

8 May 2018

Mr. Brian Mills
Chief Executive Officer and Superintendent of Financial Services
Financial Services Commission of Ontario
5160 Yonge Street, Box 85
Toronto, Ontario M2N 6L9

Subject: FSCO's Consultation Draft, "Treating Financial Services Consumers Fairly"

Dear Mr. Mills:

The Canadian Association of Financial Institutions in Insurance (CAFII) is pleased to offer its comments and observations on FSCO's draft Treating Consumers Fairly (TCF) Guideline, referred to as a "Superintendent's Guideline" in the Commission's Draft 2018 Statement of Priorities.

General Comments

Our Association appreciates the attention that FSCO is putting on the fundamental principle that consumers need to be treated fairly. We agree with the basic thrust of the draft Guideline, including that the interests of consumers are paramount and information about financial transactions must be communicated in an accurate and transparent manner. We are generally comfortable with and support the draft Guideline because it is largely rooted in a principles-based approach, rather than prescriptive rules; and because it incorporates the principle of proportionality, which will provide needed flexibility for licensees to tailor solutions to achieve the desired outcomes contained in FSCO's expectations.

CAFII agrees that treating consumers fairly means putting their interests first and taking the time to understand their needs, as well as making every reasonable effort to ensure that they understand the benefits and limitations of the product(s) being considered, along with their rights and responsibilities as consumers.

The April 3/18 transmittal message, by which FSCO released the draft TCF Guideline to stakeholders, states that the Commission will be taking specific steps to ensure alignment and coherence between Ontario's TCF Guideline and the CCIR's "Guidance: Conduct of Insurance Business and Fair Treatment of Customers." CAFII hopes and expects that the two documents will be harmonized to the maximum degree possible. Harmonization of regulations between different provincial authorities, and between provincial authorities and the CCIR, is of critical importance to our members and to the efficiency of the industry. In a similar vein, we would request that the Guideline align with the AMF's existing Fair Treatment of Consumers document (*Sound Commercial Practices Guideline, June 2013*). We would also request that as provincial authorities or CCIR update their Guidelines, that FSCO review its own Guideline to see if any adjustments need to be made to keep the degree of uniformity and harmonization at the highest level. CAFII requests that the TCF Guideline include a statement identifying how insurers are to proceed if there are instances where the FSCO's Guideline conflicts with CCIR's, since both will be applicable in Ontario.

We would like to point out that the wording in the initial section of the draft Guideline entitled “Context” sets a negative opening tone; and it is not clear why that approach was chosen. This is an opportunity to recognize and reinforce the importance that the industry already places on sound market conduct practices.

We note also that the Guideline lumps all industry participants into a category called “licensees.” In doing that, the Guideline ignores the reality that there are different accountabilities for the fair treatment of consumers depending upon roles; and, that being the case, the Guideline becomes vulnerable to misunderstandings and loses some of its effectiveness.

For example, if there is uncertainty among industry members as to which obligations in the Guideline apply to them, gaps in interpretation and understanding are bound to result. The IAIS’ Insurance Core Principles document, on the other hand, takes pains to differentiate between insurers and intermediaries. ICP 19 addresses conduct of business supervision which applies to both insurers and intermediaries, while ICP 18 addresses other aspects of supervision that are specific to intermediaries. Such differentiation would add clarity and strengthen some sections of the Guideline.

As a general observation, we suggest that the term “as appropriate” be substituted for the currently used “as necessary” throughout the Guideline.

We also note that very few of the expectations included in the Guideline relate to the customer’s experience; that may be an oversight which FSCO wishes to address in a subsequent draft.

While the pop-out box under *“FSCO’s Expectations for Treating Financial Services Consumers Fairly: FSCO’s Expectations for Treating Financial Services Consumers Fairly”* says that the Guideline uses the word “must” when there is a statutory requirement in place for all licensees and “should” when there is not a consistent statutory requirement – but a licensee is still expected to consider a particular conduct to comply with a principle – we find that there are some gaps in the application of this principle. This could be corrected by having the Guideline making specific reference to existing regulation, where applicable. Examples of this helpful approach are already utilized with respect to item #7 (complaint handling) and item #8 (privacy protection).

In the section about Expectations, we note that there is no reference to the Insurance Core Principles in points #1 to #8. We suggest that that oversight be corrected, as direct alignment with the ICPs is, in our view, both important and helpful. As well, some bullet points in this section are more prescriptive than they need to be -- in contrast to the ICPs which focus on outcomes. As well, the prescriptive bullets could be addressed in some cases by referencing existing regulations. Further, throughout this section there are opportunities to reinforce how industry currently supports FSCO’s expectations through a variety of mechanisms such as the CLHIA Guidelines (applicable to nearly all CAFII members), Negative Option Billing Regulation, Cost of Borrowing Regulation, CBA Code of Conduct for Authorized Insurance Activities, FCAC Consumer Provisions, and the Provincial Consumer Provisions.

Item #1 “FSCO expects that a core of a Licensee’s business governance and culture is fair treatment of consumers”:

In Bullet 2, we find it confusing to say that licensees should design, implement, communicate and monitor compliance with codes of conduct. This is an example of where non-differentiation of roles can cause confusion. Design, development, implementation, communication and monitoring are usually the role of the manufacturer and not the seller/intermediary. The seller/intermediary would not design their own code, but rather be accountable to a code established by an insurer, regulator or licensing body.

In Bullet 2, we recommend adding “where appropriate” to the expectation that insurers’ policies related to FTC be made publicly available. Many of the policies and procedures developed by insurers to achieve the outcomes related to fair treatment of consumers are internal in nature or not of value to the public. Only those that directly impact consumers should be considered for publication.

Item #2 “FSCO expects Licensees to act with due skill, care and diligence at all times, but especially when dealing with consumers or designing financial services or products for consumers”:

We note that ICP 19 distinguishes between product design and dealing with customers. If FSCO did the same in the TCF Guideline, there would be less confusion between the roles of insurers and intermediaries. By way of example, in ICP 19.5, the supervisor requires **insurers** to take into account the interests of different types of consumers when developing and distributing insurance products.

There is also an opportunity to relate Bullet 3 in this section to existing licensing (LLQP) and continuing education requirements in Ontario.

Item #3 “FSCO expects Licensees to promote financial services and products in a manner that is clear, fair and not misleading or false”:

With respect to Bullet 2 in this section, we note that product disclosures are normally prepared to be given to all consumers. We counsel against suggesting that licensees determine which disclosures are most suitable for which consumers.

With respect to Bullet 6, we would reiterate our point about differentiating expectations based on the role of a licensee, and suggest that the word “governance” referring to products probably should instead be replaced by “distribution.” We recommend aligning language to ICP 19.5.5, specifically the section that states the need to “target the consumers for whose needs the product is likely to be appropriate, while preventing, or limiting, access by consumers for whom the product is likely to be inappropriate.”

Item #4 “FSCO expects Licensees to recommend products that are suitable, taking into account the consumer’s disclosed personal circumstances and financial condition”:

With respect to Bullet 2, we note that the three-step process cannot apply to some insurance products where the need is already determined: e.g. insurance when taking on new debt, or insurance to protect a consumer when they are travelling.

Item #5 “FSCO expects Licensees to disclose and manage any potential or actual conflicts of interest”:

The Guideline is largely principles-based; however, the assertion that “Actual or potential conflicts of interest are best managed by avoidance” in Bullet 1 is not. Principles-based regulation is supposed to identify outcomes; however, this statement is more of a directive. We would recommend alternative language such as “insurers should adopt the best methods to manage conflicts of interest.”

In addition, there is no evidence provided to support the claim that “Actual or potential conflicts of interest are best managed by avoidance.” Continuing to assert that could detract from the rest of the Guideline and result in unnecessary or unwanted controversy or debate, given its implications with respect to commissions. We also feel that this directive is inconsistent with ICP 19.3: *“The supervisor requires insurers and intermediaries to avoid or properly manage any potential conflicts of interest.”*

With respect to Bullet 5, we believe that the comment that “Licensees should develop incentives that take into account the fair treatment of consumers” could be clarified.

Item #7 “FSCO expects Licensees to have policies and procedures in place to handle complaints in a timely and fair manner”:

We suggest that this section should also refer to existing legal and regulatory requirements for complaint handling.

Item #8 “FSCO expects Licensees to protect the private information of financial services consumers, and inform them of any privacy breach”:

We suggest that this section should reference the 10 principles of the *Personal Information Protection and Electronic Documents Act (PIPEDA)*. We have concerns with the Title of this section and with Bullet 1, which suggests that FSCO expects consumers to be informed of *any* privacy breach. The new PIPEDA Breach of Security Safeguards Regulations sets the standard at “real risk of significant harm to the individual.” To address this concern our recommendation is to add “as appropriate” after the words “privacy breach” in the Title and Bullet 1.

Concluding Observations

We believe that a critical building block to enhancing the fair treatment of consumers is raising their level of financial literacy. Consumer education around financial literacy is a shared, multi-stakeholder responsibility. While consumers are ultimately responsible for their purchase decisions, governments and regulators such as FSCO have an important role to play, alongside the industry, in providing education which can help consumers better understand the benefits and limitations of products and improve their financial literacy.

In that connection, we believe that in its communications, FSCO should emphasize, where appropriate, consumers’ responsibilities with respect to financial and insurance products, in addition to their rights. CAFII members are committed to playing our part by ensuring that communications are easy to understand and, as the draft Guideline stipulates, written “in plain language wherever possible.” Our members will continue to make efforts to ensure the ease of understanding of our communications, but we believe it is also important to emphasize that consumers need to read their policies, understand their features, and ask questions if there is anything they are uncertain about.

CAFII members place strong emphasis on ethical behaviour: not just on complying with regulations – as important as that is – but in recognition that the principles which the regulations uphold are fundamental to our own businesses. We provide comprehensive and rigorous training to our own employees and to the staffs of suppliers we may engage to interact with consumers on our behalf, such as third party administrators. We also have monitoring and controls; and together these are examples of areas where CAFII members dedicate significant resources to upholding the principles set out in the draft Treating Consumers Fairly (TCF) Guideline.

With respect to any new expectations of the industry which may be introduced in the finalized TCF Guideline, we ask that a reasonable period of time for implementation be provided, with a minimum of 90 days provided for adjusting to new regulations; and that a longer period of at least six to nine months be built-in for implementing changes that require modifications to IT systems or processes.

CAFII appreciates the opportunity to comment on FSCO’s Consultation Draft, “Treating Financial Services Consumers Fairly,” and we look forward to continued communication and input on policy matters. Should you require further information from CAFII or wish to meet with representatives of our Association at any time, please contact Keith Martin, CAFII Co-Executive Director, at keith.martin@cafii.com or 647.460.7725.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Peter Thorn', with a stylized, flowing script.

Peter Thorn
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 creditor's group insurance across Canada. In particular, creditor's group 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 is currently the only Canadian Association with members involved in all major lines of personal insurance. Our members are the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Financial Security; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players American Express, Assurant, Canada Life Assurance, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and valeyo (formerly Canadian Premier Life Insurance Company).