



**AUTORITÉ
DES MARCHÉS
FINANCIERS**

COMMERCIAL PRACTICES GUIDELINE

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Preamble

The *Autorité des marchés financiers* (“AMF”) has established this guideline setting out its expectations with respect to financial institutions’ legal requirement to follow sound commercial practices. The guideline covers the execution, interpretation and application of this requirement.

In setting out its expectations, the AMF favours a principles-based approach rather than a specific rules-based approach. This guideline differs from existing guidelines in that it is based in part on rules set out in the laws and regulations in force.¹ Nonetheless, the guideline provides financial institutions with the necessary latitude to determine the requisite strategies, policies and procedures needed to implement the principles for sound commercial practices and to apply such practices based on the nature, size and complexity of their activities.

The AMF considers corporate governance, integrated risk management and compliance (GRC) as the foundation stones for sound commercial practices and, consequently, as the basis for the prudential framework provided by the AMF.

This guideline is part of this approach and sets out the AMF’s expectations regarding financial institutions’ sound commercial practices.

¹ For example, *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2 (“Distribution Act”) and its regulations.

Introduction

A number of factors have contributed to creating a higher-risk environment for financial institutions, including the globalization of financial markets, the integration of financial product and service offerings, complex organizational structures, a reliance on financial engineering and changes in information technologies. Ethics, integrity and competence are also important issues in an industry that relies on confidence. Consequently, the firm commitment of directors and officers to manage all risks, and thereby reputational risk, is a significant factor in ensuring the proper conduct of an institution's affairs. This commitment involves oversight of commercial practices, since these can affect an institution's reputation and constitute a threat to its solvency.

As a regulator, the AMF must protect the interests of Québec consumers of financial products and services² and maintain the public's confidence in the industry and, in this way, foster the stability of our financial system. With this in mind, the AMF believes that financial institutions, as a producers, promoters or distributors of financial products and services, have the responsibility to act in the best interests of their clients.

Pursuant to the authority conferred upon it³ under the various sector-based laws it administers, the AMF is issuing this guideline to inform financial institutions of its expectations regarding the legal requirement to follow sound commercial practices.⁴

The expectations set out in this guideline are based on core principles and guidance issued by international organizations⁵ with a view to fostering sound commercial practices, as well as on numerous documents published by various regulators, self-regulatory organizations and industry associations.

² The use of the generic term "consumer" in this guideline refers both to consumers of financial products (insureds, savers, investors and borrowers) and users of financial services.

³ *An Act respecting insurance*, R.S.Q., c. A-32, ss. 325.0.1 and 325.0.2;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, s. 565;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, s. 314.1.

⁴ *An Act respecting insurance*, R.S.Q., c. A-32, s. 222.2;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, s. 66.1;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, s. 177.3.

⁵ Bank for International Settlements, *Core Principles for Effective Banking Supervision*, October 2006.
International Association of Insurance Supervisors, *Insurance Core Principles and Methodology*, October 2003.

Approach adopted for the guideline

In order to develop a commercial practices framework that is consistent and fosters the fair treatment of consumers, this guideline is divided into two parts.

Part A emphasizes an intersectorial approach and sets out the AMF's general expectations with respect to the design, selection, promotion and distribution of financial products and services.

Part B is subdivided based on the specific financial sector or type of institution being discussed. It sets out more specific expectations with respect to a given product, service or activity, elaborating on the elements covered in Part A or on the provisions contained in existing laws and regulations.

This structure allows for amendments or additions to the guideline as needed, in particular to deal with specific situations.

Scope

This commercial practices guideline is intended for insurers of persons (life and health), damage insurers, portfolio management companies controlled by an insurer, mutual insurance associations, financial services cooperatives as well as trust and savings companies, which are 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.

This guideline applies to financial institutions operating independently as well as to financial institutions operating as part of a financial group.⁶ As regards financial services cooperatives and mutual insurance associations that are members of a federation, the standards or policies adopted by the federation should be consistent with—and even converge on—the principles of sound commercial practices prescribed by law and the expectations set out in this guideline.

The generic terms “financial institution” and “institution” refer to all entities covered by the scope of this guideline.

⁶ For purposes of this guideline, “financial group” refers to any group of legal persons composed of a parent company (financial institution or holding company) and legal persons affiliated therewith.

Coming into effect and updating

This commercial practices guideline will come into effect on month xx, 201X.

With respect to the legal requirement of institutions to follow sound commercial practices, the AMF expects each institution to develop strategies, policies and procedures based on its nature, size, complexity and risk profile, to ensure compliance with the expectations underlying this guideline by month xx, 201X (2 years after the date of coming into effect). Where an institution has already implemented such a framework, the AMF may verify whether it enables the institution to satisfy the requirements prescribed by law.

This guideline will be updated based on developments in best commercial practices and in order to address the most crucial problems related to the protection of the interests of Québec consumers. The guideline will also be updated in light of the AMF's observations in the course of its supervision of financial institutions, the data collected from complaints and the surveys carried out among institutions and consumers.

Supervision of commercial practices

To foster the establishment of sound commercial practices within financial institutions, the AMF, acting within the scope of its activities, intends to assess the degree of compliance with the expectations set forth in this guideline in light of the specific attributes of each institution. Consequently, it will examine the effectiveness and relevance of the strategies, policies and procedures adopted by financial institutions in order to achieve the expected results in respect of sound commercial practices as well as the quality of independent oversight exercised by their board of directors and senior management to ensure operational compliance therewith.

Moreover, there are a large number of commercial practices and these practices are constantly evolving. The AMF therefore expects decision makers at financial institutions to remain current with best practices and to adopt such practices, to the extent that they address their needs.

PART A

GENERAL EXPECTATIONS

	Section
Roles and responsibilities of the board of directors and senior management	A1
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A1. Roles and responsibilities of the board of directors and senior management

The AMF expects the members of the board of directors and senior management to participate actively in designing and implementing sound commercial practices aimed in particular at protecting the interests of consumers.

In light of the roles and responsibilities incumbent upon them under the Governance Guideline,⁷ the board of directors and senior management should, in particular:

- demonstrate their firm commitment to achieving the expected results with respect to commercial practices, namely, by:
 - developing strategies and implementation plans in order to achieve said results with respect to commercial practices;
 - identifying a senior officer responsible for carrying out the initiatives aimed at establishing and promoting sound commercial practices;
 - developing a compensation structure for senior officers geared towards achieving long-term results;
 - establishing internal reports that include the most useful information and indicators to allow them to measure the institution's performance with respect to commercial practices;
- ensure that the institution's framework supports the achievement of the expected results in matters of sound commercial practices, namely, by:
 - reducing the risk of sales inappropriate to consumers' needs;
 - ensuring, as needed, that any advice given is of a high quality;
 - examining consumer complaints in a fair manner;
 - protecting information obtained from consumers;
- establish a code of ethics and professional conduct and communicate to staff the importance of understanding and complying with the code;
- establish mechanisms and controls to ensure that all departures from policies and procedures as well as all other situations that jeopardize the protection of the interests of consumers are given special attention by decision makers.

⁷ *Autorité des marchés financiers*, Governance Guideline, April 2009.

A2. Design, selection, promotion and distribution of financial products and services

The AMF expects financial institutions to develop a framework to reduce the risk of sales inappropriate to consumers' needs, from the point of selection or design of financial products and services to distribution.

Regardless of the institution's organizational or operational structure, its status and relationship within a group and whether or not it relies on third parties⁸ or independent and certified distribution networks, the AMF expects the institution to act in the best interests of its clients.

The AMF expects a financial institution to establish policies and procedures and implement controls allowing it to offer consumers financial products and services which meet their needs and provide disclosure that is appropriate for informed decision making as well as quality advice, as the case may be, to reduce any incidence of inappropriate sales.

Before marketing a financial product or service, the institution should carry out a diligent review of the product or service in relation to its business model, the existing rules and regulations and its risk management approach. In particular, the policies, procedures and controls put into place should allow the institution to:

- offer a viable product or service which allows the consumer to benefit from a healthy level of competition in the financial markets;
- target the consumers for whom the product or service is likely to be suitable in meeting their needs, as well as the clients for whom the product or service is likely to be unsuitable;
- analyze financial, accounting and taxation issues and assess the risks resulting from the product or service⁹ by considering, among other things, changes (threats or opportunities) associated with the environment or stemming from the institution's policies that could harm consumers;
- ensure that distribution methods suitable to the product or service, particularly in light of the laws and regulations in force¹⁰ and whether or not advice should be provided;
- anticipate the information that consumers will need in order to make an informed decision, keeping in mind that consumers do not all have the same informational needs;

⁸ For example, for the design of products and services, the preparation and dissemination of disclosure documents or advertising materials, the recruitment or training of persons providing advice, etc.

⁹ For example, credit risk, market risk, liquidity risk, insurance risk, reputational risk and compliance risk.

¹⁰ Distribution of insurance products in Québec subject to *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2 and its regulations.

- if applicable, provide for the disclosure to consumers of any situation based on circumstances likely to limit or compromise the impartiality of the advice given;
- ensure that information intended for consumers can be provided to them upon request and in a timely manner;
- ensure that information intended to be delivered to consumers electronically can also be made available in hard copy;
- plan for the informational and training needs of staff providing advice in order to ensure they are adequately acquainted with, and have sufficient understanding of, the characteristics and risks of the product or service in question, and are able to identify all relevant information to be provided to consumers;
- provide for a meticulous assessment of the main characteristics of a new product or service and of the disclosure documents related thereto by competent persons within every appropriate department of the institution,¹¹ including a product or service originating from a third party;
- ensure that the information about the product or service is clear, relevant, truthful and not misleading and that it complies, as the case may be, with applicable laws and regulations;
- provide for an independent review of advertising materials and other communications intended for consumers other than by the person or organization that prepared or designed them;
- ensure that consumers can have access to additional information after the initial purchase of a product or service;
- provide for systems and controls to notify consumers of any remedial action taken with respect to a product or service;
- maintain a file regarding the diligent review carried out by the institution with respect to a product or service;
- monitor the product or service after its launch to ensure it still meets the needs of target consumers, assess the performance of the various methods of distribution used with respect to sound commercial practices and, if necessary, take the necessary remedial actions.

¹¹ Compliance, risk management, finance, sales, etc.

A3. Advice

The AMF expects financial institutions to ensure the delivery of quality advice.

Certain financial products and services offered on the market present few risks for consumers and do not require advice. Other products and services, which may be complex, difficult to understand or assess or may affect a consumer's financial situation, do require advice.

Whether advice is given directly or independently,¹² the AMF expects an institution to ensure that the best possible advice is provided. Accordingly, institutions should set up policies, procedures and controls to ensure the delivery of quality advice, in accordance with any legal and regulatory requirements.¹³ Advice should include, in particular :

- a fair and equitable analysis of the relevant elements;
- the timely communication of information in light of the consumer's degree of knowledge and experience with respect to financial products and services, so as to allow for informed decision making;
- the disclosure of any situation liable to compromise the impartiality of the advice given, limit the advice given or place the interests of the institution or a third party above those of the consumer;
- the elements that should be included in the "client files" so that the institution can exercise independent control after the fact on the quality of the advice given, take any necessary remedial measures with respect to the delivery of advice and, if applicable, be in a position to examine fairly any complaints submitted to it.

In order to ensure the delivery of quality advice, the institution should, in particular:

- establish recruitment practices through which it can identify behaviour that raises doubts regarding a person's ethics, integrity, competence, judgment or sense of responsibility, all of which are essential criteria for providing quality advice. Such practices could include:
 - initial and periodic controls;
 - qualifications sought;

¹² Directly by the institution or through a certified independent distributor.

¹³ For example, *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2 ("Distribution Act") and its regulations.

- obtaining information;
- procedures to respond to the information obtained;
- rules for determining whether an individual is still qualified to perform his functions;¹⁴
- establish a continuous training program that allows the persons giving advice to:
 - keep abreast of market trends, economic conditions, innovations and modifications made to the products and services;
 - maintain an appropriate level of knowledge about their industry segment, including the characteristics and risks of the products and services;
 - know the applicable legal and regulatory requirements;
 - know the requirements for the communication of information regarding the products and services and for appropriate disclosure of any situation liable to compromise the impartiality of the advice given or limit such advice;
 - be familiar with the documentation regarding the products and services and answer reasonably foreseeable questions;
 - provide a consumer with sound advice following a fair and equitable analysis of the relevant elements, including the consumer's needs;
- establish and periodically review the system for evaluating the performance of persons providing advice and their remuneration structure, so as to foster sound commercial practices.¹⁵

¹⁴ Under the Distribution Act, an insurer who gives advice directly (an "insurer firm") must regularly verify that its representatives are still certified. Furthermore, under section 104 of the same statute, an insurer who gives advice directly must inform the AMF when it terminates its association with a representative. If the firm terminates its association with the representative for reasons relating to the representative's activities, it must inform the AMF of those reasons.

¹⁵ Performance should not be determined solely on the basis of advice resulting in sales.

A4. Complaint examination and dispute resolution

The AMF expects financial institutions to examine consumer complaints fairly, in accordance with a policy and with straightforward, accessible and effective procedures.

Pursuant to the legislative provisions set forth in the laws administered by the AMF,¹⁶ every institution should provide equitable examination of complaints submitted to it in order to maintain consumer confidence. To this end, the institution should establish an independent process and designate a person in charge of examining complaints and resolving disputes. In particular, the institution should adopt a policy and procedures allowing it to:

- examine complaints made in connection with a product or service, regardless of its means of distribution, and resolve any disputes arising therefrom;
- document data regarding complaints;
- promote and disclose its complaint examination and dispute resolution process and facilitate access thereto by consumers, in person, by phone or on-line;
- provide written confirmation as soon as a complaint has been received;
- inform the consumer forthwith and in writing that he can ask for a copy of his file to be sent to the AMF if he is dissatisfied with the examination of his complaint or its outcome;
- set a maximum time limit for the examination of a complaint and for a written answer clearly summarizing the reasons for its position;
- ensure that the persons who provide advice are familiar with the complaint examination and dispute resolution process and that they communicate this information to consumers;
- establish internal reports allowing it to pinpoint trends, highlight aspects that need improvement, target the distribution methods and the products and services in question, identify those parties who have failed to comply with the principles of sound commercial practices and take the appropriate measures to remedy any deficiencies.

¹⁶ *An Act respecting insurance*, R.S.Q., c. A-32, sections 285.29 to 285.31 and 285.33;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, sections 131.1, 131.2 and 131.4;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, sections 153.1, 153.2 and 153.4.

A5. Protection of information obtained from consumers

The AMF expects financial institutions to handle information obtained from consumers with the appropriate degree of confidentiality.

The theft, loss or inappropriate use of information obtained from consumers and all unethical commercial practices represent a risk to consumers and a threat to the reputation of institutions and the financial sector as a whole. These events can result in significant financial losses for both consumers and institutions.

In the course of continuously assessing and managing its information security risks, the institution should take the appropriate measures to lessen the likelihood that such incidents will occur.

The financial institution should implement a policy and procedures with respect to the protection of information obtained from consumers in accordance with the applicable laws and regulations.¹⁷ All the necessary measures, including awareness programs with respect to information security intended for staff at all levels of the organization and for consumers, should be taken to ensure that information obtained from consumers:

- is not disclosed or used for purposes other than that for which it was gathered, unless the consumer consents to such disclosure or use and is in a position to understand the scope of his consent or unless the applicable laws and regulations require such disclosure or use; and
- is not used for the purpose of harming consumers or benefiting from such information.

These measures should be endorsed by the board of directors and senior management. They should evolve in light of organizational changes at the institution and new emerging threats to the security of information.

If the confidentiality of information about consumers has been violated, the institution should promptly disclose this fact to consumers. It should also inform the AMF of any significant violations involving the protection of information obtained from consumers.

¹⁷ *An Act respecting the protection of information obtained from consumers in the private sector*, R.S.Q., c. P-39.1;
An Act to establish a legal framework for information technology, R.S.Q., c. C-1.1.
Where applicable, *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2; See also the *Regulation respecting the keeping and preservation of books and registers (no. 10)*; *An Act respecting the distribution of financial products and services*, (S.Q. 1998, c. 37, s. 223, par. 1, subpars. (11), (12); M.O. 2009-06, 2005-05-19, G.O. 2009-09-25.

PART B**SPECIFIC EXPECTATIONS**

	Section	Subsection
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Examination and settlement of claims		B3-1
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B2-1. Principal protected note offerings

Background

Over the past few years, principal protected notes (“PPNs”) have become more and more complex, with various risk/return profiles. At present, a broad range of underlying assets is associated with PPNs, such as unmanaged investments (e.g.: baskets of shares, bonds, stock market indices, currencies) and actively managed funds (e.g.: mutual funds). Consumers may therefore have trouble understanding the risks, costs and return associated with them.

To ensure that consumers have all the information they need to make informed decisions when they consider purchasing such products, the AMF is setting out its expectations regarding the content of the information which institutions should disclose according to various sales channels (in person, by telephone and on-line), as well as the manner in which they should do so and when. The AMF also expects institutions to provide consumers who so request with certain other current information to help them monitor their investments.

For the sake of consistency, the AMF’s expectations presented in subsection B2-1 are harmonized with federal regulations (“Principal Protected Notes Regulations”).¹⁸

The AMF expects all disclosures provided by an institution to a consumer in accordance with this subsection to take place in a language that is clear and simple and in a manner that is not misleading.

Definitions

For the purposes of subsection B2-1:

a principal-protected note is a financial instrument that is issued by an institution to a consumer and that:

- provides for one or more payments to be made by the institution that is determined, in whole or in part, by reference to an index or reference item, including
 - the market price of a security, commodity, investment fund or other financial instrument; or
 - the exchange rate applicable between any two currencies; and
- provides that the principal amount that the institution is obligated to repay at or before the note’s maturity is equal to or more than the total amount paid by the consumer for the note.

The term “interest”, in relation to a principal protected note, includes any return payable under the note by an institution in respect of the principal.

¹⁸ SOR/2008-180 (Canada Gazette Part II)

1. Disclosure before purchase

The AMF expects consumers to have any information that is likely to influence their decision to invest in PPNs.

Subject to the specific conditions set out in item 2 of this subsection, the AMF expects an institution to provide the consumer with a synopsis, at least two days before entering into an agreement for the issuance of a PPN, of the following information orally, by means of a person who is knowledgeable about the terms and conditions of the note, and in writing:

- the term of the note, and how and when the principal is to be repaid and the interest, if any, is to be paid;
- any fees and their impact on the interest payable;
- the manner in which interest is to be accrued, and any limitations in respect of the interest payable;
- any risks associated with the note, including, if applicable, the risk that no interest may accrue;
- the distinction between PPNs and fixed-rate investments with respect to the levels of risk and return;
- the circumstances in which a PPN could be an appropriate investment;
- the terms of any secondary market offered by the institution;
- if applicable:
 - the fact that the notes relate to deposits that are not guaranteed by the deposit insurance fund within the meaning of the *Deposit Insurance Act*¹⁹ or eligible for deposit insurance coverage by the Canada Deposit Insurance Corporation;
 - the fact that the note may be redeemed before maturity and, if applicable, that redemption before maturity may result in the consumer receiving less than the amount invested;
 - the fact that the consumer has the right to cancel the agreement for the purchase of a PPN, and the terms for exercising such right;
 - the fact that the note allows the institution to amend the note and the circumstances under which it can do so; and
 - the fact that the manner in which the note is structured or managed could place the institution in a conflict of interest;

¹⁹ R.S.Q., c. A-26.

- any information that is likely to influence a consumer's decision to invest in PPNs; and
- the fact that the information referred to in item 3.1 of this subsection is available on request and that the disclosure referred to in item 3.2 will also be available after the PPN is issued.

If the institution sends the information by mail, the AMF will consider the written disclosure to have been provided five business days after the postmark date.

2. Specific conditions

2.1 Agreement entered into in person

Any oral and written disclosure set out in item 1 of this subsection may be provided at any time before entering into the agreement for the issuance of a PPN if the institution and the consumer expressly consent to it and the agreement is entered into in person.

2.2 Agreement entered into by electronic means

Agreement without right of cancellation

The agreement for the issuance of a PPN entered into by electronic means may take place without the oral disclosure referred to in item 1 of this subsection. However, the institution should, at least two days before entering into the agreement, provide the written disclosure referred to in item 1 of this subsection and give the consumer the telephone number of a person who is knowledgeable about the terms and conditions of the note.

Agreement with right of cancellation

If the agreement to issue a PPN is entered into by electronic means and it provides the consumer with a right of cancellation within two or more days after the agreement is entered into, the AMF expects the institution to make the minimum written disclosure referred to in item 1 of this subsection at least two days before entering into the agreement.

Furthermore, the AMF expects the institution to provide the consumer, before entering into the agreement or without delay thereafter, with the telephone number of a person who is knowledgeable about the terms and conditions of the note. However, if disclosure of the contact information for such person is provided after entering into the agreement, the time period of at least two days given to the consumer for cancelling the agreement should only begin to elapse starting on the day following such disclosure.

2.3 Agreement entered into by telephone with right of cancellation

If the agreement to issue a PPN is entered into by telephone and it provides the consumer with a right of cancellation within two or more days after the agreement is entered into, the AMF expects the institution to make the oral disclosure referred to in item 1 of this subsection at least two days before entering into the agreement.

As well, the AMF expects the institution to provide, before entering into the agreement or without delay thereafter, the written disclosure referred to in item 1 of this subsection. However, if such written disclosure is provided after entering into the agreement, the time period of at least two days given to the consumer for cancelling the agreement should only begin to elapse starting on the day following such disclosure.

3. Additional disclosure

3.1 Detailed information regarding PPNs

The AMF expects the institution to provide the disclosure referred to in item 1 of this subsection in a full and complete manner about the PPNs offered by it by posting such disclosure on its websites and in written format to be sent to any person who requests it.

3.2 Additional information, following the issuance of a PPN

Information about the value of the note

Further to a consumer's inquiry concerning the value of his PPN on a specified day, the AMF expects the institution to disclose to him the following information without delay:

- either the net asset value of the PPN on the specified day and how that value is related to the interest payable under the PPN; or
- the last available measure, before the specified day, of the index or reference item on which the interest on the PPN is determined and how that measure is related to the interest payable under the PPN.

Information about early redemption of the note

Prior to purchasing or redeeming a PPN before maturity at the request of a consumer, the AMF expects an institution to disclose the following to the consumer:

- (a) the value of the note on the last business day before the day that the investor requests the redemption or purchase, or the value of the note based on the last available measure of the index or reference item on which the interest is determined;
- (b) the amount of any penalty or charge;
- (c) the net amount that the investor would have received for the redemption or purchase, after deducting the amount referred to in paragraph (b) from the value of the note referred to in paragraph (a); and
- (d) when and how the value of the PPN will be calculated, and the fact that the value of the note may differ from the value referred to in (a) above.

Information about amendments to the note

Before making an amendment to a PPN that may have an impact on the interest payable under the note, the AMF expects the institution to disclose details of the amendment, and its potential impact on the interest payable, in writing to the consumers concerned. If it is not possible to disclose this information in advance, the AMF expects the institution to make such disclosure without delay after the amendment is made.

Information about the reference item

If a PPN ceases to be linked to an index or reference item that was to be used to determine the interest payable under the PPN and, as a result, no interest will be paid, the AMF expects the institution to disclose that fact to the consumer without delay.

4. Advertisement content

In each of its advertisements for PPNs, the AMF expects an institution to disclose clearly how the public may obtain information about the PPNs.

In any advertisement that refers to features of PPNs or the interest payable under them, the AMF expects an institution to also disclose the following:

- the manner in which interest is to be accrued, and any limitations in respect of the interest payable;
- if the advertisement gives an example of a situation in which interest would be payable, an example of another situation in which no interest would be payable;
- if the advertisement gives an example of a situation in which interest would be payable that is in addition to any guaranteed minimum interest, an example of another situation in which only the minimum interest would be payable; and
- if applicable, the fact that the notes relate to deposits that are not guaranteed by the deposit insurance fund or eligible for deposit insurance coverage by the Canada Deposit Insurance Corporation.

The AMF expects an institution that uses past market performance in an advertisement for a PPN to represent that performance fairly and, if hypothetical examples are used, the underlying assumptions must be realistic and must be disclosed in the advertisement. The AMF also expects the institution to disclose in the advertisement that past market performance is not an indicator of future market performance.

B3-1. Examination and settlement of claims

The AMF expects insurers to interpret policy clauses consistently and settle claims in a prompt and fair manner, according to a straightforward, accessible and effective process.

The AMF considers the examination and settlement of claims to be essential for protecting the interests of consumers.

Consequently, the insurer should designate an officer or employee to be in charge of the examination and settlement of claims. The insurer should implement a policy and procedures that:

- provide that claims will be dealt with fairly, as soon as possible and in a manner that is transparent to the consumer;
- create an environment that helps the claims adjuster, where applicable, to abide by his obligations under *An Act respecting the distribution of financial products and services*²⁰ and his code of ethics, among other things;
- provide that policy clauses will be interpreted consistently and with a view to arriving at a fair settlement;
- enable the insurer to disclose its claims examination procedure, including the rules for paying benefits, and facilitate access thereto by the consumer, at the insurer's place of business or on-line;
- do not aim to refuse a claim without a reasonable examination, to conceal policy clauses that are relevant to the claim, to dissuade the consumer from retaining the services of a lawyer or claims adjuster, where applicable, or to settle for a lower amount than he is entitled to receive, in particular through remuneration incentives for the employees in charge of claims;
- use reasonable methods for evaluating claims and losses, where applicable, such that, for example, a claim is not rejected due to the consumer's failure to disclose a risk factor that the consumer could not reasonably have expected to have to disclose;
- provide that the reasons for the total or any partial rejection of a claim must be clearly and promptly communicated to the consumer;
- provide for the measures that the consumer can take if he is dissatisfied with the examination or proposed settlement of his claim;

²⁰ R.S.Q., c. D-9.2.

- provide that the persons or companies that act on its behalf know and respect:
 - the institution's claims examination and settlement policy and procedures so that they can provide appropriate information to the consumer and assist him adequately when he is preparing his claim and throughout the entire claims management process;
 - the procedure to be followed to file a complaint with the insurer and are able to inform the claimant or beneficiary of the measures the claimant or beneficiary can take if he is dissatisfied with the examination or proposed settlement of his claim;
- provide for the documentation of claims files;
- provide for management reports that show the insurer's performance regarding claims examination times and the degree of satisfaction of claimants and beneficiaries with respect to the settlement of claims, and highlight what must be improved.

B6-1. Block transfers of business

The AMF expects any new contract issued by a damage insurer benefiting from a block transfer to provide the same or greater coverage than that offered in the previous contract, insofar as such coverage still meets the needs of the insured.

Furthermore, the AMF expects the block transfer to include a right allowing the insured to review and cancel the contract within 10 days of the date the contract comes into effect.

The block transfer of business (“block transfer”) is a practice whereby a firm, independent representative or independent partnership transfers a volume of business subscribed for with one or more insurers to one or more other insurers.

The block transfer results in the issuance of a new insurance contract by the insurer benefiting from the transfer, such that it does not involve a contract renewal.

The AMF expects insureds affected by such transfers to be treated fairly and be given all the necessary information and time to make an informed decision.

An insurer benefiting from a block transfer should:

- require the firm, independent representative or independent partnership to send a notice to the consumers affected by the block transfer. The notice must comply with any regulatory requirements;²¹
- not require the transfer of a minimum volume of business or a commitment regarding the period of time during which the volume of business must remain on its balance sheet;
- accept all the insureds forming part of a block transfer, the whole for a term equal to a renewal;²²
- undertake to provide the insured with the most advantageous coverage between the coverage provided for in the previous contract and the coverage provided for in the new contract, the whole for a definite period equal to a renewal, unless there has been a change in the declared risk;
- undertake to send the documentation relating to the new contract as soon as possible, so that the insured has the information at least 30 days and not more than 60 days before the effective date of the new contract;

²¹ Refer to the draft *Regulation to amend the Regulation respecting Information to be Provided to Consumers* published in the AMF Bulletin on September 4, 2009. This regulation is not yet in force.

²² For purposes hereof, the term of an insurance contract is not limited to the current one (1) year; it corresponds to the term of the contract being transferred.

- undertake to provide the insured with a right to cancel the insurance contract under conditions that are not detrimental to the insured:
 - a right to cancel the contract within 10 days of its effective date;
 - if the notice of cancellation was given in writing within 10 days after the effective date of the contract, the insurer must refund to the insured the portion of the premium collected for the period subsequent to the cancellation;
 - the insured must not assume other costs related to the cancellation of the contract when the contract is cancelled during the review period available to the insured; and
 - the usual cancellation conditions apply if the cancellation occurs after the 10-day period; and
- keep all information relating to each block transfer agreement entered into, including the conditions of transfer.

B6-2. Financial activities of insurers with brokerage firms

The AMF expects damage insurers to disclose to consumers, where applicable, any business relationship they have with brokerage firms that could undermine the advisory role that brokers assume with respect to consumers.

Consumers generally expect damage insurance brokers to provide them with the best insurance product offerings available on the market.

The existence of financing activities between an insurer (or persons associated with the insurer) for the benefit of a brokerage firm (or individuals or legal persons associated with the firm) can cause the firm to be subject to incentives that are likely to limit its latitude for providing consumers with the best insurance offering available on the market.

These relationships can constitute a significant source of financing for firms. As such, the AMF considers it advisable to provide a framework for such relationships rather than prohibit them.

In addition to the central notion of a framework based on the disclosure to consumers of any business relationship between firms and insurers, the AMF wishes to set out its expectations with respect to financing activities.

The AMF expects the disclosure of direct or indirect financing activities for the benefit of brokerage firms to include activities such as the granting of loans to firms or individuals or legal persons associated therewith, investments in preferred financing shares, contingent commissions and the supply of computer equipment.

The AMF expects the loans granted by insurers or their investments in preferred financing shares to be made under conditions that would have been imposed by any lender that does not have a business relationship with the brokerage firm.

Furthermore, the AMF expects financing activities to comply with the provisions under sections 147 and following of *An Act respecting the distribution of financial products and services*²³ and the interpretation thereof set out in the staff notice issued by the AMF regarding ownership of damage insurance firms.²⁴

²³ R.S.Q., c. D-9.2

²⁴ AMF Bulletin, February 16, 2007.