

Regulatory Update – CAFII Board of Directors, May 29, 2017

Prepared By Brendan Wycks, CAFII Co-Executive Director

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Federal/National

Financial Consumer Agency of Canada (FCAC)

Commissioner Calls For New Consumer Protection Advisory Committee Volunteers

On May 1/17, Lucie Tedesco, Commissioner of the Financial Consumer Agency of Canada (FCAC), issued a call for volunteer applicants for a new Consumer Protection Advisory Committee (CPAC) which will play a key role by supporting the Commissioner in carrying out the Agency's financial consumer protection mandate.

Committee members will help protect consumers by informing FCAC's supervision work, research initiatives, and the development of consumer education material. In addition, members will share their perspectives on marketplace trends and emerging issues, concerns regarding the delivery of financial services, and how changes in the financial services sector are impacting Canadians.

The CPAC will have up to 12 members, who will be selected by Ms. Tedesco. The FCAC is seeking candidates from the public, non-profit and private sectors. The Commissioner will consider the roles, experience and knowledge of applicants in selecting members of the Committee. The Commissioner also reserves the right to select a member who, in her view, has expertise or represents interests that may help advance the Committee's work. Membership selection will be open and transparent, representative of Canada's diversity, and merit-based.

Applicants and the organizations they represent should be able to demonstrate the importance they accord to financial consumer protection issues and the identification and evaluation of trends and emerging issues. Members should be senior representatives of organizations and/or experts in their field related to the financial industry, active in the financial sector and have significant influence within their sector. Members are required to actively participate in the Committee's activities.

The Committee will meet at least twice per year and may, at the discretion of the Chair, hold additional meetings. In-person participation is preferred; however, conference call facilities will be made available if required. Membership on the Committee is for renewable, two-year terms. The Commissioner will determine whether members are renewed.

Interested individuals may apply online until 11:59 p.m. on June 30, 2017.

Canadian Council of Insurance Regulators (CCIR)

Northwest Territories Signs Onto MOU Re Co-operative Framework

In an April 24/17 meeting, CCIR Policy Managers M. Boyle and S. Jacobs advised CAFII that the Northwest Territories had recently signed the Council's Memorandum of Understanding related to its Framework for Co-operative Market Conduct Supervision.

As well, Newfoundland is in the late stages of its review and approval process and should be signing the MOU in the very near future. That will leave only the Yukon as a non-signatory among the 13 provincial/regional jurisdictions in the country; and it is currently going through some staff changes in terms of its insurance supervision roles. Jonathan Parker is the new Superintendent of Insurance for the Yukon.

CCIR Approves New 2017-2020 Strategic Plan; Targets Early June Release

CCIR approved a penultimate draft of its new 2017-2020 Strategic Plan during its April 6-7/17 Spring meeting. The target release date for the new Plan is early June.

M. Boyle and S. Jacobs offered to meet with CAFII after the new Strategic Plan's release to provide elaboration and clarification, and answer any questions. It was agreed that that meeting should take place after June 22/17 – the date of CCIR's Summer teleconference meeting – as deferring until then would allow for a wider range of updates to be provided.

CCIR To Resume October/November Timing For Annual Stakeholder Meetings

On April 24/17, CCIR Policy Managers M. Boyle and S. Jacobs advised CAFII that the Council will be continuing its Annual Stakeholder Meetings, but will revert to an October or November timing for them rather than the January and December timing that was used most recently.

CCIR Re-Appoints Executive Committee Members; Adds Third Vice-Chair

At its April 6-7/17 Spring meeting, CCIR made the following Executive Committee re-appointments for a two-year term: Patrick Dery; Chair; Brian Mills, Vice-Chair; and Robert Bradley, Vice-Chair; and Scott Moore was added as a third Vice-Chair.

CCIR To Share Aggregated Annual Statement On Market Conduct Results With Industry

On April 24/17, M. Boyle advised CAFII that CCIR plans to share an aggregated results report from the first year of the Annual Statement on Market Conduct with participating insurers and industry Associations, likely in the third or fourth quarter of 2017.

CAFII has also learned that there will only be grammatical changes made to the Annual Statement for its Year 2. Informal consultations on those changes would be conducted during the summer of 2017. Thereafter, CCIR has committed to a more fulsome review of the Annual Statement for its Year 3.

Travel Health Insurance Association (THiA)

THiA Progressing On Travel Insurance Bill Of Rights and Responsibilities

Will McAleer, President of the Travel Health Insurance Association (THiA), reported in its Winter 2017 quarterly newsletter that the Association's in-development Travel Insurance Bill of Rights and Responsibilities (BofRs) had been reviewed and refined by the Executive Committee and would be showcased to the membership, along with a comprehensive communications plan, at the THiA Annual Conference, which was held April 30 to May 3/17 in Las Vegas.

"Our intention is to outline ways that you and your organizations can participate in the promotion of this exciting new initiative, such that we can show both regulators and the public our support for the programs we offer to Canadian travelers," McAleer said in his President's Message.

(At this time, no further news about the BofRs has been published on the THiA website, in either the public or members-only sections.)

Earlier, at THiA's AGM on September 27/16, the then-current draft of the BofRs was unveiled as follows:

Know Your Health, Know Your Policy, Know Your Trip, Know Your Rights

You Have The Right To

1. *A No Obligation Purchase: your travel insurance provider will allow you a '10-day free look.'*
2. *Be Informed: you will receive your policy documentation and confirmation of coverage outlining the policy terms and conditions, whether you purchased in-person, over the phone, or online.*
3. *Request Clarification: you may ask questions about the travel insurance you have purchased.*

4. *Review and Modify Medical Screening: you will receive a copy of the answers you provided on the medical questionnaire prior to the start of your policy.*
5. *Receive World-wide Assistance and Toll-free Support: you will have 24/7 access to the help you need, when you need it, from your travel insurance provider.*
6. *Fair and Prompt Claims Handling: you will have a timely and transparent communication process.*
7. *Escalate and Appeal: you may challenge decisions and request additional reviews with new information.*
8. *Confidentiality: your personal information will be protected in all dealings with your travel insurance provider.*
9. *Know Your Insurer: your policy will clearly identify the underwriter of your travel insurance and the process to file and resolve complaints.*
10. *Your Preferred Language: you may transact and correspond about all components of your travel insurance in English or French.*

You Have The Responsibility To

1. *Provide Accurate Information: you must complete the travel insurance application accurately.*
2. *Understand Your Purchase: you should read and understand your policy wording.*
3. *Travel With Proof of Insurance: you should have your policy number and emergency assistance contact information easily accessible.*
4. *Notify Your Travel Insurance Provider: you must provide prompt and timely communication when a claim situation arises and provide all requested documentation related to your claim, including all receipts.*

In addition to the BofRs itself, THiA is developing a 'Seal of Approval' icon which will be made available to members to use on their corporate websites, policy documentation, and promotional materials. THiA has indicated that to be able to use the 'Seal of Approval,' member companies will need to make sure that their policies and practices are in line with the BofRs; and in the near-term that process will be entirely self-managed.

British Columbia

Gerry Matier Suggests Work-Around For Representation For Banks-In-Insurance

In a May 5/17 liaison meeting with CAFII representatives at the CLHIA Conference in London, Ontario, Gerry Matier, Executive Director of the Insurance Council of BC, advised that the "BC residency requirement" remains an obstacle for creating a vehicle for CAFII and the financial institutions in insurance sector to have representation on the Insurance Council.

However, if the non-resident appointee prohibition remains a stumbling block, he advised that CAFII and the Insurance Council could create a work-around by setting up a permanent opportunity for CAFII to make a presentation to the Insurance Council at one of its scheduled meetings, perhaps annually or semi-annually.

Mr. Matier suggested that CAFII pursue setting this up with his successor, as he will be retiring as Executive Director of the Insurance Council at the end of 2017.

Judge Dismisses Application To Certify Class Action Against Banks

In a judgment handed down on March 28/17, the Honourable Mr. Justice J. Macintosh dismissed an application by Ms. Harpreet Kaur Sekhon to have a class action certified against Royal Bank of Canada, Toronto Dominion Bank, Canadian Imperial Bank of Commerce, Bank of Montreal, and Bank of Nova Scotia related to their credit card balance protection insurance (BPI).

The class definition proposed by Ms. Sekhon and her lawyers evolved over the course of a six-day hearing and ended up as *“this action is brought on behalf of members of a class consisting of the Plaintiff and all persons who, while residing in the Province of British Columbia, were enrolled in Credit Protection by telephone by the Defendant Banks and who paid monthly premiums and/or fees for Credit Protection, or such other class and/or subclass definitions or class periods as the Court may ultimately decide on the motion for certification.”*

Key elements of the judge’s dismissal decision included the following:

“The Plaintiff could not point to anything that contravenes any law in the voluminous documentary evidence the Banks filed, showing their BPI policies, procedures, and protocols. . . . Given my finding that it was permissible for the Certificates of Insurance to be sent after the enrollment phone calls, no claim by a potential plaintiff can get off the ground without an examination of that individual’s enrollment phone call and his or her other knowledge about BPI. In the result, there is nothing common about the claims of the members in any potential plaintiff group.

It is not a common issue whether thousands of Canadians have enrolled by phone with the Banks to obtain BPI coverage, and have paid for that coverage. That is common ground.

There is a further level of individuality when any potential BPI claims is examined. The five Banks each have their own BPI program. While there are many common points in the five programs, there are also enough differences that it would be relevant to know which Bank a particular complainant dealt with. Similarly, each of the five programs changes from time to time.

The application for certification fails to satisfy the requirements in s. 4(1)(b)-(e) of the Class Proceedings Act. The central point of the case is the absence of “commonality” as discussed in the case law addressing s. 4(1)(c) of the Act. Every potential class member, no matter how the class was defined, would need to advance a case which was almost entirely specific to that customer.”

In his judgement, Mr. Justice Macintosh did, however, make one backhanded slap at the defendants, as follows: *“I sympathize with the Plaintiff. From reviewing the Sekhon and Barbero phone transcripts . . . , I expect that Bank representatives, not infrequently, are, or at least have been, overly aggressive and persistent in selling BPI to their customers, many of whom phoned their Banks only to activate their credit cards. But in my view, that is not enough to make a finding of commonality so as to bring this application within the ambit of s. 4(1)(c) of the Act.”*

Alberta

CAFII Provides Feedback on AIC’s Internal Definitions of Credit-Related Insurance

In a May 19/17 response to CAFII’s “Feedback on Definitions of Credit-Related Insurance Authorized for Sale Under a Restricted Insurance Agent’s Certificate in Alberta,” J. Abram, CEO of the Alberta Insurance Council, wrote to B. Wycks as follows: “Thanks, Brendan. I appreciate your quick response on this issue and value your feedback. I will place this matter before the LIC at their next meeting and will let you know the outcome.”

Earlier on May 19/17, B. Wycks made a detailed submission to Ms. Abram on behalf of CAFII (see document supporting agenda item 4.2 for June 6/17 CAFII Board Meeting).

AIC Contemplating Separate Licensing Regime For Travel Agencies

In a liaison meeting with CAFII representatives on May 4/17 at the CLHIA Conference in London, Ontario, Joanne Abram, CEO of the Alberta Insurance Council, advised CAFII that the Council is looking seriously at the possibility of introducing a separate restricted licensing regime for travel agencies that sell travel health insurance in the province.

The AIC was approached by the Association of Canadian Travel Agencies (ACTA) with a proposal to that end. Currently, an RIA Certificate allows only the employees of travel agencies to engage with consumers under the licence with respect to travel insurance sales; no outsourcing is allowed. However, travel agencies would like to be able to engage TPAs to assist with the travel insurance aspect of their business. In that connection, the AIC has started to look at Saskatchewan's plans for a TPA licensing regime, but not in great detail yet.

This contemplated separate licensing regime would affect only individual travel insurance policy sales by travel agencies, Ms. Abram clarified. If the AIC decides to move ahead with this proposal, there will be a consultation with the industry on it.

AIC Approves New 2017-22 Strategic Plan

On May 4/17, Joanne Abram, CEO of the Alberta Insurance Council, advised CAFII that the AIC had recently reviewed and approved a new five-year, 2017-22 Strategic Plan for the organization. It should be posted on the AIC website by the end of May.

One initiative within the new Strategic Plan is undertaking a review of the Council's current system with respect to Errors and Omissions Insurance requirements, with the goal of implementing a better system for monitoring/auditing and enforcement.

Review of Alberta Insurance Act Not On Near-Term Horizon

On May 4/17, Joanne Abram, CEO of the Alberta Insurance Council, advised CAFII that a review of the Alberta Insurance Act was not on the near-term horizon, particularly given that the next fixed-term provincial election date is only two years away.

Nilam Jetha Now Permanent As Superintendent of Insurance

On May 4/17, Joanne Abram, CEO of the Alberta Insurance Council, advised CAFII that in early 2017, Nilam Jetha's appointment as Alberta's Superintendent of Insurance was made permanent. Ms. Jetha's confirmation as Superintendent follows a one-year temporary appointment made in early 2016, when her predecessor Mark Prefontaine was seconded to an Assistant Deputy Minister role.

Saskatchewan

Retiring IBAS Executive Director Reminisces On Wins Against Banks In Insurance

Retiring after 25 years as Executive Director of the Insurance Brokers Association of Saskatchewan, Ernie Gaschler said the following in his farewell column to IBAS members in the Spring 2017 issue of the Association's Saskatchewan Broker magazine:

"IBAS' political effectiveness has been legendary when it comes to keeping the banks from selling insurance through their branches and websites. Protecting the public interest at the point where credit is granted is a message that's resonated well with governments at both the national and provincial levels and should continue to do so in the future."

Gaschler's parting comments also include a reminiscence that when he first became Executive Director of IBAS in 1992, for a number of years he also served in the dual role of General Manager of the relatively new Insurance Councils of Saskatchewan. "Although managing both provided a few challenges, there weren't many conflicts since the benefit of a fair and consistent regulatory regime served the best interests of industry and the public equally well," he opines.

Interestingly, the Spring issue of Saskatchewan Broker does not contain any mention of Finance Minister Kevin Doherty's imposition of a 6% provincial sales tax on most types of insurance premiums including home and auto premiums; nor any mention of IBAS initiatives either before or after the Minister's announcement of that PST measure in his March 22/17 provincial budget.

Manitoba

Insurance Council To Launch 2017-18 RIA Licence Renewal Period Shortly

The Insurance Council of Manitoba (ICM) has published a Notice on its website advising that the period for online renewal of Restricted Insurance Agent (RIA) licences for 2017-18 will open shortly. An email notice will be sent to an RIA's Designated Official as soon as that occurs.

The ICM recommends that RIAs renew their licences immediately after receiving the notification email indicating that its licensing portal is ready to accept RIA renewals. That's because if issues occur with an RIA entity's renewal application, and the license ends up not being issued prior to the July 1 renewal deadline, the entity and its employees will not be licensed or authorized to conduct insurance business in Manitoba after the current licence has expired.

The Notice also advises that amendments to an organization's name cannot be completed via the online licence renewal process; but rather must be submitted to the ICM in paper format. A new, fully completed application – including required documentation and an amendment fee of \$70 – is required to complete an amendment to an organization's name. In that connection, the Notice warns that under Section 391 of the Insurance Act of Manitoba, a licensee can only hold out in the manner in which it has been licensed by the ICM.

Existing ISI Committee Could Be Vehicle For Restricted Licensee Representation

In a May 4/17 get acquainted discussion with CAFII representatives at the CLHIA Conference in London, Ontario, Barbara Palace Churchill, new Executive Director of the Insurance Council of Manitoba, was introduced to a key Manitoba-related concern for the Association.

In CAFII's view, with a relatively new Restricted Insurance Agent/Incidental Sales of Insurance regime now in place, Manitoba now faces the issue of coming up with an approach whereby the interests of all distribution channels are well-served by the Insurance Council and the representatives of any particular channel are not in a position to make decisions which could negatively affect or disadvantage competing channels.

Ms. Palace Churchill said that she understood and appreciated that concern; and that in her opinion, meaningful representation for Restricted Licence Holders could be achieved through the Council's existing ISI Committee. However, she also expressed interest in reviewing a copy of CAFII's Concept Proposal For A Restricted Insurance Agents Advisory Committee to the Executive Director of the Insurance Councils of Saskatchewan.

ICM Requests Educational Presentation From CAFII In Winnipeg

Barbara Palace Churchill advised CAFII on May 4/17 that she would be delighted to have a more substantive liaison meeting with CAFII representatives in the near future.

Through discussion, it was agreed that that best approach and location for such a meeting would be a meeting at the Insurance Council's office in Winnipeg in late June or early July 2017 (following completion of ICM's intensive licence renewal period), in which CAFII's representatives also make a presentation to all ICM staff to help educate them about ISI Distribution/CGI Sales By Financial Institutions. It was agreed that CAFII would follow-up with Ms. Palace Churchill to schedule and co-ordinate that meeting and presentation opportunity.

Ontario

FSCO To Launch Life Insurance Industry Working Group

On April 21/17, Heather Driver, Director, Licensing Branch in FSCO's Licensing and Market Conduct Division, wrote to CAFII and four other industry Associations in the life and health insurance sector, with an invitation to appoint up to two representatives to the Commission's new Life Insurance Industry Working Group (LII Working Group).

The purpose of the LII Working Group will be to provide a forum to discuss operational policy issues and regulatory matters pertaining to the life insurance industry.

Ms. Driver, who will chair the LII Working Group, indicated that it will include participants from FSCO, the Ontario Ministry of Finance, and the following life insurance industry Associations: Advocis; Independent Financial Brokers (IFB); Canadian Association of independent Life Brokerage Agencies (CAILBA); Canadian Life and Health Insurance Association (CLHIA); Canadian Association of Financial Institutions in Insurance (CAFII).

Discussions at this forum are intended to be open and candid, so no minutes will be taken at the meetings. Although discussions are not intended to be confidential, there may be occasions upon which members are privy to confidential materials and may be asked to sign non-disclosure agreements.

The LII Working Group will meet three to four times per year and face-to-face meetings are being recommended for the first few meetings.

CAFII has determined that Co-Executive Director K. Martin and one member representative from the Association's Licensing Efficiency Issues Committee will be its representatives on FSCO's LII Working Group.

FSCO has now confirmed that the first meeting of the LII Working Group will take place on May 30/17.

Quebec

AMF Creates Fintech Lab

On April 27/17, the AMF announced that it was creating a Fintech Lab to explore the current and potential applications of new technologies among regulated entities (including market infrastructures) or in connection with its regulatory activities. The Lab will be accessible to all AMF staff who contribute to the various projects of the Fintech Working Group.

The Fintech Lab's mandate is to study new technologies rather than the business models that are based on them. It will therefore serve as a think tank, equipped with exploration tools, whose purpose is to provide the AMF with the knowledge it requires to fully carry out its role as a regulator in an increasingly digital environment.

In connection with its new Fintech Lab, the AMF also announced that it had signed a partnership agreement with R3, an innovation firm focused on building platforms and applications for the financial sector. R3 has established a consortium of financial institutions for developing and applying blockchain technology in the financial services industry.

R3 invited regulators to join the consortium in order to address the regulatory issues of the new technologies adopted by these institutions. By joining the consortium, the AMF will be able to gain access to relevant information about projects undertaken by other regulators, enter into project partnerships and develop its own initiatives in a more timely manner through the contributions of other members.

Finance Minister Says Integrating Chambres Into AMF Would Be Desirable

In a Quebec National Assembly Committee on Public Finance debate on May 2/17, Finance Minister Carlos Leitão confirmed that he is considering integrating the province's self-regulatory organization for financial advisors – the Chambre de la sécurité financière; and the Chambre de l'assurance de dommages (an SRO for general insurance agents, brokers and adjusters) – with the Quebec's financial sector regulator, the Autorité des marchés financiers. (AMF).

“We want to make the AMF more effective as a regulator. It would be desirable that this integration happens... The objective is not to cause turmoil to save money. We want the AMF to provide a better framework and give it the latitude it needs to carry out its role,” said the Minister.

Louis Morisset, President and CEO of the AMF, was in attendance during the debate. He said the regulator is ready to take on this integration if the government decides on this path.

Finance Minister Non-Committal About Consultations Around Omnibus Bill

In a Quebec National Assembly Committee on Public Finance debate on May 2/17, an Opposition MNA asked Finance Minister Carlos Leitão if the government intends to hold consultations related to the long-awaited Omnibus Bill aimed at modernizing the province's financial services sector, once the Bill is tabled?

Minister Leitão replied “there has already been a great deal of consultation and we received many submissions. The positions of various industry bodies are well-known. We'll see. The industry has been amply consulted. There won't be any big surprises in this Bill.”

International

United Kingdom

Payment Protection Insurance Dominant Cause Of Complaints By Consumers

Financial services firms in the UK received more than three million complaints and paid £1.9 billion in consumer redress in the second half of 2016, according to new data released on April 26/17 by the the UK's Financial Conduct Authority (FCA).

Payment protection insurance (PPI) was the product that drew the most complaints, accounting for almost 900,000, and accounted for £1.6 billion or 84 percent of the redress paid to consumers in the second half of 2016, according to the FCA's report, which is based on the complaints that firms reported under new complaint-handling rules that took effect in June 2016.

The new data on industry complaints are more informative because they provide greater insight into the products that consumers complain about, and they show the number of complaints against size of the business, the FCA's report states.

"Greater transparency of complaints information will enable consumers looking to invest or buy products to be better informed about the products that have caused concern for other consumers," the report notes.

Research, Thought Leadership, and Innovation

KPMG Acquires Online Fintech Match-Up Firm

Netherlands-based KPMG International has acquired Matchi, a firm that provides an online platform to match financial services institutions with financial technology (fintech) companies. Through the Matchi platform, firms such as banks and insurance companies, can access a database that features more than 700 fintech solutions and more than 2,500 fintech companies.

"[The Matchi platform] is designed to identify, match and enable collaboration with the most innovative fintechs and solutions to address issues being faced by financial institutions," says Ian Pollari, global co-leader of fintech at KPMG International, in a statement.

Companies included in the database are first vetted. In Canada, there are about 22 fintech firms represented in the database and eight financial services institutions currently signed on to the service, says Andrée Gage, national manager of communications at KPMG MSLP, in an email.