legal options that you so eloquently delivered at the Special Purpose Board Meeting on 29 June, 2021.

The arguments you made were very well-received by the Board and led to a very impactful Board discussion. Thank you for producing such an excellent range of insights and for delivering it in a way that gave Board members a solid understanding of options.

The Board has, as a first step, asked Brendan and me to set up a get-acquainted webinar session with Eric Jacob at which we will share our priorities, inquire about AMF priorities that Eric Jacob will have as the new Superintendent, and “gently” raise that we have received a legal opinion from Norton Rose on the AMF position around the RADM and credit card-embedded insurance benefits, and offer to share at a high level some of those arguments.

Depending on how that conversation goes, we would also offer to have a synopsis of some of the arguments (the “softer” options) shared with the AMF through a written summary from Norton Rose; through a webinar presentation from Norton Rose; or both.

CAFII would facilitate and participate in the webinar, but Norton Rose would take the lead in presenting the arguments, if the AMF is interested in such a presentation.

For a written submission, we have in the attachment to this email an appendix with the arguments we propose to share, but we would ask you to concur that these are the right arguments and would defer to you in terms of preparing a letter to the AMF, if this is something they are interested in receiving. We will confer with you if any of this comes to pass, of course, but my view is that we probably would want the presentation and/or written letter to be in French.

I will keep you both informed of progress on this. Please find attached the Action Plan that has been approved by Chris Lobbezoo, CAFII Board Chair (RBC Insurance); and Peter Thompson, CAFII Board Vice-Chair (National Bank Insurance).

Any questions or concerns, please let me know.

Personal regards,

--Keith

**Keith Martin**

Co-Executive Director / Co-Directeur général

Canadian Association of Financial Institutions in Insurance

L'association canadienne des institutions financières en assurance

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## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 7(b)**

**Read Only Items—Outreach from Erica Hiemstra, FSRA Re Recent FSRA Supervision Work on Life & Health Insurance Agents and Second Annual LARF Report**

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### **Purpose of this Agenda Item**

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Read only item.

### **Background Information**

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Erica Hiemstra of FSRA has asked to meet with CAFII on some recent FSRA initiatives.

### **Recommendation / Direction Sought**

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Read only item.

### **Attachments Included with this Agenda Item**

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1 attachment.

**Agenda Item 7(b)**  
**July 20/21 EOC Meeting**

**From:** Erica Hiemstra <Erica.Hiemstra@fsrao.ca>  
**Sent:** July-05-21 4:18 PM  
**To:** Brendan Wycks <brendan.wycks@cafii.com>; Keith Martin <Keith.Martin@cafii.com>  
**Cc:** Nadine Willock <Nadine.Willock@fsrao.ca>  
**Subject:** RE: FSRA LARF Report & Agent & Insurer Priorities

Hi Brendan,

Thanks for your note and I hope you had a great Canada Day weekend.

We're happy to meet with you and Keith. Our timeframe would be late July or early August. Nadine Willock, copied above, can work with you on dates.

Cheers,  
Erica

**Erica Hiemstra**  
(she/her)  
Head, Insurance Conduct  
Market Conduct  
Financial Services Regulatory Authority (FSRA)  
E: [erica.hiemstra@fsrao.ca](mailto:erica.hiemstra@fsrao.ca)

**From:** Brendan Wycks <[brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com)>  
**Sent:** Wednesday, June 30, 2021 11:45 AM  
**To:** Erica Hiemstra <[Erica.Hiemstra@fsrao.ca](mailto:Erica.Hiemstra@fsrao.ca)>; Keith Martin <[Keith.Martin@cafii.com](mailto:Keith.Martin@cafii.com)>  
**Cc:** Nadine Willock <[Nadine.Willock@fsrao.ca](mailto:Nadine.Willock@fsrao.ca)>  
**Subject:** RE: FSRA LARF Report & Agent & Insurer Priorities

Hi, Erica and thanks very much for reaching out to Keith and me on this matter.

We'd be happy to have a virtual meeting with you and have you share the details of your second annual LARF report and related supervision insights with us.

We feel that it's best to have such an initial meeting with you on our own, which will allow us to determine what is the best way to relay the information to CAFII Member representatives.

My initial thinking is that if it does make sense to arrange an opportunity for you to present your LARF report and related supervision insights directly to CAFII Member representatives, the best forum would like be a mini-webinar/virtual meeting for that specific purpose rather than trying to squeeze you onto the agenda for one of our Executive Operations Committee meetings, which typically have very full and often time-challenged agendas.

Keith and I are both generally available on Monday, July 5; Tuesday, July 6; and Wednesday, July 7; or, alternatively, in the following week of Monday, July 12 through Friday, July 16.

So please propose three or four date/time options when you have an hour free, and I'm sure than one of them will also work for Keith and me.

Best regards,

**Brendan Wycks, BA, MBA, CAE**

Co-Executive Director

Canadian Association of Financial Institutions in Insurance

[Brendan.wycks@cafii.com](mailto:Brendan.wycks@cafii.com)

**From:** Erica Hiemstra <[Erica.Hiemstra@fsrao.ca](mailto:Erica.Hiemstra@fsrao.ca)>

**Sent:** June-28-21 11:12 PM

**To:** Brendan Wycks <[brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com)>; Keith Martin <[Keith.Martin@cafii.com](mailto:Keith.Martin@cafii.com)>

**Cc:** Nadine Willock <[Nadine.Willock@fsrao.ca](mailto:Nadine.Willock@fsrao.ca)>

**Subject:** FSRA LARF Report & Agent & Insurer Priorities

Hi Brendan & Keith,

We haven't connected in some time! I wanted to reach out on some of FSRA's priority work in the L&H sector. We recently published our second annual LARF report and have been doing some supervision work on L&H agents and insurers that we believe will be of interest. Let me know if there is an opportunity to share the details of this work with CAFII. We'd certainly be pleased to join one of your upcoming meetings.

I hope you are well and look forward to the opportunity to connect soon.

Cheers,

Erica

**Erica Hiemstra**

(she/her)

Head, Insurance Conduct

Market Conduct

Financial Services Regulatory Authority (FSRA)

E: [erica.hiemstra@fsrao.ca](mailto:erica.hiemstra@fsrao.ca)

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 7(c)**

**Read Only Items—Media Release On Canadian Tire Bank's Joining CAFII as a New Member and Adam Vespi's Appointment AS CTB's First CAFII Director**

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### **Purpose of this Agenda Item**

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Read only item.

### **Background Information**

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CAFII recently issued a news release on Canadian Tire Bank joining the Association as a new member, and Adam Vespi's appointment as CTB's first CAFII Director.

### **Recommendation / Direction Sought**

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Read only item.

### **Attachments Included with this Agenda Item**

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1 attachment.

***Agenda Item 7(c)***  
***July 20/21 EOC Meeting***

**CAFII Welcomes Canadian Tire Bank as a New Member**

**Toronto, July 8, 2021** – The Canadian Association of Financial Institutions in Insurance (CAFII) is pleased to announce that Canadian Tire Bank (CTB) has joined the Association as a new member. In that connection, Adam Vespi, Associate Vice-President, Insurance & Services at CTB, has been appointed to CAFII's Board of Directors.

Canadian Tire Bank is a federally chartered bank operating as a subsidiary of Canadian Tire Financial Services Limited (CTFSL), the financial services arm of Canadian Tire Corporation. CTB employs over 1,600 people with offices in Welland, St. Catharines and Oakville, Ontario. The company was established in 2003 and is a member of the Canada Deposit Insurance Corporation (CDIC).

"We are pleased to welcome Canadian Tire Bank to CAFII," said Chris Lobbezoo, Chair of the CAFII Board and Vice-President of Creditor Insurance at RBC Insurance. "We look forward to working with Adam Vespi and his colleagues at CTB in ensuring that Canadians continue to have access to an open and flexible insurance marketplace, including optional credit protection insurance and travel insurance, and high levels of customer satisfaction."

"At Canadian Tire Bank, we know that our future will be defined by how well our customers connect with our innovative financial solutions for their jobs and the joys of life in Canada," said Mr. Vespi. "Our customers' needs are what drive us to develop innovative financial services and products as well as related insurance coverage, and we look forward to working with our peers at CAFII to help ensure Canadians continue to have access to insurance coverage that is simple, affordable and accessible."

CAFII is a not-for-profit industry association dedicated to the development of an open and flexible insurance marketplace. It was established in 1997 to create a voice for financial institutions involved in selling insurance through a variety of distribution channels. Its 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 a meaningful choice in the purchase of insurance products and services. Its members offer credit protection insurance, travel, life, health, and property and casualty insurance across Canada.

CAFII works with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector that helps ensure Canadian consumers get the insurance products that suit their needs. The Association's aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

In addition to Canadian Tire Bank, CAFII's 15 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 Life Insurance Company; along with major industry players Assurant Canada; The Canada Life Assurance Company; Canadian Premier Life Insurance Company; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.

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**Media contact:**

David Moorcroft, Public Affairs Advisor

Email: [david@strategy2communications.com](mailto:david@strategy2communications.com); Tel: +1-416-727-1858



**L' ACIFA ACCUEILLE LA BANQUE CANADIAN TIRE EN TANT QUE NOUVEAU MEMBRE**

**Toronto, le 8 juillet 2021** – L'Association canadienne des institutions financières en assurance (ACIFA) est heureuse d'annoncer que la Banque Canadian Tire (BCT) s'est jointe à l'Association en tant que nouveau membre. À cet égard, Adam Vespi, vice-président associé, assurances et services à la BCT, a été nommé au conseil d'administration de l'ACIFA.

La Banque Canadian Tire est une banque à charte fédérale qui est une filiale des Services Financiers Canadian Tire Limitée (SFCT), la branche des services financiers de la Société Canadian Tire. La BCT emploie plus de 1 600 personnes et possède des bureaux à Welland, St. Catharines et Oakville en Ontario. La société a été créée en 2003 et est membre de la Société d'assurance-dépôts du Canada (SADC).

« Nous sommes heureux d'accueillir la Banque Canadian Tire au sein de l'ACIFA déclare Chris Lobbezoo, président du conseil d'administration de l'ACIFA et vice-président de l'assurance-crédit de RBC Assurances. Nous nous réjouissons de collaborer avec Adam Vespi et ses collègues de la BCT pour faire en sorte que les Canadiens continuent d'avoir accès à un marché de l'assurance ouvert et flexible, y compris à l'assurance protection de crédit et l'assurance voyage facultatives, et à des niveaux élevés de satisfaction de la clientèle. »

« À la Banque Canadian Tire, nous savons que notre avenir sera défini par la façon dont nos clients utiliseront nos solutions financières novatrices pour leur travail et pour profiter de la vie au Canada, ajoute M. Vespi. Ce sont les besoins de nos clients qui nous poussent à développer des services et des produits financiers innovateurs ainsi que des couvertures d'assurance connexes, et nous sommes impatients de travailler avec nos pairs de l'ACIFA pour faire en sorte que les Canadiens continuent d'avoir accès à une couverture d'assurance qui soit simple, abordable et accessible. »

L'ACIFA est une association à but non lucratif dédiée au développement d'un marché de l'assurance ouvert et flexible. Elle a été créée en 1997 pour donner une voix aux institutions financières qui offrent des produits d'assurance par l'intermédiaire d'une variété de canaux de distribution. Ses membres fournissent de l'assurance par le biais de centres de contact avec la clientèle, d'agents et de courtiers, d'agents de voyages, de publipostage direct, de succursales d'institutions financières et d'Internet.

L'ACIFA croit que les consommateurs sont mieux servis lorsqu'ils ont un choix significatif dans l'achat de produits et de services d'assurance. Ses membres offrent l'assurance protection de crédit, l'assurance voyage, l'assurance vie, l'assurance maladie et l'assurance multirisque des biens partout au Canada.

L'ACIFA travaille avec le gouvernement et les organismes de réglementation (principalement provinciaux et territoriaux) afin d'élaborer un cadre législatif et réglementaire pour le secteur de l'assurance qui permet d'assurer que les consommateurs canadiens obtiennent les produits d'assurance qui répondent à leurs besoins. L'Association a pour objectif de veiller à ce que des normes appropriées soient en place pour la distribution et la commercialisation de tous les produits et services d'assurance.

En plus de la Banque Canadian Tire, les 15 membres de l'ACIFA comprennent les branches d'assurance des principales institutions financières du Canada - BMO Assurance, CIBC Assurance, Desjardins Assurance, Assurance Banque Nationale, RBC Assurance, la Financière ScotiaVie et TD, Compagnie d'assurance-vie - ainsi que les principaux acteurs de l'industrie : Assurant Canada, la Compagnie d'assurance du Canada sur la vie, la Compagnie d'assurance-vie Première du Canada, la Compagnie d'Assurance-Vie CUMIS, Manuvie (la Compagnie d'assurance-vie des Manufacturiers), Sun Life et Valeyo.

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**Personne-ressource pour les médias :**

David Moorcroft, Conseiller en affaires publiques

Courriel : [david@strategy2communications.com](mailto:david@strategy2communications.com); Tél : +1- 416-727-1858

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 7(d)**

**Read Only Items—Media Pickup of Press Release on Results of CAFII-Commissioned Research by Pollara on CPI Consumers Digitization Preferences**

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### **Purpose of this Agenda Item**

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Read only item.

### **Background Information**

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CAFII has received good trade press coverage of its press release on the CAFII research initiative with Pollara on CPI consumers' digitization preferences.

### **Recommendation / Direction Sought**

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Read only item.

### **Attachments Included with this Agenda Item**

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1 attachment.



**Agenda Item 7(d)  
July 20/21 EOC Meeting**

**From:** Brendan Wycks  
**Sent:** July-12-21 2:22 PM  
**To:** CAFII Board, EOC, and Other Committee Members  
**Cc:** Keith Martin <Keith.Martin@cafii.com>; david strategy2communications.com <david@strategy2communications.com>; Lyn Wallington <lyn.wallington@cafii.com>; Jake Becker <jake.becker@cafii.com>; CAFII Events <events@cafii.com>; Meighan Pears <info@cafii.com>  
**Subject:** Media Pickup of Press Release on Results of CAFII Research on Results of 2021 CAFII Research on CPI Consumers' Digitization Preferences/Expectations and Their Post-Pandemic Insurance/Financial Transaction Intentions

**CAFII Board, EOC, and Other Committee Members:**

I'm pleased to share with you the information below on the pickup/coverage that resulted from our Association's recent Media Release on the results of the *2021 CAFII Research on CPI Consumers' Digitization Preferences/Expectations and Their Post-Pandemic Insurance/Financial Transaction Intentions*.

Our CAFII news release and related info-graphics can be found here:  
<https://www.cafii.com/pandemic-has-changed-the-way-canadians-conduct-financial-transactions-and-for-some-the-change-will-be-permanent/>

Links to all resulting trade press articles/broadcast interviews can be found here on the CAFII website:  
<https://www.cafii.com/news/>

*Separately/individually, our Release generated the following pickup/coverage:*

Insurance Business Canada story:  
<https://www.insurancebusinessmag.com/ca/news/breaking-news/how-has-covid-changed-how-credit-protection-insurance-customers-purchase-coverage-258283.aspx>

Mortgage Broker Canada story:  
<https://www.mortgagebrokernews.ca/news/how-comfortable-are-canadians-with-conducting-financial-transactions-online-357300.aspx>

Onside Media story:  
<https://www.theonside.com/finance/pandemic-has-changed-the-way-canadians-conduct-financial-transactions-and-for-some-the-change-will-be-permanent/>

Retail Banker International story:  
<https://www.retailbankerinternational.com/news/covid-accelerates-canadian-digital/>

Retail Banker International interview—Douglas Blakey interviews Keith Martin:

<https://www.cafii.com/cafii-executive-discusses-new-study-with-retail-banker-international/>

Business of Blockchain interview – David Moorcroft interviews Keith Martin:

<https://www.mixcloud.com/BlockchainRadio/unknown-businessofblockchain-keithmartin-210625/>

Congratulations to Keith Martin and our media consultant David Moorcroft on their efforts which generated the above-noted media coverage – which also enhances our website content and drives search engine optimization benefits -- for CAFII and its Members!

**Brendan Wycks, BA, MBA, CAE**

Co-Executive Director

Canadian Association of Financial Institutions in Insurance

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*Rendre l'assurance simple et accessible pour les Canadiens*

## **Briefing Note**

**CAFII EOC Meeting 20 July, 2021—Agenda Item 7(e)**

**Read Only Items—Possible Topics and Presenters for Fall CAFII Webinars**

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### **Purpose of this Agenda Item**

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Read only item.

### **Background Information**

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CAFII is planning to hold three webinars in the Fall of 2021: one in each of September, October, and November.

### **Recommendation / Direction Sought**

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Read only item.

### **Attachments Included with this Agenda Item**

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1 attachment.

**Agenda Item 7(e)**  
**July 20/21 EOC Meeting**

**Proposed Topics and Presenters/Panelists For Fall 2021 CAFII Webinars and Events**

**Fall 2021 Webinar #1**

**Topic/Focus:** "Climate Change and Its Implications For Life Insurance" including Background and Evidence; Causes and Consequences; Mortality and Morbidity Outcomes; Life Insurance Implications; and Risk Management Challenges

**Panelists/Presenter(s):** Dr. Georgiana Willwerth-Pascutiu, Vice-President and Global Medical Director, RGA Reinsurance Group of America, Inc. (based in Canada; and current Scientific Director and Past-President, 2016-17, of Canada Life Insurance Medical Officers Association (CLIMO)); and Christopher Falkous, Senior Biometric Insights Actuary, RGA Reinsurance Group of America, Inc. (based in the UK)

**Rationale/Comment:** This webinar and its presenters are highly recommended by Scott Kirby of TD Insurance, as it was presented at a TD Insurance Town Hall Meeting on May 27/21. Scott has subsequently reached out to Dr. Willwerth-Pascutiu and she is willing to co-operate with CAFII and arrange for the same presentation to be made as a CAFII webinar. This would build upon CAFII's June 2020 webinar with three panelists from Deloitte Canada, but be more customized to life and health insurance.

**Timing:** TBA date in September, October, or November 2021 from 12 Noon to 1:00 p.m. Eastern.

**Fall 2021 Webinar #2**

**Topic/Focus:** The Ins and Outs of Wellness Incentivization Programs At Major Life and Health Insurers (Programs That Incentivize Healthy Lifestyle Decisions and Behaviours By Insureds)

**Panelists/Presenter(s):** Panel of staff executives who lead wellness programs at Manulife (Vitality); Sun Life (Lumino Health); and Canada Life (?)

**Rationale/Comment:** This idea was discussed briefly and supported at an EOC meeting in 2021. Monika Spudas of Manulife has agreed to help CAFII secure the participation of a staff executive who leads her company's Vitality program; and Anaar Jessa of Sun Life has secured the agreement of a Lumino Health leader to participate.

**Timing:** TBA date in September, October, or November 2021 from 12 Noon to 1:00 p.m. Eastern.

**Fall 2021 Webinar #3**

**Topic/Focus:** The Changing Role Of Medical Doctors On The Underwriting Team At Life and Health Insurers

**Panelists/Presenter(s):** Panel of medical doctors who are involved in underwriting at their life and health insurer employers, including possibly Dr. Bruce Empringham, Vice-President and Medical Director, Canada Life.

**Rationale/Comment:**

**Timing:** TBA date in September, October, or November 2021 from 12 Noon to 1:00 p.m. Eastern.

#### **Fall 2021 Webinar #4**

**Topic/Focus:** Regulatory Priorities and Issues Across the Country As Canada Emerges From COVID-19

**Panelists/Presenter(s):** Eric Jacob, Superintendent, Client Services and Distribution Oversight, AMF; Peta Wales, Vice-President, Sector Liaison, BCFSa; and one or two additional participants such as Mark Brisson, Superintendent of Insurance, Alberta (appointed January 2021); and/or Jean Bishop, Superintendent of Insurance, Newfoundland and Labrador (appointed May 2021).

**Rationale/Comment:** Fireside chat opportunity for CAFII Member and Associate audience to meet new, directly relevant senior staff executives at three provincial insurance regulators; and for them to raise their profile while discussing their organizations' regulatory priorities.

**Timing:** TBA date in September, October, or November 2021 from 12 Noon to 1:00 p.m. Eastern.

#### **CAFII 2021 Annual Members and Associates Luncheon**

**Topic/Focus:** Hot/Burning Insurance Policy and Regulatory Issues At Home and Abroad

**Panelists/Presenter(s):** Panel of three or four insurance lawyers, such as Jill McCutcheon, Torys; Stuart Carruthers, Stikeman Elliott; Koker Christensen, Fasken; and Marc Duquette, Norton Rose.

**Rationale/Comment:** Returns Annual Members and Associates Luncheon to its original focus/intent as a "Bring Your Internal Legal Counsel Event" which former Networking & Events Committee Co-Chair John Lewsen recommended, in 20219, should be the recurring theme/focus of this event every second year.

**Timing:** TBA date in November 2021 from 11:45 a.m. to 2:15 p.m. Eastern if an in-person luncheon event at a downtown Toronto venue; or from 12 Noon to 1:30 p.m. Eastern if a virtual-only event