

June 14, 2024

Submitted via Email

Attention:

M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la cité, tour Cominar
2640, boulevard Laurier, 3^e étage, Québec (Québec) G1V 5C1
Email: consultation-en-cours@lautorite.qc.ca

Re: AMF Issues and Discussion Paper: Best Practices for the responsible use of AI in the financial sector (the “Proposal”)

The Investment Industry Association of Canada (IIAC) is the national association representing financial services firms of any size and type operating in Canadian and global markets. Our members manufacture and distribute a variety of securities and provide products and services to Canadians.

The IIAC supports the AMF’s initiative in consulting on best practices for the responsible use of AI in the financial sector. Thank you for the opportunity to express our comments on this issue. The IIAC provides this response letter with respect to the various elements of the Proposal, starting with a discussion of general comments and followed by more specific feedback regarding the categories of topics identified in the Proposal. We focus our comments on elements impacting securities registrants (“**financial players**”).

We have also responded to specific questions in the Proposal in Schedule “A” to this submission.

SUMMARY OF RECOMMENDATIONS

- The AMF should leverage existing regulation, which imposes disclosure, reporting, oversight and conduct requirements on registrants, as opposed to creating a new layer of obligations specific to artificial intelligence systems (“**AISs**”) at a time when the AI use cases in the financial sector continue to evolve.
- The Proposal should be aligned with Federal, Provincial, and other applicable privacy and AI legislation to ensure a commonality of defined terms and interpretation. This will increase compliance, reduce burden, and bolster consumer understanding of the ways in which AISs are being used by financial players.
- The Proposal should incorporate a consumer-risk-based approach and focus only on high-risk and “high impact” AISs, as the term will be defined in Federal legislation, to appropriately calibrate the balance between consumer protection, and consumer and industry benefit in the form of cost-savings and innovation.

GENERAL COMMENTS

Current Regulatory Requirements Should Be Leveraged

Financial players are subject to existing regulations in respect of their businesses, including regarding conduct, reporting, oversight, and disclosure requirements, for example, in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. These existing regulatory requirements should be leveraged such that the Proposal should focus only on high-level best practices, rather than on prescriptive requirements.

Harmonization and Timing

(a) Alignment with Bill C-27 and OSFI Draft Guideline E-23 is recommended.

Best practices set out in the Proposal should align with legislation and guidelines under development, such as proposed federal legislation Bill C-27 – *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act (“AIDA”) and to make consequential and related amendments to other Acts (“Bill C-27”)*, as well as with the Office of the Superintendent of Financial Institutions’ (OSFI) Draft Guideline E-23 – Model Risk Management (“OSFI Draft Guideline E-23”). For example, defined terms or concepts used in the Proposal should have the meanings given to them in Bill C-27.

(b) Proposed best practices should only apply to high-impact AIs and other AIs that raise specific concerns.

We encourage the AMF to issue the best practices in the Proposal only as they relate to “high impact” AIs, as will be defined in Bill C-27, and to other categories of AIs only as the AMF identifies as creating specific concerns, for example general-purpose AIs, such as generative AIs.

(c) Common lexicon of terms and concepts is appropriate.

A commonly defined and understood lexicon of terms and concepts is of paramount importance when adopting guidance and best practices around an emerging issue, such as AI.

(d) Best practices are better served by finalized legislation.

We commend the AMF for considering best practices for the responsible use of AI in the financial sector and for its efforts to anticipate related regulatory and consumer protection issues. We suggest that further efforts in this regard would be better informed with the finalization of Bill C-27. Consumers will be better served and financial players better able to adopt the AMF’s best practices if they are aligned with the final version of Bill C-27.

Bill C-27 will inform a broader Canadian understanding of AIs and, to the extent possible, has been drafted to be interoperable with comparable legislation in other jurisdictions¹. Using these commonly defined terms and standards will enhance compliance with the AMF’s proposed best practices, which in turn can enhance understanding of AIs.

We set out the following considerations in respect of AIDA and OSFI Draft Guideline E-23:

(i) Artificial Intelligence and Data Act

The AMF should adopt the same definition of “high impact” as that which will be proposed under AIDA², given

¹ House of Commons, Standing Committee on Industry and Technology, *Evidence*, 44-1, No 86 (26 September 2023) at 1640 (Hon François-Philippe Champagne)

² If passed, the AIDA will regulate the design, development, and use of AI systems in the private sector, with a focus on mitigating the risks associated with “high-impact” AI systems.” A definition is expected in future regulations under the AIDA.

the AMF's objective to provide a framework to regulate the use of AIs that could have a "high impact" on consumers. As suggested in the *Guide to Proposed Amendments to AIDA*,³ the definition of "high impact" which will ultimately be adopted both in AIDA and by the AMF should be based on actual impacts on human rights as well as on an AIS' societal impacts. Doing so would mitigate the risks of confusion and uncertainty for financial players undertaking a compliance project for the development and operationalization of such an AIS.

We also recommend that, to avoid conflicting contradictory obligations for financial players, the Proposal's best practices relating to risk management of AIs that could have a "high impact" reflect the legal obligations set out in the anticipated AIDA.

(ii) OSFI Draft Guideline E-23

Financial players involved in insurance could potentially be subject to two distinct regulatory expectations as OSFI intends to extend the application of the OSFI Draft Guideline E-23 to federally regulated insurers. Accordingly, we suggest that the AMF collaborate with OSFI to ensure consistency, facilitate compliance, and reduce costs.

Given the importance of these AI technologies for the financial sector, we likewise recommend that to the extent this is not already the case, the AMF collaborate with Innovation, Science and Economic Development Canada (ISED), as OSFI has, to simplify compliance where harmonization is possible.⁴

(e) Leveraging of AI related research is recommended.

We encourage the AMF to leverage AI related research conducted by other Canadian financial services or securities regulator peers, such as the Ontario Securities Commission Report, *Artificial Intelligence in Capital Markets – Exploring Use Cases in Ontario*⁵, to better understand AI use cases in the financial markets without duplicating efforts and resources.

Consumer Risk-Based Approach Should Be Incorporated

A strong focus on investor protection, governance, privacy and cybersecurity issues is of critical importance as AI best practices and standards evolve and develop. Consideration of the operational complexities for financial players of the best practices set out in the Proposal will support their implementation.

Applying the Proposal only as it relates to high-impact AIs and incorporating a consumer-risk-based approach with a focus on high-risk AIs will allow financial players to manage the costs and resources with respect to their creation and use of AIs in proportion to the risks these firms are being asked to manage.

³ Canada, Minister of Innovation, Science and Industry, Correspondence from the Honourable François-Philippe Champagne, Minister of Innovation, Science and Industry - Amendments to AIDA - 2023-11-28, Annex B: Guide to Proposed Amendments to AIDA (Ottawa: INDU Committee, 2023) at 1 online: < <https://www.ourcommons.ca/content/Committee/441/INDU/WebDoc/WD12751351/12751351/MinisterOfInnovationScienceAndIndustry-2023-11-28-Combined-e.pdf> >

⁴OSFI reported that it is collaborating with ISED to ensure alignment of its guidance with Bill C-27 (see Canada, Office of the Superintendent of Financial Institutions, *OSFI's Annual Risk Outlook – Fiscal Year 2023-2024*, Digital Innovation Risk (Ottawa: OSFI, 2023) online: < <https://www.osfi-bsif.gc.ca/en/about-osfi/reports-publications/osfis-annual-risk-outlook-fiscal-year-2023-2024#digital> >.

⁵ Ontario Securities Commission & EY, "Artificial Intelligence in Capital Markets: Exploring Use Cases in Ontario" (October 10, 2023), online: < <https://oscinnovation.ca/resources/Report-20231010-artificial-intelligence-in-capital-markets.pdf> >.

SPECIFIC COMMENTS

1. Maintain consistency with Quebec's Act respecting the protection of personal information in the private sector (Private Sector Act).

The Proposal should be revised to reflect that AISs must be deployed in compliance with the Private Sector Act.

We urge the AMF to ensure that the Proposal references the Private Sector Act and the guidance from the *Commission d'accès à l'information*, as opposed to establishing new or conflicting positions on issues such as what constitutes personal information, when consumer consent is required for the collection, use and disclosure of personal information⁶, or when an intrusion into a consumer's privacy is acceptable⁷. The Private Sector Act includes certain exceptions to the general consent principle, which should apply in the context of the use of an AIS.

2. Consider practicality of implementation.

- (a) Financial players will need to develop and implement specific policies, procedures and internal controls with respect to AISs and their related privacy considerations. The Proposal should consider that the implementation of any of the proposed best practices will involve cost, time, and resources, and accordingly set out an appropriate phase-in period.
- (b) A best practices proposal for public consultation that outlines the suggested scope of such policies and examples of effective best practice controls would benefit the wider industry. We recognize that these will evolve as AISs evolve and risks change.
- (c) The consumer consultations described in the Proposal⁸ are too broad and not subject to practical, objective implementation. Further, as financial players are subject to multiple regulatory obligations, these consultations may not offer further consumer benefit.

In the alternative, should this obligation to consult consumers remain in the Proposal, we recommend that the scope be significantly narrowed to high-impact and high-risk AISs, and subject to further public comment.

- (d) The proposed practice to create participation mechanisms that would enable consumers' comments to be gathered regularly throughout the lifecycle of a high-impact AIS⁹ may not garner further benefits to consumers.

Financial players' existing complaint handling procedures, including the recently revised AMF complaint handling procedures, can be used by consumers to voice comments on the services they receive, including those involving AISs.

- (e) The Proposal should be modified to account for instances in which it may not be practicable for financial players to implement certain best practices. As previously noted, the Proposal should be narrowed to apply only to high-impact and high-risk AISs.

⁶ Autorité des marchés financiers, "Issues and Discussion Paper: Best practices for the responsible use of AI in the financial sector" (2024) at 10, s 3.1, no 2, online: < https://lautorite.gc.ca/fileadmin/lautorite/grand_public/publications/professionnels/tous-les-pros/IssuesDiscussion_PaperAI_2024.pdf >. ("Proposal").

⁷ Proposal at 10, s 3.1, no 2.

⁸ Proposal at 11, s 3.1, no 6.

⁹ Proposal at 11, s 3.1, no 6.

-
- (f) The proposed practice to offer alternative options to AI¹⁰ may undermine the efficiency hoped to be gained through the deployment of an AIS. We note that the requirement to offer an alternative option is broader than what is proposed under Bill C-27.
 - (g) The proposed transparency practices would benefit from a proportionality assessment as well as the inclusion of an AIS model complexity assessment.

The extent to which an AIS outcome is “traceable” or “explainable”¹¹ will be proportionate to the complexity of the model. For example, interpreting the process of a decision being made by a more complex model is increasingly difficult due to its internal complexity and the amount of training data it employs.

The Proposal should consider that, generally, there is a trade-off between the complexity of a model, which often corresponds with its accuracy, and how explainable that model is. For use cases such as fraud detection (which may consist of high-impact activities, such as processing biometrics, or gatekeeping access to services), there may be reason to favour a less explainable model that has increased accuracy.

We note also that the proposed practices around transparency may result in financial players providing information that could be used to circumvent an AIS.

3. Practices related to responsibility.

(a) Reconsider apportionment of liability.^{12, 13}

We point to the AMF’s expectations that registered firms oversee their service providers in a reasonably prudent fashion as a preferable standard, particularly given the specificity of AI-related knowledge and the oversight that would be required of an AI firm.

The Proposal suggests that a financial player’s liability in the event of a harm caused by an AIS goes beyond the liability that would be found in other contractual arrangements, putting the entire onus for the impacts of the use of the AIS on the financial player. The protection provided by financial players exercising diligence, and appropriately onboarding and overseeing a third-party AIS, applying the same standard of care as with other third parties, should be sufficient.

The AMF could, as an alternative, suggest best practices for public consultation, for the reasonable oversight, reporting and audit rights that financial players should negotiate in their agreements with third-party AIS providers, using guidance by other Canadian regulators, such as OSFI’s Guideline B-13, as a basis.

We note that AIS decision-making around identity verification, fraud, and credit could fall within the proposed practice to “*individually review and validate*” all such AIS decisions.¹⁴ We note that there are mitigating controls in place to prevent potential bias or other risks of harm, such as regarding the governance of the data sets used by AISs.

¹⁰ Proposal at 10, s 3.1, no 3.

¹¹ Proposal at 12, s 3.2, no 9.

¹² Proposal at 14, s 3.4, no 13.

¹³ Proposal at 14, s 3.4, no 14.

¹⁴ Proposal at 14, s 3.4, no 15.

(b) Consider suitability obligations in respect of manual verification.

We recommend that the AMF reconsider the proposed practice of employee manual verification,¹⁵ as drafted, taking into account financial players' existing suitability obligations.

Additionally, provided that AIS functions are tested on a regular basis and depending on the business model of the financial player, we suggest that the Proposal be revised to provide for discretion by financial players to allow flexibility as to when an AIS decision is reviewed by an employee, whether that be pre- or post-decision, and whether the review should be sample based.

(c) Consider role delineation in AI design and use governance structure.¹⁶

We suggest the Proposal consider that, at a practical level, officers of a financial player may have only high-level visibility and oversight into the design and use of AI.

4. Practices related to managing AI-associated risks

(a) Training recommendations.¹⁷

We provide the following recommendations:

- The scope of those required to evidence this type of training should be narrowed so that the training is tailored to only those professionals who interact with the AIS and clients.
- The Proposal should consider that the level, depth, frequency and sophistication of this training will vary widely among firms, which may create additional regulatory burden without a corresponding investor and market protection benefit.

(b) Proposed practice to monitor AIS deviations should focus on high-impact and high-risk AISs.

This proposed practice that AIS monitoring be implemented to enable financial players to spot deviations from normal operations, discriminatory or inequitable outcomes, inappropriate use or use for harmful purposes¹⁸ will require deep AI know-how. Such proposed oversight should focus on high-impact and high-risk AISs to ensure an appropriate allocation of resources.

5. Other Considerations

Further consideration should be given to how financial players can reasonably determine that the benefits of using AI outweigh the foreseeable risks and harm both generally and for each group that could be affected.¹⁹ This includes whether cost-savings benefits are to be construed as a benefit to investors that outweigh the risks and harm of an AIS. Questions about what it means to adequately mitigate the risks associated with the data used by a high-impact AIS and who would be positioned to make such an assessment should be further considered.²⁰

Finally, as proposed practice number 9 already seems to suggest,²¹ any recommendation that a financial player should provide explanations on an AIS should specify that it must not be interpreted

¹⁵ Proposal at 14, s 3.4, no 15.

¹⁶ Proposal at 14, s 3.5, no 16.

¹⁷ Proposal at 18, s 3.6, no 30.

¹⁸ Proposal at 18, s 3.6, no 28.

¹⁹ Proposal at 13, s 3.3, no 12.

²⁰ Proposal at 17, s 3.5, no 25.

²¹ Proposal at 12, s 3.2, no 9.

as requiring the disclosure of any intellectual property, commercially sensitive information, trade secrets, or proprietary information.

The IIAC's responses to the additional questions in the Proposal are enclosed at Schedule "A".

We are happy to discuss with the AMF the observations provided and recommendations made in this correspondence.

Respectfully submitted,

Investment Industry Association of Canada

SCHEDULE "A"

Responses to AMF's Additional Questions

1. In addition to the values and ethical principles set out in this paper, what other important principles do you think should be put forward?

IIAC Response: The IIAC applauds the AMF's review of existing guidance and regulatory reform on AI to inform its proposed 30 best practices. While the IIAC has not engaged in a systemic review of the available literature for conformance, we draw attention to ISED's Voluntary Code of Conduct on Development and Management of Advanced Generative AI Systems²² released in September 2023. This Code highlights important values and ethical principles including accountability, safety, fairness and equity, transparency, human oversight and monitoring, and validity and robustness. The AMF may well wish to encourage industry to become signatories of this voluntary code.

2. Which cases of AI use in finance present the most risk? Are the proposed practices sufficient to mitigate the risks associated with the use of AI in the financial sector? Consider the risks to consumers, financial players, market integrity and financial stability.

IIAC Response: We refer to the OSC & EY Report on Artificial Intelligence in Ontario's Capital Markets (OSC Report)²³ for an analysis of some of the higher risk uses of AI in finance. In particular, the OSC Report notes the cost and complexity of using AI systems for revenue generation and high-frequency trading, as examples.

The AMF's proposed practices can be adjusted as described in this comment letter and still mitigate risks of AI use in the financial sector.

3. Is there a risk that the implementation of the practices described in this paper would inhibit innovation in the financial sector? If so, why?

IIAC Response: Practices that are overly prescriptive would inhibit innovation in the financial sector. Please see our comment letter.

4. Do the financial players have the resources, particularly the required qualified human resources, to implement the proposed practices? Does the implementation of the practices described in this paper seem achievable to you? Over what time horizon (short, medium, long term)?

IIAC Response: Please see our comment letter.

5. What role should technical standards play in practices related to the responsible use of AI in the financial sector?

²² Innovation, Science and Economic Development Canada, *Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems* (Ottawa: 2023) online: <<https://ised-isde.canada.ca/site/ised/en/voluntary-code-conduct-responsible-development-and-management-advanced-generative-ai-systems>>.

²³ Ontario Securities Commission & EY, "Artificial Intelligence in Capital Markets: Exploring Use Cases in Ontario" (October 10, 2023), online: <<https://oscinnovation.ca/resources/Report-20231010-artificial-intelligence-in-capital-markets.pdf>>.

IIAC Response: The IIAC views technical standards on the responsible use of AI, generally, and in particular in respect of the financial sector, as key to ensuring the safe and secure deployment of AIs. The IIAC remains engaged to participate on behalf of its members in industry collaborations to inform the continued development of technical standards for the responsible use of AI in the financial sector.

6. How are the financial players integrating generative AI into their activities? How are they regulating employees' use of on-line generative AI tools?

IIAC Response: Generative AI is no different than any other innovation before it that has caused a disruption across industries, including the financial sector. As with any other innovation, appropriate controls must be deployed to manage its risks and benefits. In this regard, the financial sector has a robust existing digital infrastructure to support the responsible use of generative AI including, as appropriate, setting out internal policies and governance frameworks to facilitate innovation around generative AI applications through either bespoke applications or tools that may be available through various vendors.

7. What role do you see the AMF playing in supporting financial players in integrating AI into their activities, and what would be the best way for the AMF to fulfill that role?

IIAC Response: To support financial players in integrating AI into their activities, we propose that the AMF provide a best practices document that can be updated, as required, to reflect material developments in AIs. As noted in our comment letter, we recommend that the AMF ensure alignment with existing and upcoming relevant laws, regulations and guidance.