Notice relating to individual variable insurance contracts entered into before June 1, 2023

The *Regulation respecting the prohibition on requiring certain fees from holders of individual variable insurance contracts relating to segregated funds*[1] (the "Regulation") came into force on June 1, 2023. The Regulation prohibits the practice of requiring deferred sales charges ("DSCs") from clients for contracts entered into as of June 1, 2023.

This notice clarifies the expectations of the Autorité des marchés financiers (the "AMF") regarding authorized insurers that have entered into individual variable insurance contracts ("IVICs") with a DSC option before June 1, 2023, in which additional investments may be made after that date.

The *Insurers Act*[2] requires authorized insurers to adhere to sound commercial practices and treat their clienteles fairly.[3] Consistent with these requirements, in November 2022, the AMF published an update of its *Sound Commercial Practices Guideline*[4] (the "Guideline") in which it sets out its expectations regarding the fair treatment of clients (FTC).

The AMF wishes to remind authorized insurers that their good commercial practices have an effect on their client relationships, from before a contract is entered into until all the obligations under the contract are fulfilled.

Although IVICs entered into before June 1, 2023 are not specifically covered by the Regulation, the AMF considers the sales practice of using DSCs in IVICs to be contrary to FTC, as stated in the AMF's news release of February 28, 2022.[5] Consequently, the AMF believes that insurers that sold such contracts must treat their clients fairly in accordance with the expectations in the Guideline. The AMF expects the following practices to be implemented by insurers that entered into IVICs with a DSC option before June 1, 2023.

Options offered to clients

> *The AMF expects financial institutions' distribution strategies to take into account the needs and interests of the target client groups and to be tailored to the products.*[6]

The AMF believes that insurers should make various purchase options available as alternatives to DSCs so that intermediaries can offer options that consider the needs and interests of their clients. A diversified offering of purchase options will enable intermediaries to assess the suitability of a substitute for the DSC option for future investments in contracts entered into before June 1, 2023. Intermediaries will be able to make recommendations and provide explanations to their clients so the latter can make an informed decision regarding the option best suited to their interests.

However, the AMF clarifies that the representative chargeback option[7] should not systematically be the preferred option for future investments in contracts entered into before June 1, 2023. Without

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1. *Regulation respecting the prohibition on requiring certain fees from holders of individual variable insurance contracts relating to segregated funds*, (2023) 155 G.O. II, 827.
2. *Insurers Act*, CQLR c. A-32.1
3. *Ibid*, s. 50.
4. AUTORITÉ DES MARCHÉS FINANCIERS, *Sound Commercial Practices Guideline*, November 2022.
5. *AMF delivers Québec's response to the joint announcement by CCIR and CISRO with respect to segregated funds*, (news release in French only), February 28, 2022.
6. Guideline, Principle 5.4.
7. Under the chargeback option, in the event of a redemption by the client, the intermediary returns all or a portion of the commission it received from the sale of an IVIC, according to a pre-determined schedule.

appropriate controls, this purchase option presents risks for clients. As a member of the Canadian Council of Insurance Regulators ("CCIR") and the Canadian Insurance Services Regulatory Organizations ("CISRO"), the AMF was involved in developing the joint position issued on May 15, 2023.[8]

The AMF expects the indicators used and controls exercised over distribution strategies by insurers to make it possible to assess the performance of the alternatives to the DSC option that was entered into before June 1, 2023. If the alternative options provided are not suited to the interests of clients who entered into those contracts, the AMF expects insurers to take corrective action.

The AMF also expects the indicators used and controls exercised by insurers to make it possible to maintain the existing guarantees and contracts where those contracts are advantageous for their clients.

Information to intermediaries

> *Staff, intermediaries, or other persons acting on behalf of the institution who are involved in offering its products receive relevant information and appropriate training on the products. They have an adequate grasp of the product's features, and the target client groups.*[9]

The AMF considers the insurers to be responsible for ensuring that intermediaries have access to relevant information and appropriate training on the various purchase options that are available for their clients. Accordingly, intermediaries should benefit from all the tools needed to assess and offer clients an alternative to replace the DSC purchase option entered into before June 1, 2023. Intermediaries should also be informed of the target clientele for whom maintaining the DSC option for future investments in such contracts may be the best option. Lastly, insurers should use reporting, indicators, and controls to obtain reasonable assurance that the intermediaries meet the insurers' FTC expectations and enable them to discharge their own FTC obligations.

Information to clients

> *Periodic communications remind clients of the importance of reviewing their needs based on changes in their personal situation to ensure that the product is still appropriate for them. The institution therefore takes the necessary steps to ensure that clients receive ongoing and adequate service.*[10]

The AMF expects insurers to inform clients of the importance of reviewing their needs with the intermediary in charge of their file in order to assess the best purchase option for amounts to be invested in existing contracts. This initiative is particularly important for clients who invest in an IVIC on a pre-determined schedule or by pre-authorized debit. The AMF also expects the procedures implemented by insurers to facilitate a change in purchase option for IVICs entered into before June 1, 2023, should such a change be the most advantageous option for a client.

Given that the Regulation has been applicable since June 1, 2023, the AMF recognizes that an adjustment period may be necessary for contracts entered into before that date. The AMF

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8 CANADIAN COUNCIL OF INSURANCE REGULATORS and CANADIAN INSURANCE SERVICES REGULATORY ORGANIZATIONS, *CCIR-CISRO Position on the Discussion Paper on Upfront Compensation in Segregated Funds*, (news release), May 15, 2023.

9 Guideline, Principles 4 and 5.4

10 Guideline, Principle 5.8

nevertheless expects insurers to act with diligence and take concrete actions to achieve the expected FTC outcomes for contracts entered into before the coming into force of the Regulation.

Further information

Additional information is available from the AMF Information Centre at:

Québec City: 418-525-0337
Montréal: 514-395-0337
Toll-free: 1-877-525-0337
www.lautorite.qc.ca

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