

6 January, 2022

Mr. Frank Lofranco
Deputy Commissioner, Supervision and Enforcement
Financial Consumer Agency of Canada
Supervision and Promotion Branch
427 Laurier Avenue West, 6th floor
Ottawa, ON K1R 1B9

FCAC.Consultation.ACFC@fcac-acfc.gc.ca

Re: CAFII Feedback on FCAC's proposed Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks

Dear Mr. Lofranco:

CAFII thanks the FCAC for the opportunity to provide feedback comments on its proposed *Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks*.

We are focusing our Association's comments on the application of the proposed Guideline to the credit protection insurance (CPI) and travel insurance Authorized Insurance Products offered by CAFII member banks, as federally regulated financial institutions (FRFIs). That is, our feedback has been developed using the lens of CPI life insurance, critical illness insurance, disability insurance, and job loss insurance offered by CAFII member banks in connection with debt obligations such as mortgages, lines of credit, loans, and credit cards. These are unique insurance products for which an Appropriateness Guideline can pose particular challenges.

In that connection, it's important to highlight a key contextual distinction.

With respect to most non-Authorized Insurance Products (e.g. traditional life insurance), the coverage is typically offered by licensed individuals who are permitted to provide the customer with advice. Canada's provinces and territories require a license when insurance advice is being provided.

In contrast, CPI products and travel insurance are Authorized Insurance Products under the federal Bank Act and the Insurance Business (Banks and Bank Holding Companies) Regulations; and they are regulated at both the federal and provincial levels. Authorized Insurance Products can be offered by banks' non-licensed representatives as part of a bank's consumer lending processes, within strict parameters. However, because these bank representatives do not hold an insurance licence, banks offering CPI and travel insurance cannot conduct a comprehensive needs analysis on a consumer, nor can they offer advice or recommendations or engage in any activities that are restricted to insurance licensees.

General Comments and Observations

CAFII understands that the legislation and Regulations which the proposed Guideline is augmenting will come into force on 30 June, 2022, which the Guideline explains as follows:

The proposed Guideline sets out FCAC's expectations with respect to Banks' implementation of, and compliance with, the appropriate product or service provisions in the Bank Act and the Financial Consumer Protection Framework Regulations, which will come into force June 30, 2022.

In that connection, while CAFII members subject to the proposed Guideline are large organizations with robust procedures and processes in place for managing change, it is not reasonable or practical to expect such FRFIs to be able to develop effective compliance controls to address new requirements and standards without providing adequate lead time prior to implementation. It is also important to recognize that compliance implementation work cannot begin until the Guideline is finalized and communicated to the industry as such.

Since the deadline for responses to this consultation is 6 January, 2022 and the FCAC will need some time to determine whether and how it will adjust the final Guideline based on stakeholder feedback, it is unlikely that FRFIs will be able to launch their compliance implementation work that targets the new requirements before February or March 2022— just a few short months before the 30 June, 2022 coming-into-force date. It will also be extremely difficult for them to pivot and come into compliance with the new expectations set out in the final version of the Guideline in such a brief period of time.

Typically, financial services regulators provide the industry with a minimum 12 to 18 months implementation period -- to ensure effective compliance with any significant new provisions, especially if they entail changes to training, communications, systems, processes, or technology (IT).

CAFII therefore requests that the FCAC consider a deferral of enforcement with respect to the Guideline on Appropriate Products and Services and the intertwined Financial Consumer Protection Framework (FCPF) Regulations. Such regulatory forbearance for a specified and reasonable period of time has been utilized in the past by other Canadian financial services regulators when faced with similar circumstances.

In addition to the FCAC's federal regulatory authority over CPI and travel insurance as Authorized Insurance Products, the regulation of distribution and market conduct related to those products is also governed by provincial/territorial frameworks. CAFII members therefore must balance the new appropriateness requirements with existing obligations while continuing to comply with the market conduct and fair treatment of customers expectations of 14 different jurisdictions and, in addition, the varied insurance licensing requirements of the 10 provinces and 3 territories.

In that regard, CAFII and its members strongly believe that having a clear and shared understanding of jurisdiction and regulatory approach between federal and provincial/territorial regulators can help greatly in the achievement of harmonization, efficiency, effectiveness, and consumer fairness and protection. Conflicting regulations and a lack of harmonization only stymie the attainment of those desirable objectives.

The FCAC's proposed Guideline on Appropriate Products and Services will introduce new regulatory expectations around distribution and market conduct for the offering of and enrolment in CPI and travel insurance Authorized Insurance Products. Not only will this lead to an increase in the complexity of the regulatory environment – with a heightened potential for contradictions between federal and provincial/territorial regulatory expectations – it may also make it difficult for vulnerable populations to gain access to these protection products (see comment on Clause 10 under Specific Comments and Observations below).

CAFII therefore strongly encourages the FCAC to participate in the national co-ordinating body activities of the Canadian Council of Insurance Regulators (CCIR), which seeks to promote consistency and harmonization among insurance regulators. The federal Office of the Superintendent of Financial Institutions (OSFI) – even though it deals almost exclusively with prudential regulatory issues -- has, for many years, been an Associate Member with a seat at the CCIR table, in the interests of information-sharing, co-ordination, and harmonization. A strengthening of CCIR as a forum and “shared space” for provincial/territorial and federal regulators to discuss their expectations, plans, and outcomes around insurance regulation – through FCAC's direct and active participation -- would, we strongly believe, be of major benefit to all regulator participants, to industry, and ultimately to consumers.

The FCAC's potential involvement in CCIR deliberations could go a long way toward addressing the probability that there will be circumstances where an FRFI's compliance with the FCAC's Guideline on Appropriate Products and Services will give rise to the unintended consequence of non-compliance with provincial/territorial regulations. For example, CAFII members offer CPI in branches and call centres, as well as digitally; and since it is non-licensed individuals who are offering these products, they cannot conduct a comprehensive needs or suitability analysis and they are prohibited from offering insurance advice or recommendations. Given that there are expectations in the proposed Appropriateness Guideline that seem to require the provision of advice or recommendations with respect to an offer of insurance, they would cause CAFII members to be off-side of provincial and territorial licensing regulations.

Another unintended consequence of the new FCAC Guideline may be that vulnerable populations who need insurance coverage may not be able to access bank-offered CPI and travel insurance Authorized Insurance Products, due to the additional barriers that the Guideline will put in place (see comment on Clause 10 under Specific Comments and Observations below).

With all of these considerations in mind, CAFII requests that the FCAC provide an exemption for CPI and travel insurance Authorized Insurance Products from the ambit of the proposed Guideline on Appropriate Products and Services, so that the above-noted unintended and harmful consequences can be avoided.

As a contingency alternative, we would request an explicit acknowledgement within the Guideline which confirms that compliance with it should not create non-compliance with any other applicable legislative and/or regulatory requirements. To be more specific, language could be added to the Guideline to the effect that ‘in the event of a conflict between the Guideline and other legislation or regulations, the FCAC expects the industry to comply with the latter.’

We believe that this recommendation/request reinforces our earlier point about a shared forum/space for federal and provincial insurance regulators to discuss their respective approaches to regulating the industry; and that a co-ordinated approach among federal and provincial/territorial regulatory authorities could address any potential concerns related to the interpretation and application of their respective requirements.

In concluding this section on General Comments and Observations, we note that the FCAC's pre-consultation work, which produced the current draft of the proposed Guideline, was conducted with one industry Association alone; and that the time period now being allowed for all other industry stakeholders to provide feedback is a rather compressed 45 calendar days.

In that connection, we note again that CAFII members offer a unique CPI and travel insurance Authorized Insurance product set for consumers' protection; and, as noted above, our members must deal and comply with unique multi-jurisdictional/layered regulatory requirements.

However, the FCAC did not call upon CAFII to share insights about CPI and travel insurance Authorized Insurance Products during the pre-consultation phase of its work on the proposed Guideline. We believe that a more open, inclusive approach to the pre-consultation work -- with more than one industry stakeholder involved -- would have allowed the FCAC to receive broader feedback over a less-compressed and hurried time period. We therefore encourage the FCAC, in future consultations, to broaden the stakeholders it initially consults in any pre-consultation work; with and to provide a minimum of 60 calendar days for written feedback submissions.

Specific Comments and Observations

- We note that Clause 2 in the document establishes "Policies and Procedures" as a defined term related to the appropriateness check performed with a customer as part of the offer or sale of a product. However, throughout the document there are also references to policies and procedures generally, interspersed with the use of upper case "Policies and Procedures" to denote the defined term. We recommend that the document maintain a constant and clear distinction between the two types of policies and procedures (i.e. "Policies and Procedures" related to the appropriateness check at the time of the offer; and more general policies and procedures within an FRFI). For example, it would not be appropriate for the policies and procedures that govern the conversations at the time of an offer of or enrolment in insurance also to include content related to officers' compensation, product development, review of customer-facing materials, and other more general practices addressed through other policies and procedures within a financial institution which are not germane to the appropriateness check performed with a customer.
- We applaud the proposed Guideline's recognition that there is not one size fits all in financial products and services, as noted in Clause 4: "FCAC recognizes that Banks may tailor their Policies and Procedures in accordance with the nature, size and complexity of their business, distribution channels, and products and services." We believe that this recognition is important in the context of the challenges of meeting some of the FCAC's expectations for CPI. (As noted above, provincial/territorial regulatory frameworks create unique complexities for CPI.)

We also recommend adding to this clause an explicit acknowledgement that compliance should not create the risk of non-compliance with any other applicable legislative and/or regulatory requirements. To be more specific, language could be added to the Guideline to the effect that ‘in the event of a conflict between the Guideline and other legislation or regulations, the FCAC expects the industry to comply with the latter.’

- We interpret Clause 5 to mean that while the Guideline is aimed at banks, other federally-regulated entities can use it as well. We recommend that this clause include the statement that policies and procedures developed to align with the Guideline should be consistent with other applicable legislative and/or regulatory requirements.
- With respect to Clause 6, this is another relevant section that would benefit from the insertion of an acknowledgement that compliance with the Guideline should not result in non-compliance with other applicable legislative and/or regulatory requirements. To be more specific, language could be added to the Guideline to the effect that ‘in the event of a conflict between the Guideline and other legislation or regulations, the FCAC expects the industry to comply with the latter.’
- Many of the requirements of Clause 10 may be problematic for CPI, which is offered by non-licensed individuals who cannot offer advice or conduct a comprehensive needs assessment with a customer. As written, we interpret this section to mean that the FCAC expects a level of customer service which can only be delivered by licensed individuals within provincial/territorial insurance regulatory frameworks. If that interpretation is correct, whole groups of people may not be able to access CPI and travel insurance Authorized Insurance protection through a bank, if it is only to be offered by licensed individuals. More vulnerable populations would thereby be put at risk – which is not a positive outcome for consumers, society, or government.
- We note the following inconsistency: Clauses 10i and 10iii speak of an FRFI collecting information “before it offers or sells products or services to them” while Clause 19 says “A Bank’s Policies and Procedures should ensure that the bank conducts an appropriateness assessment when it offers or sells products or services to consumers.” We believe that the use of the term “when” is more appropriate than “before.” We note that the underlying legislation and the FCPF Regulations do not specify that the appropriateness check must occur “before” the bank offers products or services. Linking the requirement to “when” an offer is being made would also ensure that the information the customer receives is relevant to his/her/their particular interests. With respect to Clause 10iv, we believe that for reasonableness and practicality, the wording should be adjusted to indicate that a customer needs to be informed of the appropriateness (or inappropriateness) of a product if it is being offered to him/her/them, or if he/she/they have expressed an interest in it.
- We note that some clauses, such as 16, 17, and 18, appear to address issues that are broader than the appropriateness of products and services. Yet, these sections utilize the upper case “Policies and Procedures,” which is defined in Clause 2 as being specific to the appropriateness check performed with a customer.

- Clause 17 is an example of a move towards a more prescriptive, as opposed to principles-based, approach by moving beyond an articulation of the regulator's expectations and desired outcomes to dictating how the regulated entity is to achieve those expectations and outcomes.

As a key stakeholder industry Association, CAFII again thanks the FCAC for the opportunity to provide feedback comments on its proposed *Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks*. 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 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 credit protection, travel, life, health, and property and casualty insurance across Canada. In particular, credit protection insurance and travel insurance are the product lines of primary focus for CAFII as our members' common ground.

CAFII's diverse membership enables our Association to take a broad view of the regulatory regime governing the insurance marketplace. We work with government and regulators (primarily provincial/territorial) to develop a legislative and regulatory framework for the insurance sector which helps ensure that Canadian consumers have access to insurance products that suit their needs. Our aim is to ensure that appropriate standards are in place for the distribution and marketing of all insurance products and services.

CAFII's members include the insurance arms of Canada's major financial institutions – BMO Insurance; CIBC Insurance; Desjardins Insurance; National Bank Insurance; RBC Insurance; ScotiaLife Financial; and TD Insurance – along with major industry players Assurant; Canada Life Assurance; Canadian Premier Life Insurance Company; Canadian Tire Bank; CUMIS Services Incorporated; Manulife (The Manufacturers Life Insurance Company); Sun Life; and Valeyo.