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Consultation on the draft Commercial Practices Guideline

CAFII is pleased to provide comments to the Autorité des marchés financiers (AMF) on the draft Commercial Practices Guideline.

About CAFII

CAFII is a not-for-profit association dedicated to the development of an open and flexible insurance marketplace. CAFII was established in 1997 to provide a voice for financial institutions involved in selling insurance through a variety of distribution methods. CAFII believes consumers are best served when they have meaningful choice in the purchase of insurance products and services.

CAFII is the only insurance association today whose members are involved in all major lines of the insurance business. Our members provide insurance through call centres, agents and brokers, travel agents, direct mail and the Internet. Our members sell highly innovative products and services that consumers often purchase to compliment other insurance products. CAFII members offer a variety of insurance products including travel, life, health, property and casualty, and creditor's group insurance.

CAFII's diversity in membership enables our association to take a broad view of the regulatory regime governing the insurance marketplace. CAFII works with government and regulators (primarily provincial) 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.

Comments on the Guideline

Principles-based Approach

CAFII supports a principles-based approach to regulation so that regulation can be flexible to suit a company's products and distribution channels. We have some concerns, however, about the approach of having an "omnibus" guideline overlay existing legislation, guidelines and codes of conduct. This would appear to add administrative cost and be duplicative of existing requirements which are updated when needed. It may even mean that there is more than one set of requirements which may become unharmonized or potentially in conflict with the complaint handling procedures and privacy requirements which are covered by specific legislative requirements as examples.

We also question the requirement for "each institution to develop strategies, policies and procedures based on its nature, size, complexity and risk profile, to ensure compliance with the expectations underlying this guideline". The guideline is very broadly based. Companies have practices in place to comply with legislation, and codes etc. The requirement to have specific strategies for compliance with this omnibus guideline has the potential to create duplicative processes within organizations.

A1. Roles and Responsibilities of the Board of Directors

We support the principle of having directors and senior management actively participating in sound commercial practices that are focused on the interests of the consumers. However the supporting points that frame the direction can infringe on the needs of the corporation. As an example "developing a compensation structure for senior executives geared toward achieving long-term results" is very prescriptive and infringes on the ability of the corporation to align the executives to both long and short term objectives that support the specific needs of the organization at the time.

We note that this section requires that senior management should:

- "ensure that the institution's framework supports the achievement of the expected results in matters of sound commercial practices, namely, by:
 - ensuring, as needed, that any advice given is of a high quality;"

Since section A3 is dedicated to Advice, we think that it is not necessary have advice giving in this section.

A2. Design, selection, promotion and distribution of financial products and services

This section (first bullet) requires that “the policies, procedures and controls put into place should allow the institution to:

- offer a viable product or service which allows the consumer to benefit from a healthy level of competition in the financial markets;”

The intent of this section is not clear and should perhaps be rephrased. No company is going to offer a product that is not viable nor does a company control what the competition may be offering.

Bullet 3 calls for the institution to “analyze financial, accounting and taxation issues and assess the risks resulting from the product or service by considering, among other things, changes (threats or opportunities) associated with the environment or stemming from the institution’s policies that could harm consumers;”

We find this statement to be very broad and thus difficult to interpret. It would be helpful if this could be more specific about what the AMF is looking for insurance companies to do.

Bullets 10, 11 and 12

- “provide for a meticulous assessment of the main characteristics of a new product or service and of the disclosure documents related thereto by competent persons within every appropriate department of the institution, including a product or service originating from a third party;
- ensure that the information about the product or service is clear, relevant, truthful and not misleading and that it complies, as the case may be, with applicable laws and regulations;
- provide for an independent review of advertising materials and other communications intended for consumers other than by the person or organization that prepared or designed them;”

We believe that these 3 bullets could be one bullet and that it could be clearer. We do not know what the AMF would consider to be a “meticulous assessment” of the product and disclosure documents.

Bullet 15 calls for the institution to “maintain a file regarding the diligent review carried out by the institution with respect to a product or service;” Is this the same review as noted above as the “meticulous assessment?” If so, then perhaps these points could also be combined. If not, then it would help to understand what further review is envisioned by this point.

As a general observation, we recommend that the guideline should just have bullet number 2 under A2 i.e. “target the consumers for whom the product or service is likely to be

suitable in meeting their needs, as well as the clients for whom the product or service is likely to be unsuitable;”

This lays out the principle, and each company works out the means to achieve it which are appropriate to their product and distribution model.

A3. Advice

We were pleased to see that the section on Advice notes that “Certain financial products and services offered on the market present few risks for consumers and do not require advice.”

Bullet 6 calls for insurers to “establish a continuous training program that allows the persons giving advice to: ..etc” This is relevant for agents, however, independent brokers are in charge of their own training. We recommend that this be changed to reflect that insurers enable the persons giving advice.

B3-1. Examination and settlement of claims

We recommend that the 4th bullet point “enable the insurer to disclose its claims examination procedure, including the rules for paying benefits, and facilitate access thereto by the consumer, at the insurer’s place of business or on-line;” be removed. Claims handling procedures are part of an insurer’s competitive edge. Insurers constantly look for ways to improve their customer service and claims handling is a key area of competition; thus, claims procedures are confidential. Furthermore, a significant amount of claims process is embedded in the system through controls, edits and adjudication requirements. These are not able to be shared. As an example, the adjudication and processing of drug claims or dental claims are automated. What would we provide a consumer that asks for the procedure? This principle sets a level of expectation that cannot be met.

The 6th bullet calls for insurers to “use reasonable methods for evaluating claims and losses, where applicable, such that, for example, a claim is not rejected due to the consumer’s failure to disclose a risk factor that the consumer could not reasonably have expected to have to disclose;” We recommend that the sentence stop after “use reasonable methods for evaluating claims and losses’ so as not to impact on the insurer’s rescission rights.

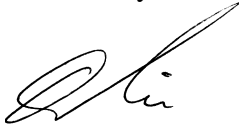
With respect the 9th bullet:

- “provide that the persons or companies that act on its behalf know and respect:
 - the institution’s claims examination and settlement policy and procedures so that they can provide appropriate information to the consumer and assist him adequately when he is preparing his claim and throughout the entire claims management process;”

This would seem to imply that an adjuster provides claims advice. We suggest that you remove the clause “assist him adequately when he is preparing his claim”.

CAFII appreciates the opportunity to provide comments to the AMF on the draft guideline.

Yours truly,

A handwritten signature in black ink, appearing to read "D. Minor", with a long, sweeping flourish extending upwards and to the right.

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