Self-evaluation process of financial institutions regarding the Sound Commercial Practices Guideline: What is the objective and what will be the impacts?

June 1, 2014

The *Sound Commercial Practices Guideline* (the "**Guideline**") published by the Autorité des marchés financiers (the "**AMF**") in June 2013 and intended for insurers of persons or damages, holding companies controlled by an insurer, trust and savings companies or financial services cooperatives that are authorized by the AMF to conduct business in Quebec, including in particular those financial institutions governed by the statues of another province or country (collectively referred to hereafter as the "**Target institutions**"), has made it possible for the AMF to communicate its expectations regarding the legal requirement of financial institutions to adhere to sound commercial practices, specifically with respect to determining the necessary strategies, policies and procedures regarding the fair treatment of consumers.

In connection with its oversight work, the AMF recently forwarded to the Target institutions a request for information relating to the application of the requirements set out in the Guideline. By way of this request, the AMF primarily requires these Target institutions to undertake a self-evaluation process regarding the AMF's expectations as stipulated in the Guideline by completing a questionnaire available on the AMF website.

The self-evaluation questionnaire proposed by the AMF is divided into eight sections – i.e. the eight topics contained in the Guideline[1] - and each of these sections includes examples of sound practices for which the Target institution is encouraged to perform a self-evaluation. The Target institutions are required to indicate whether or not these practices apply to their situation based on their nature, size, and on the complexity of their activities as well as on their risk profile by replying using a "Rating" based on a numbered scale from 0 to 4[2]. The Target institutions are required to forward to the AMF an electronic response to this request for information by no later than September 30, 2014 using the AMF's File Transfer Services.

In its letters to the Target institutions, the AMF specifies that the objective of its request is to allow the Target institutions to identify the points to be improved on in their process of applying the standards set out in the Guideline and to make it possible for them to correct any weaknesses identified. The AMF goes on to say that the results gleaned in connection with this process will provide it with a better overview of the progress made by the Target institutions in their efforts to comply with the Guideline requirements and to become more familiar with the practices put in place by them as part of their commercial activities.

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Several of the Target institutions, specifically those in the insurance sector, have raised concerns regarding the apparent rigidity of this process and questioned its potential scope. While, at first glance, the initiative may seem demanding, it should not yield negative consequences for the Target institutions that undertake it. In connection with this process, it is our understanding that the AMF will in particular take into consideration the fact that some of the Target institutions that are also governed by the laws of other jurisdictions are already in compliance with certain regulations similar to those set out in the Guideline.

Depending on the circumstances, this self-evaluation process should not apply to financial institutions that are in dissolution or that do not conduct any new activities in Quebec. These institutions should, however, take the necessary measures to communicate with the AMF in order to confirm their status and ensure that the AMF clearly exempts them from the requirement to complete the self-evaluation questionnaire.

According to the AMF, this procedure must not be construed by the Target institutions as an investigation or even an inspection by the AMF of their activities in Quebec. Rather, it is more a kind of survey that will make it possible for the provincial regulator to be able to determine the extent to which the Target institutions can meet the results expected in the Guideline and to have a better understanding of financial sector practices.

In the event that your organization should encounter any difficulty during this self-evaluation process, we would be pleased to help guide you through the process and determine, if needed, the answers that must be provided to the AMF.

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[1] 1) Governance and corporate culture; 2) Design and marketing of new products; 3) Incentives management; 4) Disclosure to consumers; 5) Product advertising; 6) Claims examination and settlement; 7) Complaint examination and dispute resolution; 8) Protection of personal information.

[2] 0 = Not applicable; 1 = Process not implemented; 2 = Informal process or one that is in the process of being implemented; 3 = Formal and implemented process but one without any control mechanisms in place; 4 = Formal and implemented process with a control mechanism in place.

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