

## Notice regarding information collection and insurance advice

The *Autorité des marchés financiers* (the “AMF” or the “Authority”) seeks by way of this notice to clarify representatives’ obligations related to the collection of information and the provision of insurance advice within the meaning of the *Act respecting the distribution of financial products and services*<sup>1</sup> (the “Distribution Act”).

Sections 3 through 6 of the Distribution Act provide that “[A representative in insurance of persons / A group insurance representative / A damage insurance agent / A damage insurance broker] is a natural person **who offers** [...] insurance products.” The Distribution Act also stipulates that any person who, without a certificate from the AMF, acts as or purports to be a representative is guilty of an offence.<sup>2</sup>

As confirmed by the courts, “offering” insurance products<sup>3</sup> is an act reserved for insurance representatives who hold a certificate issued by the AMF (a “representative”). With respect to how the term “offering” is to be interpreted, the courts have indicated that, in using the verb “to offer,” the legislator wanted to regulate the greatest number of activities related to insurance products. Moreover, the courts have noted on several occasions that the objective of the Distribution Act is to protect consumers and that its provisions must be interpreted as broadly as possible to ensure this protection.

Section 27 of the Distribution Act sets out obligations for representatives in connection with information collection and advice:

“27. Insurance representatives must inquire into their clients’ situation to assess their needs.

They must ensure to appropriately advise their clients regarding matters that fall within the sectors in which they are authorized to act; if they can, they shall offer their clients a product that meets their needs.” [Our emphasis]

The following clarifies how the AMF intends to apply this section.

### Collection of information

The obligation for representatives to “inquire into their clients’ situation” can be seen as twofold:

- 1) collecting factual information on a client’s situation; and
- 2) considering and analyzing this information.

Representatives may delegate the first part to non-certified persons. However, in order to appropriately advise their clients, they must carry out the second part themselves.

Representatives who decide to mandate non-certified persons to collect client information must be aware of the related risks:

- Representatives remain fully responsible for the collection of information and cannot transfer this responsibility to the persons they mandated.

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<sup>1</sup> As amended by Bill 141, *An Act mainly to improve the regulation of the financial sector, the protection of deposits of money and the operation of financial institutions*, S.Q. 2018, c. 23.

<sup>2</sup> Section 461 of the Distribution Act provides that “Subject to the provisions of the second paragraph of section 12 and of Title VIII, every person that, without authorization from the Authority, acts as a representative, uses the title or abbreviated title of a representative, or purports to be a representative is guilty of an offence.”

<sup>3</sup> For the purposes of this notice, the term “insurance product” or “product” refers to an insurance product and includes annuities and segregated funds.

- For example, if a representative decides to rely on the information collected by a non-certified person and the information proves to be incomplete or does not reflect the information disclosed by the client, the representative will not fulfill the obligation of inquiring into the client's situation and may be exposed to sanctions.
- Representatives should ensure that information has been collected in a manner that is impartial and unbiased (for example, the way the questions were asked) in order to ensure that the information is reliable. If a representative intends to rely solely on information collected by the person mandated, that person should also ask the client to disclose all the necessary information that allows the representative to thoroughly inquire into the client's situation.
  - A non-certified person could not, however, inform a client that they have the option of disclosing certain information, give the client explanations, or make remarks that might influence the client. Such acts may be considered to be acts that only representatives could perform in this context (see the following section for greater detail on the conditions allowing a non-certified person to provide insurance advice).
- If the non-certified person who collects information from a client is not authorized to receive a share of a commission in accordance with sections 100 or 143 of the Distribution Act,<sup>4</sup> their remuneration must not be related to the fact that a sale did or did not take place.
  - This person could, however, be remunerated by various means, such as a lump sum, a salary or a fee, or based on the number of clients from whom information was collected.
  - An exception to this rule is a distributor,<sup>5</sup> which is authorized to receive remuneration for the sale of a product it is authorized to sell. However, a distributor that also refers clients or is mandated by a representative to collect information cannot, like any non-certified person, be remunerated based on the sale of a product.

A computerized tool may also be used to collect information. In this case, the tool should be designed so as to meet the above requirements for a non-certified person who collects information.

### **Advice**

The obligation for representatives to “appropriately advise” requires them to inquire into their clients' situation in order to identify and analyze their needs so that they can help clients choose a product and provide them with the required information and explanations on the products they distribute. Representatives must then offer their clients a product that meets their needs, if they are able to do so. Conversely, representatives must inform their clients when none of the products they are

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<sup>4</sup> Section 100 of the Distribution Act: A firm may share a commission it receives only with another firm, an independent representative or independent partnership, a broker or agency governed by the Real Estate Brokerage Act (chapter C-73.2), a securities dealer or securities adviser governed by the Derivatives Act (chapter I-14.01) or the Securities Act (chapter V-1.1), a deposit institution, an insurer or a federation within the meaning of the Act respecting financial services cooperatives (chapter C-67.3).

The commission shall be shared in the manner determined by regulation.

The firm shall enter every sharing of a commission in a register, in accordance with the regulations.

Section 143 of the Distribution Act: No independent representative or independent partnership may share a commission except with another independent representative or independent partnership, a firm that is not a deposit institution or a broker or agency governed by the Real Estate Brokerage Act (chapter C-73.2).

The commission shall be shared in the manner determined by regulation.

Independent representatives and independent partnerships shall enter every sharing of a commission in a register in the manner prescribed by regulation.

<sup>5</sup> Within the meaning of Title VIII of the Distribution Act.

authorized to offer meet their needs. Representatives are responsible for demonstrating that they have complied with all these key steps.

Representatives must always advise their clients appropriately. The fact that representatives are bound by this obligation does not necessarily mean that providing advice is an act that is reserved for representatives.

Non-certified persons could provide advice as long as they do not offer products and do not purport to be representatives. The AMF intends to apply the law so that non-certified persons who provide consumers with advice related to a product cannot receive direct or indirect remuneration from the person authorized to sell the product and to whom the consumer was referred. In fact, such non-certified persons could not receive remuneration because in doing so they would be considered to be taking part in a product offering. For example, a journalist who provides insurance advice in a column and a professional (accountant, lawyer, etc.) who advises a client would not need to be certified as long as they comply with the conditions set out in this paragraph.

The following is a non-exhaustive list of examples that the AMF considers to be “insurance advice”:

- Recommend an insurance product, coverage or an endorsement, including its replacement.
- Answer questions relating to a contract in force, including questions about the terms and conditions of cancellation.
- Give clients explanations about their situation or a product, which may lead them to make a decision about a product.
- Compare insurance products.
- Help clients choose a product or a product option.
- Discuss choice of coverage with clients.
- Present clients with the results of their needs analysis.
- Submit and explain a quote to a client.

The AMF intends to apply the law so that a firm ensures that persons who act on its behalf and who provide insurance advice to its clients are representatives. Consumers who contact a firm to obtain advice expect that advice to be provided by a representative, i.e., an insurance professional who has the required competencies and who must comply with professional development obligations and a code of ethics. The AMF also intends to apply the law so that representatives do not mandate non-certified persons to give their clients insurance advice.

Nothing in the foregoing prevents representatives from using computerized tools to assist them in fulfilling their obligations.

Lastly, the AMF will be able to intervene, as it has in the past, to put an end to the activities of a firm or a representative whose business model is based on the outsourcing of activities that are specific to representatives to non-certified persons.

## Examples

The examples in the table below illustrate the activities specific to representatives and those that may be performed by non-certified persons. These examples are not exhaustive.

| Examples of activities specific to representatives (except as provided by the Act <sup>6</sup> )   |
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| Offer an insurance product.  |
| Change the beneficiary in an insurance of persons contract.  |
| Make a new subscription to a segregated fund.  |
| Exercise contract rights, options or terms and conditions (conversion, guarantee, reset, etc.).  |
| Make a change that is likely to affect a contract, such as changing an address in damage insurance, or adding a driver, coverage, etc.   |
| Examples of activities that can be performed by non-certified persons  |
| <p>Collect client information that is limited to factual information about the client's situation.</p> <p><b>Warning:</b> When a non-certified person is collecting information, there is a high risk that he or she will perform an act that extends beyond what can be performed by non-certified persons. A non-certified person must refer a client to a representative when, for example, the client asks a question that could result in the non-certified person performing such an act.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Question: What kind of heating do you use? Answer: Fuel oil <ul style="list-style-type: none"> <li>○ <b>FACTUAL</b> – The information may be collected by a non-certified person.</li> </ul> </li> <li>• Question: Do you want the endorsement covering fuel oil spills? <ul style="list-style-type: none"> <li>○ <b>NON-FACTUAL</b> – As this question does not concern the client's factual situation, this information cannot be collected by a non-certified person. Asking such a question would be considered offering an insurance product, an act reserved for representatives.</li> </ul> </li> </ul> |
| Fill out an insurance application questionnaire/form, provided that only factual information is collected about the client.  |
| <p>Describe only the main features of an insurance product.</p> <p>A call centre agent could approach clients and briefly describe an insurance product in order to determine their interest in the product. Clients could then be transferred to a certified representative who could perform a needs assessment and offer the product.</p>   |

<sup>6</sup> Persons who, on behalf of an employer, a union, a professional order or an association or professional syndicate, secure the adhesion of an employee of that employer or of a member of that union, professional order, association or professional syndicate in respect of a group contract in insurance of persons or a group annuity contract (s. 3, Distribution Act); members of a mutual benefit association who offer policies for the mutual benefit association (s. 3, Distribution Act); actuaries who, in pursuing activities as an actuary, offer insurance products in group insurance of persons or group annuities (s. 4, Distribution Act); a customs broker who, in pursuing activities as a customs broker, offers insurance products (s. 7, Distribution Act); and the distributor authorized under Title VIII of the Distribution Act.

**Warning:** In implementing models where a non-certified person describes the main features of a product, there is a high risk that the non-certified person will perform an act that extends beyond what he or she may perform. The non-certified person must refer the client to a representative when, for example, the client asks a question that could result in the non-certified person performing such an act.

Refer a client to a representative without being remunerated based on the sale of a product.

Answer a client's technical/administrative questions, for example:

- give them a copy of their policy;
- confirm the amount and date of their monthly payment;
- reset their password to enable them to access their on-line account.

Provide insurance advice, on the condition that the person who provides advice related to a product does not offer insurance products and, therefore, does not receive any direct or indirect remuneration from the person authorized to sell the product and to whom the client was referred.

**June 27, 2019**