

Notice relating to obligations of representatives and insurers with respect to service offered to clients under insurance of persons contracts – Orphan clients

Under current insurance industry practice, policies sold by insurance of persons representatives, including former representatives, remain registered (coded) in their names for as long as the policies are in force. As a result, if stipulated in their representation contracts, they continue to receive regular commissions related to the sale of the policies. The commission due on the sale of a policy can in fact be payable over time.

Some representatives leave the profession and abandon their representative's certificates without transferring (selling) their clients, while others cease doing business with the insurer on whose behalf they issued the policies. As for clients, they may decide to change representatives. Therefore, the original policy could remain coded to representatives who, under the circumstances, no longer provide the service related to the policies they sold.

According to information gathered by the *Autorité des marchés financiers* (the "Authority" or the "AMF"), these clients could find themselves without a representative and, as a result, may no longer receive the required service.

Obligations of representatives and insurers towards clients

Given this situation, the Authority is specifying the obligations of representatives and insurers towards clients.

When the relationship between a client and a representative ends, regardless of the reason, both the representative and the insurer concerned must ensure that the client continues to be treated fairly.

For as long as a policy is in force, it must be assigned to a qualified representative (duly certified) to ensure service to the client.

Representatives have obligations with respect to the continuity of the service to be provided to clients. Certified representatives must demonstrate diligence and availability with respect to their clients. In addition, they must promptly carry out any mandate given to them. Therefore, a representative who no longer meets his obligations pertaining to the follow-up on a policy he sold must ensure that another certified representative assumes these obligations and, more particularly, provides service to the client. These obligations derive principally from section 16 of *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2, and sections 4, 23 and 24 of the Code of ethics of the *Chambre de la sécurité financière*, R.R.Q., c. D-9.2, r. 3.

Insurers also have obligations towards clients who have subscribed for contracts with them. They are required, under section 222.2 of *An Act respecting insurance*, R.S.Q., c. A-32, to adhere to sound commercial practices. Therefore, among other things, they must take the necessary measures to ensure that all clients with whom they have entered into contracts receive ongoing adequate service. This obligation begins at the time the insurance contract is entered into and ends when the contract expires or is cancelled, terminated or replaced.

Rules governing remuneration for policies sold by representatives who no longer ensure service continuity

A person can only receive remuneration for products sold or services rendered where he complies with the conditions set out under *An Act respecting the distribution of financial products and services*. For example, he must hold a representative's certificate issued by the Authority at the time he sells a product or renders a service or at the time he provides advice or a contract is amended.

A representative who has left the profession and therefore no longer holds a representative's certificate might continue to receive deferred payments of commissions (payments the parties agreed to spread over time) related to a policy sold at the time he held a certificate.

However, pursuant to their obligation to adhere to sound commercial practices, insurers must properly inform the persons being offered a product or service and act fairly in dealings with them. Therefore, insurers should establish overall remuneration strategies so that such remuneration is not detrimental to the fair treatment of clients.

Application of this Notice

The Authority will soon contact insurers of persons registered in Québec to obtain their action plans with respect to this Notice.

The Authority reminds insurers that under *An Act respecting insurance* and *An Act respecting the distribution of financial products and services*, it may take measures to end any practice that is not in compliance with these statutes, including an administrative sanction or an order.

Further information

Further information is available from the AMF Information Centre:

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Montréal: 514-395-0337

Toll-free: 1-877-525-0337

Fax: 418-647-9963

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