

December 7, 2018

BY EMAIL

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Dear Sirs/Mesdames:

Re: *Regulation respecting Alternative Distribution Methods* (“Draft Regulation”) made pursuant to section 217 of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the “Distribution Act”), and section 485 of the *Insurers Act*, S.Q. 2018, c. 23, s. 3 (the “Insurers Act”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the proposed Draft Regulation. We wish to provide the following general comments, as set out below³.

We are supportive of the proposed Draft Regulation as it relates to the regulation of insurance products (and financial planning products) distributed without an intermediary, primarily through the Internet. We understand that one purpose of the proposed Draft Regulation is to build a framework that is based on disclosure to clients. Under the proposed framework, the Draft Regulation proposes requirements with respect to distribution platforms, as well as the training and supervision of distributors. Distributing firms are obligated to inquire into their clients’ needs and if applicable, ensure the products they are offering are suitable.

We believe that building a suitability requirement into the Draft Regulation should be an important component of the proposed framework. This is particularly prescient considering the proliferation of product options via the Internet, which may make it difficult for clients to identify and properly understand the differences between products

¹ The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC’s website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors’ interests come first, markets function at their best, and economies grow. There are more than 154,000 CFA charterholders worldwide in 165+ countries and regions. CFA Institute has eight offices worldwide and there are 151 local member societies. For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAInstitute and on Facebook.com/CFA Institute.

³ A copy of this letter is being sent to the Canadian Council of Insurance Regulators at ccir-cerra@fscs.gov.on.ca.

where there is no human intermediary.

There is an informational asymmetry between a client and a manufacturer or consolidator. Equipped with knowledge regarding the features and risks of a product, a manufacturer or consolidator is in the best position to know whether a product is suitable for a client or not. Therefore, the burden of proof for demonstrating suitability analysis and conflict assessments should fall on the manufacturer or consolidator of the product being sold.

In terms of disclosure requirements, we agree that certain prescribed information should be included on each distribution platform. In particular, clients should be provided with specified summary information about the applicable product being sold. Publicly available information would promote competition amongst distributors selling comparative products. In a competitive environment, distributors are also more likely to self-regulate and implement service-oriented practices that set them apart from their competitors. Moreover, summary information made accessible on the platforms would increase transparency and encourage accountability since clients would have all required information at their disposal to make an informed decision.

The AMF should consult with industry on any regulations prescribing requirements with respect to platform design, operation and monitoring. We believe that it is important for regulators to pay attention to the interface platform and the way in which a consumer is guided through the process. Focus should be given to how the process of optimization nudges a client through various steps on a platform – such optimization may come at a cost of unsuitable recommendations. Consumers may not know that they are being “guided” by algorithms as they input information into an on line application form.

We recommend that the regulators take a cautious and forward-looking approach to the implementation and future enforcement of the Draft Regulation. It is important to first collect and examine all relevant data that can be used in informing regulatory positions. For example, in a branch (e.g. in person insurance sales), the regulators typically do not have an opportunity to observe each interaction and the information shared by participants in the selling process (or what is influencing the purchase decisions). However, when sales are made online through a distribution platform, data can be gathered as to what the algorithm or program is “nudging” the consumer toward as a result of their responses and input of information. The surplus of data that is readily available to regulators should allow for a thoughtful study of the disintermediated market and client interactions with distributors.

We also agree with the AMF’s view that comparison shopping sites that direct clients to other websites to enroll in an insurance contract must also be registered and comply with the Draft Regulation if they receive payment for products sold. Registration and compliance with the requirements of the proposed Draft Regulation will prevent unsuitable product sales and will ensure harmonization across all variations of distribution platforms.

Overall, we encourage a technologically neutral regulatory regime that is focused on disclosure for the benefit of consumers. In theory, disintermediation as a result of technological innovation and design should result in lower prices and better outcomes for consumers as a result of increased competition, information transparency, and greater accessibility to the full range of the product market via the Internet. The distribution of all investment fund products is changing quickly. We would encourage the AMF to share their experience with other regulators across the CSA.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council for
Canadian CFA Institute Societies*

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