

Draft regulations

Act respecting the distribution of financial products and services (chapter D-9.2, ss. 196, 200 par. (3), (5) and (9), 202 par. (2), 203 par. (3) and (6), and 223 par. (5), (8) and (12))

Regulatory consultation relating to professional liability insurance and outside activities

Notice is hereby given by the Autorité des marchés financiers (the “AMF” or the “Authority”) that, in accordance with section 217 of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the “Distribution Act”), the following draft regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Québec Minister of Finance for approval, with or without amendment, after 60 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships;*
- *Regulation to amend the Regulation respecting the issuance and renewal of representatives' certificates;*
- *Regulation to amend the Regulation respecting the pursuit of activities as a representative;*
- *Regulation to amend the Regulation respecting the registration of firms, representatives and independent partnerships;*
- *Regulation to amend the Regulation respecting the keeping and preservation of books and registers.*

The draft regulations are also available under “Public consultations” on the AMF’s website at www.lautorite.qc.ca. For ease of reading, the AMF also offers an administrative version of the complete text of the regulations, including the proposed amendments.

Background

The proposed regulatory amendments advance the goal of protecting the public and reducing compliance burden. For ease of reading, the term “registrants” is used to refer collectively to independent representatives, firms and independent partnerships.

A. Proposed amendments respecting professional liability insurance and questions related to cyber risks in liability insurance

The AMF wishes to address insurance coverage issues that have been observed over the years, including compliance issues with certain policies.

Given its public protection mission, the AMF is of the opinion that it is critical for contracts covering representatives’ and registrants’ liability to provide coverage that is as comprehensive as possible.

The proposed regulatory amendments therefore simultaneously increase consumer protection and registrant protection and ease certain controls implemented by the AMF to monitor liability insurance policies and ensure their compliance.

For ease of reading, the term “representative” is used, in section A only, to refer to a representative acting on behalf of a firm without being employed by it.

i. Exception for the category of claims adjuster employed by an insurer

The exception for the category of claims adjuster employed by an insurer would be removed from the Regulation respecting firms, independent representatives and independent partnerships (chapter D-9.2, r. 2) and the Regulation respecting the registration of firms, representatives and independent partnerships (chapter D-9.2, r. 15).

The proposed correction would be necessary because the category of claims adjuster employed by an insurer no longer exists.

ii. Clause regarding compliance with regulations under the Distribution Act

The proposed regulatory amendments would require adding a clause to the insurance contract whereby the insurance contract would be considered to satisfy the requirements set out in the Regulation respecting firms, independent representatives and independent partnerships or in the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10), as the case may be, in order to address any gaps that may exist between the coverage set out in the insurance contract and the coverage required under those regulations.

iii. Proof of maintenance of liability insurance at policy renewal

Currently, under the Regulation respecting the registration of firms, representatives and independent partnerships, registrants must transmit annually to the AMF proof of maintenance of liability insurance satisfying the requirements set out in the Regulation respecting firms, independent representatives and independent partnerships. A firm must also provide proof that any representative acting on its behalf is covered by liability insurance satisfying the requirements set out in the Regulation respecting the pursuit of activities as a representative. Typically, such proof would consist of a copy of the insurance policy or coverage summary page.

The “proof of maintenance” requirement would be replaced by a declaration in the maintenance of registration form confirming that the insurance policy satisfies the requirements set out in the Act and its regulations. This easing would reduce the number of reminders, document requests, exchanges of documents and follow-ups that would be required in this regard.

In certain circumstances and for purposes of verifying insurance policy compliance, the AMF could, however, request that a registrant transmit to the AMF, within 30 days of a request made by it, proof of maintenance of insurance.

iv. Coverage respecting gross fault

Currently, the Regulation respecting firms, independent representatives and independent partnerships and the Regulation respecting the pursuit of activities as a representative require, among other things, that the insurance contract cover liability arising from the fault committed by

a representative and by registrants in the performance of their activities, without making any distinction regarding the nature of the fault committed.

The AMF noted that some liability insurance policies include a clause excluding gross fault, i.e., a fault which shows gross recklessness, gross carelessness or gross negligence (as defined in the *Civil Code of Québec*).

The proposed regulatory amendments would require that the insurance coverage also extend to gross fault.

v. Extension of the coverage period for a term of five years

The proposed amendments to the Regulation respecting firms, independent representatives and independent partnerships and the Regulation respecting the pursuit of activities as a representative clarify and harmonize the requirements concerning the clause extending the coverage period for both representatives and registrants.

Under the current rules for registrants' liability insurance contracts, the contract must include a clause extending the coverage period for a further five years from the time the registrant is struck off or suspended from the AMF's roll. However, since registrants may also cease their activities voluntarily by applying to the AMF to have their registration revoked (withdrawn), the coverage period extension clause should apply to this situation, as well. Accordingly, the AMF is proposing that this clause also apply in the situation where a registrant has applied to have its registration revoked.

The AMF is also proposing an amendment specifying that the requirement to extend the coverage period applies whether or not the legal person who was registered as a firm or independent partnership has been dissolved or whether or not the natural person who was registered as an independent representative has died.

In the case of a representative, the requirement to include a clause extending the coverage period already applies in the situation of a representative who voluntarily ceases to pursue activities. The Regulation to amend the Regulation respecting the pursuit of activities as a representative includes an amendment to specify that the cessation of activities may be temporary or permanent, in order to clarify that the cessation may be due, for example, to the representative's certificate having been surrendered only for a certain amount of time. Moreover, the proposed regulation would clarify that the coverage period extension would apply in respect of all the activities contemplated by the coverage.

Cases where the registration is no longer valid

Under the Regulation respecting the registration of firms, representatives and independent partnerships, a registration is valid until it is cancelled. However, section 126 of the Distribution Act states that a registrant that wishes to terminate its activities in a given sector must apply to the AMF for the revocation of its registration for that sector. The AMF is therefore proposing to

amend the regulation to cover this situation, as well, and to specify that the registration is valid until it is cancelled or revoked.

Coming into force and transition period

The Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships and the Regulation to amend the Regulation respecting the pursuit of activities as a representative would come into force on June 1, 2023, subject to ministerial approval.

However, in order to give insurers enough time to make the necessary adjustments to their contracts, representatives and registrants that make or renew their insurance contracts between June 1 and September 30, 2023 would benefit from a transition period. They would have to comply with the new regulatory requirements not later than 12 months after the making or renewal of the contract. As a result, representatives and registrants whose insurance contracts are made or renewed for a 12-month term would have until the next renewal of their insurance contracts to comply with the new regulatory requirements. However, in situations where such making or renewal is for a term exceeding 12 months, the transition period would not be extended accordingly.

In all other situations, the insurance contract covering registrants' and representatives' liability would have to satisfy the new regulatory requirements not later than **June 1, 2024**.

When insurance contracts are made or renewed on or after October 1, 2023, the representatives and registrants concerned would be advised to ask their insurers at that time to make the changes required to bring their insurance contracts into compliance with the new regulatory requirements, while the coverage period specified in the contract has not expired (i.e., the contract is in progress), and not to wait until June 1, 2024 to do this.

The Regulation to amend the Regulation respecting the registration of firms, representatives and independent partnerships would come into force on June 1, 2023.

As of **January 27, 2024**, a registrant would no longer have to provide proof of maintenance of liability insurance in order to maintain its registration (except if the AMF requests it). However, the registrant would be expected to transmit a declaration pertaining to liability insurance as part of the maintenance of registration form.

For information purposes - The twice-yearly statement regarding the wording of professional liability insurance policies

The administrative requirement for an insurer to file a statement with the AMF twice a year regarding changes made to the wording of an existing liability insurance policy (or the absence of such changes) would be withdrawn on June 1, 2024.

Consultation questions on cyber risks in liability insurance

The AMF wishes to use this consultation as an opportunity to survey stakeholders on the appropriateness of adding, in the current regulations, cyber risk coverage to registrants' liability insurance or, conversely, to find out the reasons against doing so. Adding such coverage would definitely have some advantages but could also impact the offer or cost-benefit analysis of liability insurance policies.

This initiative is part of a forward-looking approach aimed at better anticipating, understanding and addressing the challenges and risks faced by consumers, particularly in light of technological change. No regulatory amendments in this respect are being contemplated within the scope of this consultation.

With this in mind, we are seeking your input on the following questions, in particular:

1. Would it be beneficial (on a cost-benefit basis) to include, in the regulations, requirements that would add cyber risk coverage to registrants' liability insurance contracts? If so, why?
 - 1.1. If not, what do you see as the main obstacles to introducing such a measure?
 - 1.2. What do you see as alternatives to introducing such a measure (other than insurance coverage)?
2. What cyber risks could/should be covered (e.g., client data compromise, information theft, business interruption arising from a cyber attack)?
3. What cyber risk coverages would most likely be included in registrants' liability insurance contracts?
4. Are there other comments, suggestions or issues you would like to raise with the AMF regarding the appropriateness of requiring the inclusion of cyber risk insurance coverage in a registrant's liability insurance contract?

B. Proposed amendments respecting the outside activities of representatives

In keeping with the highest public protection standards, the proposed regulatory amendments update the framework for outside activities of representatives governed by the Distribution Act. The amendments are meant to be harmonized with the new requirements in the securities and derivatives sectors, which came into effect on June 6, 2022,^[1] with necessary modifications to reflect the specific features of the activities governed by the Distribution Act. The amendments also seek to address the labour shortage issues in the industry.

Repeal of the provisions on incompatible occupations

Currently, the Regulation respecting the pursuit of activities as a representative states that certain activities and occupations are incompatible with the pursuit of activities as a representative. A repeal of these provisions is proposed to enable representatives to pursue any outside activity provided they comply with the proposed new rules. The firms or independent partnership, as the case may be, would also have to comply with new requirements.

i. Introduction of specific rules governing representatives' outside activities

While maintaining a high level of public protection, specific rules are proposed to clarify the framework within which such activities may be carried on by a representative.

^[1] [Canadian securities regulators modernize registration information requirements, clarify outside activity reporting and update filing deadlines](#), December 16, 2021.

a. Definition of outside activities

Under the proposed amendments, “outside activity” means any occupation, function or activity, other than the activity of representative, that involves dealing with the public.

b. Professional requirements

Representatives must comply at all times with their general obligations, first and foremost among them being their obligations relating to conflicts of interest and the requirement to demonstrate availability in respect of their clients.

The proposed regulatory amendments specify that the pursuit of an outside activity must not be likely to cause confusion with the activities as a representative.

Moreover, the proposed regulatory amendments would place the onus for reporting such an activity on the representative. Therefore, any situation meeting the definition of an outside activity would have to be reported in writing by the representative to the firm or independent partnership on whose behalf the representative acts.

Lastly, privileged or confidential information to which a representative has access in the course of an outside activity may not be used by the representative for the pursuit of his or her activities as a representative, unless the person concerned has consented in writing to such use.

c. Segregation of clienteles

A representative would not be able to offer financial products and services to natural persons with whom the representative had a relationship arising from certain outside activities (“Segregation of Clienteles Rule”). This rule would also apply to relatives of the natural person, including his or her spouse, parents and children.

The activities giving rise to the Segregation of Clienteles Rule largely correspond to the activities that are currently incompatible under the existing regulations. Some accommodations, however, are provided for, based on the specific features of each sector.

▪ Insurance of persons and financial planning

Representatives in insurance of persons or financial planners would be subject to a general rule (“Standard of Influence”), They would not be able to offer financial products and services to natural persons with whom they have a relationship arising from an outside activity that, due to its nature or the training or specialized knowledge it requires, places the representative in a position of influence.

This Standard of Influence is harmonized with the new requirements in the securities and derivatives sectors (see Appendix). Insurance of persons and financial planning are the sectors with the largest number of representatives who are also registered as securities representatives.

Certain, specific cases would automatically give rise to the Segregation of Clienteles Rule as well as the Standard of Influence. These include the activities of judge, police officer, doctor, nurse and teacher (see Appendix).

- Group insurance of persons

In the case of group insurance representatives, only certain, specific outside activities will give rise to the Segregation of Clienteles Rule (see Appendix). As the clients of group insurance representatives are usually entities, the Segregation of Clienteles Rule will apply only in cases where, for example, a person has a relationship as both a lawyer and a representative with a natural person who is a client for a group insurance contract for the employees of the natural person's company.

- Damage insurance

For damage insurance representatives, a number of activities that are subject to the current incompatibility provisions would give rise to the Segregation of Clienteles Rule (see Appendix), including the activity of vendor of motor vehicles or of contractor within the meaning of section 7 of the *Building Act* (chapter B-1.1).

A significant accommodation would be made, however, to allow damage insurance representatives to engage in the occupation of vendor, lessor or repairer of movable property. The Segregation of Clienteles Rule would not apply if, for example, a representative were to offer a natural person an insurance product or service that is not specifically related to property sold as part of the outside activity.

This accommodation would also support efforts to address the labour shortage, as it would make it possible to obtain a certificate as a damage insurance representative, for example, and engage in an outside activity, provided the conditions governing the pursuit of activities are complied with and the Segregation of Clienteles Rule is applied in the cases that are provided for.

- Mortgage brokerage

In the case of mortgage brokers, the pursuit of certain outside activities would give rise to the Segregation of Clienteles Rule, thereby addressing public protection concerns in this sector (see Appendix). Accordingly, a mortgage broker would not be able to offer financial products and services to natural persons with whom they act as a money lender, loan administrator, chartered appraiser or building inspector.

ii. **Keeping and preservation of records on representatives' outside activities**

Under the proposed regulatory amendments, a firm would have to keep a record on the outside activities of every representative who acts on its behalf and who has reported such activities. In particular, the record would have to contain:

- a report of the representative's outside activity;
- the start and end date of the outside activity; and
- the actions taken by the firm, if applicable, to ensure that the representative complies with the Distribution Act.

The firm would have to preserve the records on outside activities for a period of at least five years from the date on which the representative ceases to act on their behalf.

The same requirements would apply to independent partnerships and independent representatives, with the necessary modifications. Therefore, an independent representative would have to indicate the actions taken, if applicable, to comply with the Distribution Act.

iii. Reporting activities giving rise to the Segregation of Clienteles Rule and finance-related activities to the AMF

Currently, all outside activities must be reported to the AMF, which issues, on a case-by-case basis, conditions, restrictions or warnings regarding such activities. The new rules would clarify obligations and thereby optimize the administrative process.

Only situations giving rise to the Segregation of Clienteles Rule and finance-related activities (such as the preparation of tax returns for others and accounting services) would have to be reported to the AMF. Representatives, firms and independent partnerships, as the case may be, would certify that they had taken the actions required, if any, to comply with their obligations. To the extent that the report is complete and consistent, representatives will no longer have to wait for a confirmation from the AMF to pursue an outside activity. Compliance of the reported situation with the applicable provisions could be reviewed during an inspection.

Where required, the prescribed time period for notifying the AMF of a change to the information provided regarding an outside activity would be 30 days.

Coming into force

The proposed regulatory amendments respecting representatives' outside activities would come into force on June 1, 2023, subject to ministerial approval.

Consultations

Comments regarding the regulatory amendments or the consultation on cyber risks may be made in writing by **February 6, 2023** to:

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, 3^e étage
Québec (Québec) G1V 5C1
Fax: 514-864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

Unless otherwise noted, comments will be posted on the AMF's website at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the comments.

Further information

Further information is available from:

Draft amendments on liability insurance and cyber risks

Pierre-Olivier Belzile
Analyst, Distribution Practices
Distribution Policies and SROs
Autorité des marchés financiers
Telephone: 418-525-0337, ext. 4815
Toll-free: 1-877-525-0337
pierre-olivier.belzile@lautorite.qc.ca

Draft amendments on outside activities

Isabelle Boivin
Analyst, Distribution Practices
Distribution Policies and SROs
Autorité des marchés financiers
Telephone: 418-525-0337, ext. 4817
Toll-free: 1-877-525-0337
isabelle.boivin@lautorite.qc.ca

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Appendix

Outside activities – Segregation of Clienteles Rule: Approach by sector

Representatives in insurance of persons

Representatives in insurance of persons must segregate their clientele if they find themselves in a position of influence, particularly when pursuing the outside activity of:

- judge or police officer;
- minister of religion or leader in a religious organization;
- member of the Ordre professionnel des avocats du Québec or the Ordre professionnel des notaires du Québec;
- member of the Ordre professionnel des infirmières et infirmiers du Québec or the Ordre professionnel des médecins du Québec;
- teacher in an educational institution at the secondary, college or university level;
- funeral director or any other similar duties in the funeral services industry;
- immigration and citizenship consultant;
- bankruptcy trustee;
- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;
- member of the Ordre des comptables professionnels agréés, to the extent that pursuing that activity requires the representative to hold a public accountancy permit; or
- real estate broker.

Financial planners

Financial planners must segregate their clientele if they find themselves in a position of influence, particularly when pursuing the outside activity of:

- judge or police officer;
- minister of religion or leader in a religious organization;
- member of the Ordre professionnel des infirmières et infirmiers du Québec or the Ordre professionnel des médecins du Québec;
- teacher in an educational institution at the secondary, college or university level;
- immigration and citizenship consultant;

- bankruptcy trustee;
- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization; or
- real estate broker.

Group insurance representatives

Group insurance representatives must segregate their clientele if they pursue the activity of:

- judge or police officer;
- minister of religion or leader in a religious organization;
- member of the Ordre professionnel des avocats du Québec or the Ordre professionnel des notaires du Québec;
- teacher in an educational institution at the secondary, college or university level;
- immigration and citizenship consultant;
- bankruptcy trustee;
- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;
- member of the Ordre des comptables professionnels agréés, to the extent that pursuing that activity requires the representative to hold a public accountancy permit; or
- real estate broker.

Damage insurance representatives

Damage insurance representatives must segregate their clientele if they pursue the activities of:

- judge or police officer;
- minister of religion or leader in a religious organization;
- member of the Ordre professionnel des avocats du Québec or the Ordre professionnel des notaires du Québec;
- teacher in an educational institution at the secondary, college or university level;
- immigration and citizenship consultant;
- bankruptcy trustee;

- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;
- member of the Ordre des comptables professionnels agréés, to the extent that pursuing that activity requires the representative to hold a public accountancy permit;
- real estate broker;
- vendor, lessor or repairer of road vehicles, off-road vehicles or boats;
- vendor, lessor or repairer of movable property insofar as the product or service is specifically related to the property;
- contractor within the meaning of section 7 of the *Building Act* (chapter B-1.1); or
- supplier of services required at the time of an insurance loss.

Claims adjusters

Claims adjusters must segregate their clientele if they pursue the activity of:

- judge or police officer;
- minister of religion or leader in a religious organization;
- teacher in an educational institution at the secondary, college or university level;
- immigration and citizenship consultant;
- bankruptcy trustee;
- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;
- real estate broker;
- vendor, lessor or repairer of road vehicles, off-road vehicles or boats;
- vendor, lessor or repairer of movable property insofar as the product or service is specifically related to the property;
- contractor within the meaning of section 7 of the *Building Act* (chapter B-1.1); or
- supplier of services required at the time of an insurance loss.

Mortgage brokers

Mortgage brokers must segregate their clientele if they pursue the activity of:

- judge or police officer;

- minister of religion or leader in a religious organization;
- member of the Ordre professionnel des avocats du Québec or the Ordre professionnel des notaires du Québec;
- teacher in an educational institution at the secondary, college or university level;
- immigration and citizenship consultant;
- bankruptcy trustee;
- management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;
- member of the Ordre des comptables professionnels agréés, to the extent that pursuing that activity requires the representative to hold a public accountancy permit;
- money lender;
- loan administrator, except where the broker acts on behalf of a natural person who wants to take out or has taken out a loan secured by immovable hypothec;
- member of the Ordre professionnel des évaluateurs agréés du Québec; or
- building inspector.