

Compliance Update

CAILBA QUARTERLY COMPLIANCE NEWSLETTER -

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What's New in the Provinces?

Alberta

Effective April 1, the Insurance Council will post disciplinary decisions against agents. MGAs should amend their screening procedures (or notify their screening service) to include a check of this site.

Ontario

Effective January 1, 2013, FSCO can levy financial administrative penalties for a wide range of non-compliant activities, giving the regulator more "teeth."

British Columbia

The Insurance Council has announced disciplinary actions against two general agents who breached client confidentiality. (One agent provided client information to the other by email without the customer's consent). The facts could just have easily presented themselves in a life case. MGAs and producers should take note of this case, since provincial insurance acts contain client confidentiality provisions and the market conduct regulator rather than a privacy regulator imposed disciplinary sanctions.

Quebec

In January, the AMF announced that it had revoked the licenses of two insurance firms and required each to pay \$50,000 in administrative penalties for their involvement in a rebating scam.

Canadian Insurance Services Regulatory Organization ("CISRO") Update

CISRO, which consists of provincial intermediary regulators, has announced plans to create a Harmonized Life Insurance Licensing Qualification Program to replace the 12-year-old LLQP. This modular program with open-book exam will place emphasis on "applying skills and knowledge, not just being taught to pass (the) licensing exam." Only modules that are not completed with a passing mark will require a rewrite. When implemented (expected in September 2015), all agents in Canada, including Quebec, will face the same standards.

CCIR Update

CCIR and CISRO have agreed in principle to move forward with a national electronic database on agent disciplinary actions. CCIR's newly approved Disciplinary Information Implementation Working Group will oversee construction of the database. When completed, this database will allow for more consistent agent screening.

CCIR has also announced that in 2013 the International Monetary Fund will conduct a financial stability assessment of Canada. Insurance will be part of that assessment. The importance of Canada's involvement in the work of the International Association of Insurance Supervisors ("IAIS") is becoming very clear.

Update on AML Issues

Standing Senate Committee on Banking, Trade and Commerce

This committee has tabled its final report entitled: *Follow the Money: Is Canada Making Progress In Combatting Money Laundering and Terrorist Financing? Not Really .*

CAILBA made a submission to this committee and Allan Bulloch, Legislative Chair, made a presentation last year. The report concludes that Canada's current AML Regime "is not working as effectively as it should, given the time, money and other resources that are being committed by reporting entities." Among the recommendations it makes are to create whistleblower protection for employees of organizations that are non-compliant and increasing the number of businesses that would be deemed to be reporting entities.

The report argues that FINTRAC must be vigilant in ensuring that Canada's reporting entities comply with their obligations under the Act. Where CAILBA members had hoped for some relief from some of the requirements imposed on them, we see instead a promise of "a range of support including sector-specific feedback to enhance effectiveness and receive better results."

Another recommendation is that reporting entities be required to document the reasonable efforts they have taken to identify customers and create records.

FINTRAC Update – New Regulations

While the current product exemptions (term, registered plans, etc.) will remain, more stringent customer identification requirements and high risk monitoring will be required when new AML-ATF regulations go into effect in February 2014. FINTRAC expects to issue updated guidance on the changes in fall, 2013.

What to Expect in a FINTRAC Audit

Initial Contact – You will be asked to produce the following (virtually identical to the questions asked in the FINTRAC Compliance Assessment, if you were asked to respond to one). However, now you must **produce** the material.

1. AML compliance procedures for client identification and record-keeping manual, including policies for dealing with high risk situations.

2. Written ongoing training program.
3. Risk assessment including special measures to mitigate identified high risk areas.
4. Copies of the last 2 documented internal or external reviews of the program.
5. Copies of all Large Cash Transaction Records and associated 3rd party records from the prior two quarters.
6. Copies of all client records relating to certain new high-risk product sales (such as UL and annuities) sold in the prior quarter.
7. Organization chart.
8. Most recent financial info (asset size, gross revenue, net revenue).
9. Total number of full-time equivalent employees.

The Phone Interview: Expect this to last at least 90 minutes and to include a series of questions to which the Compliance Officer must respond, followed by the "exit" discussion.

The Compliance Officer will be asked detailed questions about the Compliance Regime, covering the role of Compliance Officer, the content of policies and procedures for client identification and record keeping, the risk assessment, self assessment and training. **Be prepared to provide specific and detailed answers to such things as "how do you file a Suspicious Transaction Report?"**

During the exit interview, you will be informed of the general method used in reviewing files, along with the deficiencies noted. FINTRAC will follow up by letter within 30 days of the Interview and you will have 30 days from the date of the letter to respond with an action plan that includes *how* you will repair deficiencies and *when*.

What Can an MGA Do to Prepare?

Refer to the CAILBA Compliance Toolbox for guidance and tools for enhancing your Compliance Regime. Remember that not all

insurance company applications and change forms carry the client ID and record-keeping requirements that apply to producers and MGAs. In the event of an audit, as a reporting entity, FINTRAC will hold you accountable for making “reasonable efforts” to obtain any missing information.

On a positive note, FINTRAC auditors appear to better understand the role of MGAs. They suggest that MGAs can demonstrate they made “reasonable efforts” to acquire the missing information by asking producers to supply it and retaining a record of these requests, even if the missing information is not ultimately obtained. It is highly recommended, however, that MGAs provide a form to the producers to encourage them to capture information that they are also required to obtain.

There’s a tendency to believe that all money laundering risks are covered off in the new application and new business process, but in reality inforce changes to insurance policies can present significant risks. In particular, a conversion from term insurance (an exempt product) to a permanent product can heighten the risk and may impose new client identification and record-keeping requirements. Consider implementing an inforce checklist, which would allow you to identify those changes that require you to seek additional information or impose more monitoring.

What’s New from Insurers

IVIC Suitability

In February, CLHIA produced a reference document for advisors titled “IVIC Suitability: Needs-Based Sales practices.” It is attached to this newsletter for your convenience. The document provides useful guidance. According to the CLHIA, it “describes industry practices intended to clarify the relation of the features of an Individual Variable Insurance Contract (IVIC) to the needs of a client.” MGAs are encouraged

to post this document to their websites and otherwise make it available to producers.

What’s New from the Securities Arena?

In February, the OSC approved new MFDA rules for suitability obligations for leverage. In addition to requiring policies and procedures to assess suitability, The burden appears to be on both the representative and the dealer to “ensure” suitability of leverage when it is recommended.

What’s New from the US?

Foreign Account Tax Compliance Act (“FATCA”)

While not a new law, as of June 30, 2013, Canadian financial institutions will be required to report information about accounts held by “US persons” (citizens, green card holders, some snowbirds and US estates). Failure to provide these reports could lead to a 30% withholding tax on certain payments made to these Canadian institutions. While details are still being ironed out between Canada and the US in a draft inter-governmental agreement (“IGA”), MGAs should be alert to the coming changes and prepared to provide producers with information for their customers as it becomes available. With an estimated 1 million US persons living in Canada, many of whom are unaware of the coming changes, the impact of this little-known act will soon be felt across our industry.

An Important Reminder from CAILBA

Recently, we have seen evidence of non-member MGAs using and posting CAILBA Compliance Toolbox material on their websites. We would like to remind members that this material is copyrighted to CAILBA and is intended exclusively for use by MGA members. If you see evidence of non-authorized use, please notify Erine Ruiz at CAILBA.