

28 January, 2022

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c.c. Mr. Éric Jacob, Superintendent, Client Services and Distribution Oversight  
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Ms. Louise Gauthier, Senior Director, Distribution Policies  
Mr. Mario Beaudoin, Director, Alternative Insurance Distribution Practices

**Re: CAFII Feedback On AMF's Draft Sound Commercial Practices Guideline Update**

Dear Mr. Lebel:

CAFII thanks the AMF for the opportunity to provide feedback comments on the Autorité's draft update to its existing Sound Commercial Practices Guideline.

**General Feedback Comments**

We note that the original Sound Commercial Practices Guideline (2013) was a 13 page document, and the updated version is much more detailed at 23 pages.

Germane to the document's level of detail and resulting overall length, CAFII strongly believes that market conduct-based regulations and guidelines should outline regulators' consumer outcome expectations but not get into prescriptive details as to how to achieve those outcomes.

By adding significantly more prescriptive content to the updated Sound Commercial Practices Guideline, the AMF has moved away from principles-based regulation and into specifying for regulated entities – the companies which have the direct business experience of dealing with consumers in the marketplace and with managing customer relationships – how they must act, in certain specific ways. That is altogether different from setting out the AMF's consumer outcome expectations as the regulator, and leaving it to regulated entities to determine the best ways and means to achieve your expectations. In CAFII's view, a largely prescriptive regulatory approach will result in increased regulatory burden and industry inefficiencies, while not providing any offsetting consumer protection benefits.

As a CAFII-specific opening comment, we also want to emphasize that the credit protection insurance (CPI) products that our members offer to Quebecers are very different from other types of life and health insurance coverage available in the marketplace.

CPI products are offered in connection with a related debt obligation, such as a mortgage, home equity line of credit, consumer loan, or credit card. Quebecers, like Canadians generally, are typically significantly underinsured or uninsured. Therefore, the offering of these products -- which in the case of mortgage life insurance protects consumers against a catastrophic loss associated with what is generally the largest debt obligation taken on in one's lifetime -- provides an important protection option for Quebecers.

However, CPI products are offered primarily by unlicensed individuals working in financial institutions -- under Quebec's Distribution Without Representation regime -- and those representatives cannot provide customers with advice nor perform a comprehensive needs analysis or suitability assessment.

While information is provided to customers to ensure that they can make an informed decision, representatives are not able to determine the suitability of products for the customer. Instead, information about the products is provided so that the customer can make his/her own assessment of suitability/appropriateness.

### **Specific Feedback Comments**

It is CAFII's view that a very important section of the updated Guideline is Section 2 on Business Culture, and we agree with the AMF's view that "Business culture is one of the main vectors of staff behaviour within an institution." However, we also note that business culture is difficult to measure.

With respect to business culture, CAFII members are very committed to the fair treatment of customers (FTC), and act in a manner consistent with that commitment. As such, we feel that the AMF should not assume that companies do not have an FTC business culture in place, unless there are indicators to substantiate that.

With respect to intermediaries and other external service providers, CAFII members are committed to the principle that outsourcing certain activities to business partners does not remove the obligation to maintain and ensure FTC with respect to the outsourced activities.

With respect to conflicts of interest, CAFII members support -- and make every effort to embed in their organizational cultures -- the provisions on managing conflicts of interest which are set out in the CCIR/CISRO *Guidance: Conduct of Insurance Business and Fair Treatment of Customers*. Those vigilant efforts include ensuring that the customer's interest takes precedence over the representative's/salesperson's/advisor's interest; disclosing conflicts or potential conflicts of interest; and addressing product suitability in an appropriate manner.

In that connection, we note that Section 6.7 of the updated Sound Commercial Practices Guideline on "Offering a product to a client" sets out an expectation that "*The institution's policies, procedures and controls should ensure that the product offered is suitable for the client.*" (page 17)

With respect to product suitability/appropriateness, it is CAFII's position that if a customer is 'eligible' for enrolment in CPI (a form of group insurance), then that insurance coverage is 'appropriate' to be offered to that individual. However, as noted above, due to insurance licensing regime requirements in Quebec (and other provinces/territories), a financial institution representative offering CPI cannot provide advice to nor perform a comprehensive suitability or needs analysis for the customer.

In that regard, in addition to complying with the *CCIR/CISRO Guidance*, CAFII members also adhere to all relevant CLHIA Guidelines; and we offer the following observations on directly relevant CLHIA *Guideline G13, Compensation Structure: Managing Conflicts of Interest*.

We strongly concur with *G13's* fundamental premises that "a robust compensation system is needed to attract and retain qualified professionals to offer, place and service life and health insurance products that meet the needs of the consumer. At the same time, it is important that well-designed compensation systems be alert to the risk that sales-related compensation could create conflicts of interest"; and that "one element of FTC is that remuneration and reward strategies take account of fair customer outcomes."

On a separate but important matter, our Association has concerns with the prescriptive nature of two particular clauses in the updated Guideline, the first of which is "Notify the client of any significant change that occurs regarding previously disclosed conflicts of interest."

It is our view that tracking and reporting to clients on changes to historical, previously disclosed conflicts of interest is of far less consumer protection value than having the necessary procedures and controls in place to ensure that current/existing conflicts of interests are managed properly.

The prescribed new "Notify the client" requirement will create a new regulatory burden upon the industry; and further, it will likely create confusion among consumers as to why they are receiving an update to a previously disclosed conflict of interest, without any offsetting enhancement to consumer protection that would outweigh the confusion created.

In a similar vein, in our view, the following clause is very prescriptive and would impose additional regulatory burden upon the industry, without providing any offsetting consumer protection benefits:

*Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for assessing the extent of the harm that may be caused to the client by such a conflict of interest.*

We note that in footnote 10, the AMF seems to diminish and mitigate somewhat the impact of this new prescriptive requirement, by stating the following:

*For example, if the harm to the client is insignificant, the financial institution could record the information in a more general manner, such as by category or type, rather than recording each case and the way it was handled.*

CAFII members have millions of interactions each year with customers. Requiring regulated entities to document each conflict of interest situation in detail will not provide any additional consumer protection benefits, but will simply promote 'process and reporting' over 'appropriate business culture and practices.'

We believe that if the processes, procedures, controls, and training essential to protecting consumers are in place, it should not be necessary to require regulated entities to perform this newly prescribed 'busy work,' especially when any enhanced contribution to consumer protection is suspect.

There was no such requirement in the original 2013 Sound Commercial Practices Guideline; and we believe that the original approach is much more effective, where the AMF expected industry to have in place the following:

*mechanisms and controls to identify and deal with any departure from the institution's strategies, policies and procedures, any conflicts of interest or any other situation likely to interfere with fair treatment of consumers (page 9).*

We strongly encourage to AMF to reconsider *Section 6.2 – Handling conflicts of interest* in the updated Guideline, taking into account the practical implications of the new prescriptive requirement; and to return to a principles-based approach on this matter.

On the subject of Claims Examination and Settlement, we note that the AMF sets out the expectation that *"Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision."* (page 20)

We ask the AMF to clarify and confirm that "in writing" is not intended to be limited to paper-based communication; and that communicating with customers digitally or by other electronic means will constitute compliance with this expectation.

With respect to Complaint Processing and Dispute Resolution, CAFII has recently made a detailed written submission on the AMF's separate consultation on its "Draft Regulation on Complaints Handling and Dispute Resolution in the Financial Sector."

### **Conclusion**

As a key industry stakeholder, CAFII again thanks the AMF for the opportunity to offer feedback comments on the draft update to the Autorité's Sound Commercial Practices Guideline. Should you require further information from CAFII or wish to meet with representatives from our Association on this submission or any other matter at any time, please contact Keith Martin, CAFII Co-Executive Director, at [keith.martin@cafii.com](mailto:keith.martin@cafii.com) or 647-460-7725.

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.