

June 18, 2018

Ms. Louise Gauthier  
Chair, CCIR/CISRO Fair Treatment of Customers (FTC) Working Group  
Attention: [ccircrra@fscs.gov.on.ca](mailto:ccircrra@fscs.gov.on.ca)

Subject: **CCIR/CISRO Guidance—Conduct of Insurance Business and Fair Treatment of Customers**

Dear Ms. Gauthier:

The Canadian Association of Financial Institutions in Insurance (CAFII) is pleased to offer its general observations and specific comments on the CCIR/CISRO Guidance – Conduct of Insurance Business and Fair Treatment of Customers consultation document.

### **General Comments**

Our Association appreciates the emphasis which CCIR/CISRO is placing on the fundamental principle that customers need to be treated fairly; and we applaud the fact that the two regulatory organizations are working together in the interests of harmonization. We agree with the basic thrust of the draft Guidance, including that the interests of customers must be paramount and that information about financial transactions must be communicated in an accurate and transparent manner. We are generally comfortable with and support the draft Guidance because it is rooted in a principles-based approach, rather than prescriptive rules. We also find it helpful that the document is positioned at a high level, while still providing sufficient detail and clarity to ensure its usefulness.

CAFII agrees that treating customers 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 customers.

### **Definitions**

We recommend that the definitions and terms used in the CCIR/CISRO Guidance align as closely as possible with those utilized in the International Association of Insurance Supervisors' Insurance Core Principles (ICPs) 18 and 19. In that connection, we believe that the Guidance's definitions of "Distribution Firm" and "Agent Firm" – which are not found in the ICPs -- are confusing; and we recommend that they be removed entirely.

### **Preamble**

We recommend that CCIR/CISRO state clearly in the preamble that in the interests of clarity and consistency for industry participants, harmonization across jurisdictions, and, ultimately, for maximum customer protection, CCIR and CISRO member policy-makers and regulators are strongly encouraged to adopt the CCIR/CISRO FTC Guidance as their own provincial/territorial guideline, unless there is a compelling need or reason for adopting one that is unique to their particular province or territory. In addition, it would be helpful to state in the preamble that in any such case, the unique FTC guideline should be aligned with the CCIR/CISRO document to the maximum degree possible, and any differences should be explained, with suggestions on how organizations are expected to reconcile differences between the CCIR/CISRO Guidance and any separate provincial/territorial guideline.

Even where different jurisdictions' guidelines have similar objectives, small differences in emphasis and language can produce significant, and often unnecessary, additional burden on the compliance efforts of organizations.

**Question #1: Does this guidance present contradictions with existing or future local instruments related to fair treatment of customers?**

Currently, only Quebec (*Sound Commercial Practices Guideline, June 2013*) has its own version of a Fair Treatment of Customers Guideline in place, which it is expected to update in the summer of 2018, while Ontario is expected to release an official and final version of *its Treating Financial Consumers Fairly Guideline* in the near future, having completed a consultation period on a draft version of the document in May 2018.

We do not see any significant contradictions between the CCIR/CISRO Guidance and these other two provincial guidelines; and it is precisely for that reason -- although they are all structured, written, and organized in different ways --that we question the purpose and efficacy of stating expectations of the industry in different ways, when the customer protection objectives are similar, if not identical, across all jurisdictions.

**Question #2: Does this guidance strike the right balance between roles and responsibilities of insurers, distribution firms, agents and representatives?**

We concur with the CCIR/CISRO Guidance's recognition that while insurers bear ultimate responsibility for ensuring fair treatment of customers, and insurers need to have careful oversight of their intermediaries, distributors, agents and representatives, that does not absolve those entities of responsibility for being in full compliance with the expectations of this Guidance themselves. Our insurer members make every effort to ensure that their distributors, agents, and representatives practise fair treatment of customers, including where necessary by incorporating specific language to that effect in their contracts with such third parties.

**Scope**

With respect to the section on scope—as well as to the preceding point on Agents and Representatives' responsibilities—we again encourage the use of language that is aligned as closely as possible with ICP 19. In that connection, we note that ICP 19.08 states that “the insurer has a responsibility for good conduct throughout the insurance life-cycle, as it is the insurer that is the ultimate risk carrier. *However, where more than one party is involved in the design, marketing, distribution and policy servicing of insurance products, the good conduct in respect of the relevant service(s) is a shared responsibility of those involved*” (the text in italics is what is missing in the draft Guidance). The section that reads “In the provision of products and services, Insurers should, upon first contact with Customers, make a commitment to them and hold it throughout the life-cycle of the product, regardless of the distribution channel used by the insurer” would then become a separate paragraph in the Guidance.

**Conduct of Business**

It is our view that the “tone at the top” is a critical feature of a business culture that fosters fair treatment of customers. We would therefore encourage, within the Guidance, the addition of an assertion that the business culture of an organization should consistently promote the importance of customers, and that the leadership of the organization needs to speak and act in accordance with that principle.

Explicitly specifying those features as part-and-parcel of an exemplary business culture would provide a valuable reinforcement of the important observations made in the section on “Corporate Culture.”

With respect to the 7<sup>th</sup> bullet in this section -- which states: “take into account a Customer’s disclosed circumstances when that customer receives advice and before concluding insurance contracts”—since not all products have an advice component, we suggest slightly modifying this statement as follows: “take into account a Customer’s disclosed circumstances when providing that customer with advice for applicable products and before concluding insurance contracts.”

With respect to the bullet that reads “have contractual arrangements between each other, that ensure fair treatment of Customers,” we recommend the following alternative text: “ensure contractual relationships related to carrying out insurance business provide for the fair treatment of customers.”

### **Fair Treatment of Customers**

With respect to the 4<sup>th</sup> bullet and its words “ensuring that any advice given is of a high quality,” since not all products require advice, we suggest alternative language such as “ensuring that any advice given, when applicable, is of a high quality.”

### **Corporate Culture**

We would encourage greater clarity within the Guidance around what “indicators” refers to—for example, does this include complaints? We would also encourage the use of language that is explicit about CCIR/CISRO’s taking a risk-based approach to the Guidance, consistent, for example, with the approach taken by OSFI in its sound business and financial practices-related *Guideline E-13: Regulatory Compliance Management (RCM)*.

We feel that the statement “All levels of the Organization embrace the corporate culture and recognize the risks that could hinder the achievement of expected results regarding the fair treatment of Customers as well as the means to mitigate such risks” could be written in clearer language that is easier to follow.

We would suggest replacing the statement “The Organization understands the importance of reporting the achievement of expected results throughout the organization, using indicators in terms of fair treatment of Customers that are measured, monitored and driven by a cycle of continuous improvement” with the following alternative statement: “Organizations are expected to monitor their FTC activities and strive for continuous improvement. They are also expected to understand the importance of reporting their measured activities related to the fair treatment of customers across the organization.”

**Question #3: CCIR and CISRO are mindful that in some industry sectors, the introduction of this guidance may raise questions about the possibility that intermediaries may be subject to multiple audits by regulators, self-regulatory organizations and insurers in a given year. CCIR and CISRO will address any need for clarification and invite stakeholders to comment.**

We appreciate the recognition that regulators must deploy an even-handed and reasonable approach to audits of industry players. Audits are only one mechanism available for monitoring compliance with regulatory expectations.

### **Relationships with Regulatory Authorities**

The statement that insurers are expected to communicate and report to regulatory authorities about intermediaries that are unsuitable or not duly authorized should reference existing, relevant industry guidelines, legislation, and regulations, including CLHIA Guideline 8.

With respect to the bullet which reads “implement the necessary mechanisms to promptly advise regulatory authorities if they are likely to sustain serious harm due to a major operational incident that could jeopardize the interests or rights of Customers and the organization’s reputation,” we recommend deleting the opening words “implement the necessary mechanisms to promptly.”

### **Customer outcomes and expectations**

We request that clarification be provided with respect to the final bullet which reads as follows: “Remuneration, reward strategies and evaluation of performance take into account the contribution made to achieving outcomes in terms of fair treatment of Customers.” We recommend the following ICP 19 statement which would provide clearer guidance in this area: “Where compensation structures do not align the interests of the insurer and intermediary, including those of the individuals carrying out intermediation activity, with the interests of the customer, they can encourage behaviour that results in unsuitable sales or other breach of the insurer’s or intermediary’s duty of care towards the customer.”

### **Conflicts of Interest**

In the opening statement, we recommend that the language be amended to say the following: “CCIR and CISRO expect that any potential or actual conflicts of interest, which cannot be properly managed, be avoided and not affect the fair treatment of Customers.”

In addition, the language in the second to last bullet “and does not put an unreasonable onus on the Customer” is vague; and we recommend the use of more precise language. We do not believe that remuneration should be viewed as creating a conflict of interest without looking at the broader context of other factors and controls. We recommend language that is closely aligned with ICP 19, with a particular focus on the need to manage conflicts of interest.

### **Outsourcing**

There is a section on Outsourcing, and another section on Intermediaries. It may make sense to combine these sections into one. In the bullet which reads “Retain full and ultimate responsibility for those outsourced functions and, consequently, monitor them accordingly,” we recommend deleting “full and” from the text.

### **Design of Insurance Product**

In the second bullet, we recommend replacing “Product development” with “The product development process.” Regarding the section which reads “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,” we would suggest that it is not “access by Consumers” but rather “sales to Consumers” that is the critical issue.

### **Disclosure to Customer**

We recommend clarifications to two sections, perhaps using the following wording: “The information provided to customers should be sufficient to enable Customers to understand the characteristics of the product they are buying and help them understand whether and how it may meet their needs”; and “be accessible in written format, on paper or another durable medium, such as digital.”

### **Product Promotion**

We recommend that greater clarity be provided around the following statement: “To this end, the Insurer ensures that any promotional material regarding its products is reviewed by independent functions prior to being disseminated.”

### **Advice**

Not all channels offer advice; yet the Guidance, as written, does not adequately recognize the marketplace reality that some alternate distribution channels are not advice-based. We encourage alignment with ICP 19.8.4, which notes that “the supervisor may wish to specify particular types of policies or customers for which advice is not required to be given.” In addition, the sentence “Before giving advice, appropriate information should be sought from Customers for assessing their insurance demands and needs” would be more easily understood if “demands” was replaced by “objectives.”

### **Claims Handling and Settlement**

It would be helpful to clarify what is meant by “accessible” and what is the procedure to which this is referring. With respect to the comment about “common timelines” in the second bullet, common timelines could be fairly challenging depending upon the product because in order to properly adjudicate a claim, documentation is required (from the customer or other parties). As such, a time period can't necessarily be defined since it depends upon when the documentation is received.

### **Concluding Observations**

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

In that connection, we believe that in their communications, CCIR and CISRO should emphasize, where appropriate, customers’ responsibilities with respect to financial and insurance products, in addition to their rights. CAFII members are committed to playing their part by ensuring that communications are easy to understand and 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 customers 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 a 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 and customers on our behalf, such as third party administrators. We also have rigorous monitoring and controls; and together these are examples of areas where CAFII members dedicate significant resources to upholding the principles set out in the CCIR/CISRO Fair Treatment of Customers (FTC) Guidance.

With respect to any new expectations of the industry which may be introduced in the finalized FTC Guidance, 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 the CCIR/CISRO *Guidance—Conduct of Insurance Business and Fair Treatment of Customers* 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 Brendan Wycks, CAFII Co-Executive Director, at [brendan.wycks@cafii.com](mailto:brendan.wycks@cafii.com) or 647.218.8243.

Sincerely,



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, Canadian Premier Life Insurance Company, CUMIS Services Incorporated, Manulife (The Manufacturers Life Insurance Company), and The Canada Life Assurance Company.