Canadian Association of Financial Institutions in Insurance

CAFII

June 30, 2011

Canadian Council of Insurance Regulators
c/o CCIR Secretariat
5160 Yonge Street, Box 85
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Best Practices for Regulator Surveys

I am pleased to be able to respond to the Best Practices for Regulator Surveys consultation on behalf of the Canadian Association of Financial Institutions in Insurance (CAFII). CAFII believes this paper provides an excellent approach to resolving key areas of industry concern with the use of surveys. CAFII is thus very supportive of the Survey Best Practices paper. CAFII also supports the checklist format. A checklist is very helpful to make sure all points are covered by regulators when a new survey is contemplated. Outlined below are several comments and suggestions from CAFII members for the Best Practices for Regulator Surveys document.

1) *Audience*

The paper was written by the CCIR for use by insurance regulators across the country. It would be very helpful however, if the guidelines in this paper could be shared and used by other regulatory bodies such Insurance Councils and CISRO members, rate boards and consumer advocates who may consider undertaking an industry survey.

2) *Confidentiality*

In the Survey Design section you note "regulators should give respondents the opportunity to self-identify material they feel is confidential on a question by question basis." While CAFII members agree with this, we still think that further protections are necessary. In particular, CAFII would like each jurisdiction to have in place legislated "privilege" provisions for self-assessment questionnaires. Questionnaires are an important part of the process of risk-based regulation as they allow regulators to focus their resources on areas of risk. For companies to be able to complete surveys fully about their practices, they must have assurance of confidentiality, i.e., that the information provided will not be used against the company in civil actions against insurers. We think it is an important part of this exercise that all documents related to a questionnaire have privilege. This would include documents in the regulators' possession as well as documents in the company possession that were generated to satisfy the questionnaire process.

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It is possible that jurisdictions share documents and summaries of surveys with other jurisdictions. Some jurisdictions may have legislated privilege provisions in place while others do not. We are concerned that access to privileged information may be obtained through the jurisdictions with fewest legislated protection of confidential documents. We therefore recommend that no survey documents be shared with jurisdictions that do not have the necessary privilege protection.

3) *Survey Information*

The completion of surveys takes a great deal of time by each company. Ad hoc surveys are not part of the regular work processes of organizations; they draw significant resources from companies and require input and research from a number of departments. CAFII recommends that the regulator consider if a survey is the right tool i.e. if it will elicit information that is consistent and clear, and should only be used if the information needed is relevant and timely to a current priority. We note from the Survey Best Practices document that regulators will coordinate with each other to determine if other regulators have recently conducted a similar survey or have data that can be used as a surrogate for the data requested. We also see that regulators will check to see if there is relevant information that is currently available and recent enough to be used instead of gathering new information. CAFII supports this direction and would like to reinforce the importance of using all available information in lieu of undertaking an industry survey.

4) *Timing*

As noted above, ad hoc surveys require a great deal of company time. It is therefore important to allow sufficient time for completion. The Best Practices paper notes that completion times are part of the industry consultation process and CAFII supports this. It is our experience that a minimum of 2 months is needed by companies to collect information and obtain the required approval and signature.

5) *Survey distribution and sign off*

The paper notes that surveys will be sent to the CEO or senior authority in the jurisdiction. It would be very helpful if the regulator alerted industry associations at the time a survey is released so that companies can ensure that the survey is received by the appropriate person and is being answered. Regarding attestations, previous surveys have required approval from the most senior levels in the institutions. When senior executive sign off is required, even more time and internal processes are required. CAFII therefore recommends that the paper specify that attestation should not be required from persons any higher in an organization than is absolutely necessary.

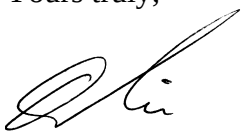
6) *Publication of results*

The paper advises that “where possible and appropriate” the final overall results should be published on the regulator’s website. We recommend that the decision to

publish results should be taken in consultation with the survey participants in each case.

Surveys and industry consultation papers share a similar purpose as information gathering tools from industry. CAFII recommends that many of the concepts in this paper, such as pre-consultation discussions of purpose, questions, timing and communication of results, can be applied to industry consultations as well as to surveys. CAFII extends our thanks to the CCIR for developing a best practices protocol for regulator surveys. Regulators have heard and responded to industry concerns in a very constructive way with this document.

Yours truly,



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Canadian Life
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Association canadienne
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Frank Swedlove
President

June 30, 2011

Mme Danielle Boulet, CCIR Chair
CCIR Secretariat
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Dear Mme Boulet,

Re: CCIR Issues Paper, "Best Practices for Regulatory Surveys"

The Canadian Life and Health Insurance Association (CLHIA) appreciates the opportunity to comment on CCIR's Issues Paper.

As regulators take a risk-based approach to regulation, there is increased focus on the use of surveys to assist them in obtaining information about industry practices and processes, assessing risk and deciding where scarce resources are best deployed. We believe that CCIR has an important role to play in this process.

We commend CCIR for the consultative and coordinated approach that is being recommended. Developing a consistent approach to survey design will lead to a clearer understanding by stakeholders of what is expected, less risk of differing interpretations, greater consistency in responses and, ultimately, more valuable and actionable survey results. Having CCIR act as coordinator for survey requests, even single jurisdiction ones, will mean less "survey fatigue" on the part of stakeholders and better coordinated national information-gathering and analysis on the part of regulators.

While CLHIA strongly supports the approach set out in this paper, we would like to raise two issues that relate to the confidentiality of material provided to regulators through surveys.

The first concerns the extent to which material provided by each insurer is covered by self-evaluative privilege in each jurisdiction. We would urge all provinces to adopt the recommendations made in CCIR's June 2008 paper, "Final Report on Privilege Model and Whistle Blower Protection" as soon as possible. Many jurisdictions have not yet acted on this important initiative.

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Secondly, even where there is self-evaluative privilege in a jurisdiction, to what extent is that material held confidential and protected in the hands of CCIR? The recommendation that CCIR maintain a database of surveys (and, presumably, survey results) seems sensible, but it does raise questions about access to that information and the CCIR's ability to maintain and protect company-sensitive information. For instance, are insurance regulators legally authorized to forward the information to the CCIR? Is the CCIR legally authorized to accept the information? Is the CCIR authorized to share the information? What confidentiality processes and standards would apply to CCIR? Would a violation of any province's confidentiality laws subject participating regulators or CCIR staff to civil or criminal liability? And, what if there are conflicting standards between the various Canadians jurisdictions? We would welcome the opportunity to explore these matters further.

In conclusion, we believe this is an excellent and worthwhile initiative and would encourage CCIR to move forward with it, in concert with due consideration of the confidentiality issues raised above.

Sincerely,

Original signed by

Frank Swedlove

FS:241

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June 30, 2011

Ms. Danielle Boulet
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Dear Ms. Boulet:

I want to thank the CCIR for giving us the opportunity to comment on the proposed Best Practices for Regulatory Surveys. In general, the Best Practices address a number of industry concerns and incorporate many of the best practices in IBC's Framework for Optimizing Governance-Style Surveys.

As you know surveys are important tools in a risk-based regulatory approach. Both regulators and insurers must ensure that surveys are not overused and are undertaken only when necessary. Further, when surveys are undertaken we must ensure that they are done in a manner that produces the most effective results. The CCIR proposed Best Practices address these fundamental tenets.

The Best Practices are clear that the regulator should as a first step clearly state the problem they are trying to address and consider if there is information available which could be used to avoid the need for a survey. We appreciate the suggestion in the proposed practices that regulators should consult with the appropriate organization in the early stages of survey development on objectives or goals, and that regulators should be open to making changes based on these consultations. These Best Practices coupled with the specific recommended practices regarding coordination should in future go a long way to preventing unnecessary or duplicative surveys. For instance, if these Best Practices had been in place, we may not have needed both the recent Nova Scotia and New Brunswick closed claims studies in support of the minor injury cap reviews, where the industry was asked to invest considerable resources in similar surveys almost back to back.

In response to the invitation for stakeholders to suggest other practices, we would like to recommend an additional first step when considering a survey, that of a cost/benefit analysis. The cost and burden on the industry should be balanced against the objectives of the information sought before deciding on a survey.

Regarding the second tenet of quality results/data, we recommend:

- Adequate time to respond to the survey.
- Well-defined questions.
- Guidance on what questions apply to the different stakeholders to whom the survey is directed (e.g. brokers, agents, company compliance officers) and in what circumstances the questions do not apply. Clarity on this item may help to avoid confusion or undue follow-up questions from industry. The P&C insurance industry is complex and the questions need to be tailored to the different business and distribution models to avoid confusion, misinterpreted intent, incomplete or invalid data.
- Testing the survey instrument before general distribution.
- The provision of support resources by web or by phone to assist with technical or clarification inquiries while completing the survey.

Through consultation with the industry, these issues can be discussed and reasonable accommodations agreed upon. The recent regulatory survey in Ontario on *conflict of interest,* where significant consultation with the industry took place and the above practices were followed, produced meaningful results.

We agree that not all surveys need an attestation. However, when required, we feel strongly that a "one size fits all" approach is not appropriate for an industry with a variety of governance models and titles. Rather, we recommend that when attestation is required, it be left to the CEO to delegate this to the most appropriate person within the company.

We are pleased that the CCIR Best Practices recognize the potential privacy issues involved in responding to surveys. While we appreciate the direction that regulators should give respondents the opportunity to self-identify material they feel is confidential, we believe the most appropriate means of dealing with this would be to provide Canada-wide legislative protection through the adoption by all provinces of the CCIR's Privilege Model. With self-evaluative privilege protection in place, our concerns about potential access to information requests with respect to survey results or an inventory of surveys posted on regulators' web sites would be eliminated.

The formulation of the guidance document Best Practices for Regulatory Surveys is a welcome initiative by CCIR. However, if it is not embraced in practice and spirit many of the past concerns of our industry will continue. Insurers understand that effective survey use is an important mechanism to support a risk-based approach to regulatory supervision. It will be important to industry then that measurement against this goal is part of a regulatory framework involving survey delivery and administration. In keeping with this vein, the statement that "although there will always be ad hoc requests..." might more appropriately be worded "although it may be necessary in specific circumstances to undertake ad hoc requests..." to signal the regulators' intent

to keep these to a minimum. Moreover, if and when ad hoc surveys do occur, we would suggest that they be undertaken in accordance with the Best Practices.

I hope that you find the information in this letter helpful. We would welcome the opportunity to discuss further with you any of these or other issues as you move forward to finalize the Best Practices guidance document.

Sincerely,



Gregor Robinson
Senior Vice President, Policy and Chief Economist

cc: Don Forgeron, President & CEO, IBC
Barb Sulzenko-Laurie, Vice President, Policy, IBC
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