

## Distribution of Financial Products and Services

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## CHANGE IN CORPORATE CULTURE : NEW EXPECTATIONS OF THE AMF FOR INSURER'S "COMMERCIAL PRACTICES"

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On March 11, 2011, the Autorité des marchés financiers (the "AMF") published a draft **Commercial Practices Guideline**, which is available for public consultation on the website of the AMF until April 22, 2011.

This Guideline constitutes a statement of principle on the expectations of the AMF concerning the sound commercial practices of insurers and financial institutions. This process is part of the mandate of oversight and "prudential supervision" that was entrusted to the AMF following the recent decline in the financial markets.

Through the proposed measures, the AMF is seeking a firm commitment from the boards of directors and senior officers of insurance companies for the application of the "best practices" in their management and operations in order to promote public confidence.

This bulletin primarily discusses the scope of the application of the Guideline to insurers.

### SCOPE OF COVERAGE

Firstly, it is important to note that this new Guideline does not apply to specific product distribution activities that are already covered by the *Act respecting the distribution of financial products and services*.<sup>1</sup> Rather, it is the insurers in their capacity as "manufacturers" and their product offerings which are targeted by the Guideline.

The Guideline applies to life and health Insurers, damage (P&C) insurers, holding companies controlled by an insurer, mutual insurance associations, financial services cooperatives as well as trust and savings companies governed by the following Acts:

- ▶ *An Act respecting insurance*, R.S.Q., c. A-32;
- ▶ *An Act respecting financial services cooperatives*, R.S.Q., c. C-67.3;
- ▶ *An Act respecting trust companies and savings companies*, R.S.Q., c. S-29.01.

<sup>1</sup> L.R.Q., c.D-9.2

### MAIN GOAL

In this draft submitted for consultation, the AMF discloses its true intentions by specifying what its expectations are with respect to the interpretation, application and execution of the obligation imposed on insurers to follow sound commercial practices.

The main goal is to regulate the insurance industry with a view to maintaining public confidence in the market.

### WHAT ARE THE EXPECTATIONS ?

The scope of the Guideline is very broad. According to the AMF, "*commercial practices encompass all marketing activities that could affect the institution's reputation or market participants' confidence in the financial sector.*" In particular, it targets "*all activities needed for product offerings.*"

The following are some concrete examples of the AMF's expectations for insurers:

- ▶ Develop and implement internal strategies, policies and procedures on the fair treatment of consumers;
- ▶ Establish independent oversight of the measures for ensuring that internal policies and procedures are applied at the operational level;
- ▶ Implement mechanisms and internal reports to provide for monitoring of any derogations from policies and procedures which threaten the fair treatment of consumers;
- ▶ Formalize employee recruiting and training practices and outsourcing practices to external partners to ensure that these persons meet the highest standards of ethics, integrity and competence;
- ▶ Establish overall compensation strategies which will ensure that sales incentives do not prejudice the fair treatment of consumers, for example, by encouraging incentive measures based on customer satisfaction rather than sales volume;

- ▶ Take consumer interests more into account in commercial product development;
- ▶ Draft appropriate disclosure documents on product offerings that will provide better product information to consumers and enable them to make informed decisions;
- ▶ Disclose all information on product changes to consumers;
- ▶ Ensure that the information contained in advertising materials is accurate, clear and not misleading;
- ▶ Track products after they are launched to ensure that they continue to meet the needs of the target consumer group;
- ▶ Adopt a complaints examination and dispute settlement policy;
- ▶ Prepare and submit complaint reports to the AMF;
- ▶ Ensure that advertising complies with the *Consumer Protection Act* and the applicable guidelines issued by the AMF;
- ▶ Ensure that claims files are well documented, for example, by including the rationale in support of the decision in the file;
- ▶ Establish a review process for decisions that totally or partially reject claims according to the appropriate levels of delegation;
- ▶ Adopt a confidentiality policy and procedures to protect the personal information of consumers, for example, by identifying risks and implementing effective counter measures;
- ▶ Obtain the consumer's consent before disclosing any personal information to third parties;
- ▶ Set up the appropriate technology to adequately manage personal information on consumers in the company's possession;
- ▶ Ensure that affiliated institutions do not violate the prohibitions against the sharing of the personal information of consumers;
- ▶ Establish information security and confidentiality awareness programs for the staff;
- ▶ Set up measures to inform the responsible persons on a timely basis of any breach of confidentiality;
- ▶ Disclose any breach of confidentiality to the affected consumer;
- ▶ Inform the AMF of any significant violation of the protection of information held on consumers;
- ▶ Take measures to anticipate emerging threats to the security of information and provide for effective protection against such threats.

## ROLE AND RESPONSIBILITY OF BOARDS OF DIRECTORS AND SENIOR OFFICERS

The AMF therefore expects boards of directors and senior officers to develop, document and implement concrete measures to integrate the concern for the fair treatment of consumers into their corporate culture.

Not only does the AMF intend to make boards of directors and senior officers accountable, but it will also have a supervisory power to ensure that there is compliance with the Guideline.

The AMF also expects boards of directors and senior officers to appoint one or more internal supervisors to ensure that the internal policies and procedures are applied and respected.

On the other hand, the nature, scope and complexity of the company's operations will be taken into consideration in assessing whether or not it is in compliance with the Guideline.

## CONCLUSION

With its *Commercial Practices Guideline*, the AMF is seeking to bring about a change in the corporate culture of insurers by requiring them to demonstrate a willingness to follow sound commercial practices, while giving them the necessary flexibility to determine the measures they themselves will take to achieve this end.

The measures proposed by the AMF will also reverse the burden of proof in the sense that it will be up to the insurers to show that the internal policies and procedures have been implemented and are being respected.

Insurers will therefore have to review their integrated risk management methods and apply the "best practices" which most effectively address the issues raised by the recent financial crisis.

The period of public consultation will end on April 22, 2011. Upon the completion of this consultation, the final version of the Guideline should be published by the end of June 2011. At that time, insurance companies and financial institutions will be given a two-year transitional period to implement their strategies, policies and procedures before the Guideline goes into force in 2013.

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