



Canadian Life & Health
Insurance Association
Association canadienne des
compagnies d'assurances
de personnes

November 15, 2022

Marina Makhnach
Director, Financial Institutions, Market Conduct
BC Financial Service Authority
600-750 West Pender Street
Vancouver, BC V6C 2T7

Submitted by e-mail to: Marina.Makhnach@bcfsa.ca

Re: BCFSA Follow-up Questions

Dear Marina,

The Canadian Life and Health Insurance Association (CLHIA) appreciate the opportunity to provide follow up comments to the British Columbia Financial Services Authority (BCFSA) on its *Insurer Code of Market Conduct*. In particular, we are responding to your email of October 14, 2022, in which you provided two follow-up questions for our consideration. We have also provided recommended approaches that would help to achieve harmonization.

About the CLHIA

The CLHIA is a voluntary association whose member companies account for 99 per cent the life and health insurance business in Canada. These insurers are significant contributors to British Columbia and its economy. They provide financial security to about 3.6 million British Columbians and make over \$12.8 billion in benefit payments (of which 90 per cent goes to living policyholders as annuity, disability, supplementary health, or other benefits with the remaining 10 per cent going to life insurance beneficiaries). In addition, life and health insurers have more than \$113 billion invested in British Columbia's economy. Sixty life and health insurance providers are licensed to operate in British Columbia.

CLHIA Position

The life and health insurance industry would like to reiterate the importance of regulators, including the BCFSA, taking a harmonized approach to implementing the Canadian Council of Insurance Regulators (CCIR)/Canadian Insurance Services Regulatory Organization (CISRO) Guidance: "Conduct of Insurance Business in Canada and Fair Treatment of Customers (FTC)."

We appreciate the BCFSA's objective of working towards a harmonized approach. However, achieving harmonization will require a coordinated approach between the BCFSA and other regulators to ensure consistent and coherent guidance across the country.

CLHIA Recommended Solutions to Promote Harmonization

In an effort to achieve harmonization with the CCIR/CISRO FTC Guidance, the CLHIA recommends that the BCFSA implement one of the below options.

1. *Work with the Insurance Council of British Columbia to adopt the CCIR/CISRO FTC Guidance*

Working with the Insurance Council of British Columbia (ICBC) to adopt CCIR/CISRO FTC Guidance would address issues arising from the guidance applying to both insurers and intermediaries while the BCFSA only regulates insurers. This approach would satisfy the legislative requirement that the BCFSA establish a Code in the province while minimizing the risk of unintended consequences. For example, if the BCFSA moves forward with creating its own Code, it could hinder the ICBC's ability to provide intermediary oversight of FTC and increase the risk of an inconsistent understanding and approach within the British Columbia insurance industry.

This approach has already been taken in [Alberta](#) where the Alberta Treasury Board and Finance (ATBF) and Alberta Insurance Council (AIC) issued a joint statement adopting the FTC Guidance in June 2019. We suggest that the BCFSA engage the ICBC on developing a joint statement for adopting the FTC Guidance.

2. *Remove Supplemental Guideline and permit insurers to use either the FTC Guidance or the BCFSA Code*

If the above recommended approach is not pursued, we suggest that the BCFSA allow insurers to follow either the FTC Guidance or the BCFSA Code to meet the BCFSA's regulatory insurer code of market conduct requirements.

This approach has also been taken previously in a Canadian jurisdiction. The Financial Services Commission of Ontario (FSCO)—the Financial Services Regulatory Authority's (FSRA) predecessor—allowed insurers to look to either FTC guidance or its Treating Financial Services Consumer Fairly Guideline (TCF Guideline). It should be noted that FSRA has since adopted FTC guidance for harmonization and consistency.

Responses to the supplementary questions posed by the BCFSA

This section of the letter responds to the BCFSA's questions set out on October 14, 2022.

1. *Please provide specific examples of differences between the principles in BCFSA Code and Canadian Council of Insurance Regulators (CCIR)/Canadian Insurance Services Regulatory Organization (CISRO) fair treatment of consumers (FTC) guidance that create potential compliance challenges for you.*

In addition to the examples included in our August 26, 2022 submission, we would note that any use of different words, even if the spirit is the same, could change interpretation or would at least necessitate resources and energy to assess the materiality of the difference, which can be burdensome to insurers.

For example, the term "ensure" can be interpreted different ways. Definitive words can cause compliance challenges for insurers when they delegate responsibilities to intermediaries through agreements and business practices.

Below we highlight some specific examples both for the BCFS Code as well as the Supplemental Guideline.

BCFS Insurer Code of Market Conduct & Supplemental Guideline	CLHIA Comments
<p>1.2 ACCOUNTABILITY Overall responsibility for FTC is at the level of the board of directors and senior management, who design, approve, implement, and monitor adherence to policies and procedures aimed at ensuring that customers are treated fairly.</p>	<p>On a practical basis, we tend to look at accountability as ownership. The person accountable (Person A) can delegate the task of completing some of the duties of which s/he is accountable to another (Person B). Person A is not ceding accountability, s/he is just getting some help to complete some of the tasks. In other words, Person A is accountable and has made Person B responsible for completing some of the tasks for which s/he is responsible.</p> <p>The CCIR Guidance makes allowance for the situation described above. The CCIR does not use the title: Accountability. BCFS uses the word "and" while CCIR uses "and/or". That is key because CCIR wording is flexible and is not prescribing responsibilities to the Board.</p>
<p>Supplemental Guideline to the Insurer Code of Market Conduct</p> <p>3.1 Advice</p> <p>BCFS expects insurers to ensure that advice goes beyond the provision of product information and relates specifically to the provision of a personalized recommendation on a product that assists the customer in making an informed decision</p>	<p>The provision of "advice" is not permitted of non-licensed persons, i.e., those who sell creditor insurance. It would therefore be clearer if the words "where applicable" were inserted to account for the fact that different rules apply based on whether the product is sold by a licensed individual.</p>
<p>1.4 MEASUREMENT AND REPORTING The insurer periodically reports the achievement of FTC outcomes over the entire lifecycle of its products to senior management and the board of directors, using indicators that are measured, monitored, and driven by a cycle of continuous improvement.</p>	<p>As worded, the BCFS Code and Guideline makes it sound as though the insurer is separate and distinct from senior management and the board of directors which is not the case.</p> <p>In contrast, the CCIR guidance does not separate the insurer out from the board of directors and senior management.</p> <p>From CCIR Guidance (Section 6.1):</p> <p><u>"Expectations to achieve this outcome (Insurers and Intermediaries)</u></p> <p>Overall responsibility for fair treatment of Customers is at the level of the board and/or senior management, who design, approve, implement and monitor adherence to policies and procedures aimed at ensuring that Customers are treated fairly."</p>

BCFSA Code, Principles	CLHIA Comments
<p>3.3 Online Products</p> <p>The insurer applies the same level of fair treatment, transparency, and disclosure to the digital offering of products as it does to traditional methods.</p>	<p>The proposed BCFSA Principal is very specific, dictating that digital offerings must follow the same principals as "traditional" methods. It does not define standards, but it does presume that the "traditional" methods are better and digital should match them.</p> <p>In contrast, the CCIR/CISRO FTC Reference Document (Section 6.5-6.6) notes that “distribution channels have evolved as well as the digital needs of Customers and CCIR and CISRO consider that this evolutionary process to continue and expect that Customers’ needs be fulfilled regardless of the distribution model or the medium used.”</p> <p>We prefer that regulatory expectations are distribution channel agnostic and set out that the insurer is expected to meet appropriate levels of treatment, transparency, and that all disclosures to provide an appropriate and equivalent level of protection.</p>
<p>3.6 Policy Decisions and Renewals</p> <p>The insurer communicates to the customers in a timely manner with a rationale as to whether their application will be accepted or a policy will be renewed.</p>	<p>The proposed BCFSA Principal uses the term “rationale” in an unclear manner, which could be different from the CCIR. If the intention is to provide rationale for insurance, then that is captured in the Reason Why letter and/or needs analysis process with the agent/advisor. It is not a regulatory obligation to submit this to the insurer. If a contract is rejected, then the high-level factual reasons behind the decline would be necessary to support the decision.</p> <p>In contrast, the CCIR expectation makes it clear that insurers are required to provide “information which allows [consumers] to make informed decisions throughout the lifetime of their contract.”</p>

2. BCFSA and CCIR periodically release guidance to insurers on discreet FTC issues that build on the CCIR/CISRO’s FTC principles. Please explain if insurers embed the expectations from additional guidance released by regulators into their compliance regimes? If so, how (process, frequency etc.)?

Any additional guidance released by regulators would be given its appropriate due diligence and embedded into insurers’ compliance regimes as deemed appropriate/necessary. Adopted and implemented guidance could be incorporated through existing processes such as distribution agreements, compliance training materials, compliance oversight processes and the compliance audit programs. Insurers would embed the expectations in line with change management processes to ensure compliance with regulatory requirements and in-force dates.

One example is the changes introduced by the ICBC to some Agent Supervision requirements in 2019 (ICN 19-004 | Guidelines for Supervision of New Life and/or Accident & Sickness Agents). These

changes had some unique requirements not present in other Canadian jurisdictions. As such, insurers had to update their compliance processing to account for those unique requirements.

Similarly, Saskatchewan recently updated their *Insurance Act* and the Saskatchewan Insurance Council also introduced unique requirements related to new agent supervision which required insurers to create additional processes.

Conclusion

Thank you for the opportunity to provide the industry's supplementary feedback on the BCFSA Code. We would be pleased to discuss any questions you may have or to provide additional information if it would be helpful.

Sincerely,

Original signed by

Brent Mizzen
Assistant Vice President, Market Conduct Policy and Regulation

Canadian Life and Health Insurance Association
79 Wellington St. West, Suite 2300
P.O. Box 99, TD South Tower
Toronto, Ontario M5K 1G8
416-777-2221 www.clhia.ca

Association canadienne des
compagnies d'assurances de personnes
79, rue Wellington Ouest, bureau 2300
CP 99, TD South Tower
Toronto (Ontario) M5K 1G8
416-777-2221 www.accap.ca