

Draft Regulation

Insurers Act

(S.Q. 2018, c. 23, s. 3; s. 485 subpar. (1))

Act respecting the distribution of financial products and services

(chapter D-9.2, ss. 202.2, 209, 223 subpars. (5), (8), (12), (13.1) and (15), 440 and 443)

Regulation respecting Alternative Distribution Methods

Notice is hereby given by the *Autorité des marchés financiers* (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”), and section 485 of the *Insurers Act*, S.Q. 2018, c. 23, s. 3, the following Draft Regulation (the “Draft Regulation”), the text of which is 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 respecting alternative distribution methods*

The Draft Regulation is also available under “Public consultations” on the Authority’s website at www.lautorite.qc.ca.

Comments

Comments regarding this Draft Regulation may be made in writing before **December 10, 2018**, and sent to the following:

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

Unless otherwise noted, comments will be posted on the Authority’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 submission.

Purpose of Draft Regulation

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* (“Bill 141”), assented to on June 13, 2018, enacts the *Insurers Act* and amends the *Distribution Act*. It also grants to the Authority new regulatory powers.

Made under subparagraph (1) of section 485 of the *Insurers Act* and sections 202.2, 209, 223 (subparagraphs (8), (12), (13.1) and (15)), 440 and 443 of the *Distribution Act*, this Draft Regulation sets out the obligations primarily applicable to a legal person that offers products and services through an alternative distribution method, namely, distribution without the intermediary of a natural person (“Internet offerings”) or distribution through a distributor (“distribution without a representative”).

To enable all interested stakeholders to present their points of view on the Draft Regulation, the Authority is providing a 60-day comment period.

The Draft Regulation was established by considering, in particular, comments received or heard during the consultations conducted by the Authority on distribution without a representative and Internet offerings as part of government-led consultations held in connection with the review of the Distribution Act and the *Act respecting insurance* and as part of the study of Bill 141. It was developed out of concern for protecting consumers, regardless of how they purchase financial products or services, whether they carry out transactions through an Internet platform or a representative. In fact, a firm (or insurance firm) is bound by the same obligations as a representative when offering a product over the Internet. The purpose of the Draft Regulation is therefore to achieve the consumer protection objective without interfering with the development of new practices that benefit the industry and consumers. It provides some latitude in the steps taken to achieve the stated objectives.

Moreover, the Draft Regulation is intended to be flexible given the fast pace of technological change. Nevertheless, it is precise in that it sets out a regime that is adapted to the reality of Internet offerings and distribution without a representative. The proposed framework for these distribution methods is thus based on the disclosure of information to clients, presented in such a way as to enable them to make informed decisions regarding the product or service offered when they are not necessarily in the presence of a certified representative.

Furthermore, specific requirements are set out for Internet offerings and distribution without a representative. For firms that make offerings over the Internet, requirements related to the platform, i.e., the digital space allowing them to interact with clients, are established to ensure appropriate design, operation and control measures. Requirements regarding the training and supervision of distributors are also provided for insurers that offer products other than through a representative.

I. On-line offering of financial products and services

1. Background

The *Insurers Act* and the Distribution Act contain new provisions that will come into force on June 13, 2019 and will provide clarity regarding Internet offerings. The *Insurers Act* states that an insurer must deal with a client either through a natural person, who is a representative or a distributor within cases permitted under Title VIII of the Distribution Act, or over the Internet. The Distribution Act enables a firm to offer products and services without the intermediary of a natural person. The Authority is proposing that a firm interacting in such a manner do so through a platform, such as a website or mobile application, in compliance with the requirements provided in the Draft Regulation.

2. Prescribed persons

Under section 70 of the Distribution Act, a legal person that offers financial products and services acts as a firm. Accordingly, except for distributors subject to Title VIII of the Distribution Act, any legal person that offers a financial product or service over the Internet, including an insurer, will be required to register as a firm.

Moreover, the Distribution Act will enable any firm to offer a financial product or service over the Internet, so long as the offer is made in a sector in which the firm is registered.

The Authority is therefore proposing that the Draft Regulation cover all firms that, through a platform, offer products or services in the insurance, financial planning or claims adjustment sectors. Consequently, except for certain provisions dealing specifically with insurance product offerings, the requirements set out in Division II of the Draft Regulation would apply to all firms, regardless of the sector.

Furthermore, the obligations under the Draft Regulation would apply, with the necessary modifications, to an independent partnership.

2.1 Comparison shopping websites

The Authority is of the opinion that most comparison shopping sites and other on-line businesses that direct clients to a firm's website to subscribe for or enroll in an insurance contract must be registered as firms and comply with the Draft Regulation, even if their sites are non-transactional. That is the case when such persons receive remuneration based on products sold or financial services rendered or when they make themselves known as a firm. Furthermore, regardless of the platform on which clients have begun the process, the person that sells the insurance product must ensure that the product suits their needs.

In addition, the Authority believes that firms are responsible for ensuring that any persons with which they have referral arrangements comply with the applicable legislation and do not mislead clients as to the scope of their offerings.

3. Intervention of a representative

The Distribution Act will authorize firms to allow clients who wish to do so to subscribe for or enroll in contracts over the Internet without the intervention of a representative. However, the firms will have to take the necessary steps to ensure that their attached representatives, who are authorized to act in the sector required to offer the given product or service, interact in sufficient time with clients who ask to deal with a representative.

The Authority is not recommending that representatives be available at all times. It is of the opinion that firms will have to take steps to mitigate the risk of transactions that may not comply with their legal and regulatory obligations outside the hours when representatives are available. Of course, firms could choose to make representatives available at all times.

4. Applicable regulatory obligations

It is important to state that the obligations set out in Chapter II of the Draft Regulation would apply in addition to the requirements that already apply to firms under the Distribution Act and its regulations.

As stated in section 86.0.1 of the Distribution Act, firms that will offer financial products or services over the Internet will have to comply with the obligations applicable to representatives.

Firms offering insurance products over the Internet will have to, in particular, provide clients with adequate advice as if they were representatives. Therefore, they should, through their platforms, inquire into their clients' situation to assess their needs and, if applicable, ensure that the products they are offering are suitable. In all cases, firms, like representatives, will remain responsible for the reliability of the information needed to comply with this obligation.

The Authority is proposing to require firms offering products or services over the Internet to provide, through their platforms, certain information and documents that representatives are required to give to clients under the Distribution Act and its regulations. For example, an insurance of persons firm that offers products or services over the Internet will have to comply with the requirements regarding the provision to clients of the information collected to assess their needs and to policy replacement.

5. Products offered

The Authority is of the opinion that the requirements it is proposing to include in the Draft Regulation will ensure orderly market development and adequate consumer protection, without limiting the products that can be offered over the Internet. Firms should implement processes for Internet offerings that allow them to meet their legal and regulatory obligations, regardless of the product offered.

In fact, the Distribution Act and the *Insurers Act* do not set out any such limitation regarding the products that are offered. The government has granted the Authority a new power to issue orders under the *Insurers Act* requiring authorized insurers to cease the on-line distribution of the contracts it determines. The Authority could also exercise the remedies provided under the Distribution Act against a firm that contravenes the Draft Regulation.

Firms should ensure that their on-line sales are adapted to the products offered and meet the needs of the consumers who are being targeted. As part of its activities, the Authority will ensure that the measures taken by the firms are consistent with the types of products offered over the Internet.

6. Information to be provided to the Autorité

The Authority is proposing to require any firm that offers a financial product or service over the Internet to inform it thereof. To do so, a firm that is already registered with the Authority could use a form that will be available on the Authority's website, and the legal person that seeks to become a firm could disclose that information on its registration form. Required annual disclosures would be made through the firm's maintenance of registration form.

The required information would enable the Authority to fully understand the market and monitor technological developments and evolving practices, so as to measure the impact on consumers and the industry. It could thus maintain effective regulation that would ensure both adequate consumer protection and industry development.

7. Information to be provided to the client

7.1 Presentation of information

A client transacting over the Internet makes a decision regarding the financial product or service offered based on information that is presented through the platform. Therefore, the Draft Regulation would specify that this information must be presented so as to highlight the key elements the client needs to make an informed decision regarding the product or service offered and not to cause confusion or misunderstanding.

7.2 Information visible at all times

To enable the client to easily identify information, the Authority is proposing that certain information be visible at all times on the platform, particularly the information used to identify the firm, validate its registration with the Authority and file a complaint. Requiring a firm's representative to interact in sufficient time with the client who asks to interact with a representative is a key element of the consumer protection framework; the manner in which to request the intervention of a representative should therefore be visible at all times.

7.3 Information to be provided before inputting personal information

To avoid having clients go through an offering process that does not meet their needs, the Authority is recommending that certain information be presented to them before their personal information is input. This option was chosen rather than having the firm warn clients of the risks of carrying out on-line transactions, since firms are bound by the same obligations as representatives.

The firm should specify for whom its platform is intended. It would be required to describe the scope of its offering as well as its limitations, particularly concerning a representative's intervention at the time an insurance product is subscribed for or offered. For example, a firm could

- allow the client to subscribe for or enroll in a contract through its platform in a completely independent manner;
- offer the client a product or service through its platform, but require the intervention of one of its representatives for the subscription or enrollment in the contract;
- recommend a product or service to the client through its platform and direct him to the platform of another firm for the subscription or enrollment in the contract;

- allow the client to switch at any time between the independent process and the one involving the assistance of a representative.

Regardless of the process used, the Distribution Act requires that the firm take the necessary steps to ensure that its attached representatives interact in sufficient time with clients who ask to deal with a representative.

7.4 Disclosures related to an insurance product offering

The Authority is proposing that the client be made aware of certain things before entering into an insurance contract, when the subscription for or enrollment in the contract is done through the platform. This distinction appears necessary because some firms could allow consumers to continue with a representative an offering process initiated on their platform. The representative would then be responsible for the applicable disclosures.

7.5 Specimen of the policy

In general, representatives have in their possession the policies that they offer and can refer to them to give clients additional clarification. The Authority is thus proposing that a specimen of the policy for each product offered by a firm through its platform be available at all times.

7.6 Validation of consent

To avoid potential errors and ensure that the client's consent is valid, the Authority is recommending that the firm allow the client to review a summary of the information that was used to determine his needs and complete the proposal. The firm should also provide the client with access to a summary of the options and conditions that the client has chosen regarding the product he or she is about to purchase, particularly the date when the coverage becomes effective. This would allow the client to be able to validate this information and correct it, if need be, before finalizing the transaction.

7.7 Post subscription or enrollment

The Authority is proposing that, as soon as the client has taken the final step of consenting to subscribe for or enroll in the contract, the firm confirm that such transaction has been concluded and, if applicable, give the client the temporary insurance.

Under sections 19 and 86.0.1 of the Distribution Act, firms that, at the time a contract is made, cause a client to make an insurance contract should also give the client a notice of rescission. It is important to note that the Insurers Act creates a 10-day right to rescind a contract only if no representative interacted with the client at the time the client subscribed for or enrolled in the contract. Therefore, the right of rescission does not apply when a transaction is concluded with a representative, even if the process was initiated through the platform. No notice of rescission is not provided for in that case.

The Authority is recommending that a firm be required to indicate to the client how to access the policy or insurance certificate. Therefore, such document could be delivered directly via the firm's platform or made available at an address at which the client indicates that he agrees to receive the document.

8. Design, operation and monitoring of platform

The platform used by a firm for its on-line offering must provide adequate consumer protection and the firm must implement measures to mitigate process automation risks.

In such a context, the Authority is proposing to make minimum regulations prescribing requirements with respect to platform design, operation and monitoring. The Draft Regulation would establish minimum

platform requirements and require a firm to adopt a procedure describing the design and operation of its platform and the related monitoring measures.

The firm's platform should achieve the objectives described in the Draft Regulation. In particular, it should require an action from the client each time confirmation or consent is required. This may be the case when clients must confirm the accuracy of pre-filled fields or consent to have information about them collected from third parties. The platform should also detect if a discrepancy or irregularity in the information provided by the client could lead to an inappropriate result.

One of the key elements of the proposed framework involves the traceability of transactions. The information that the firm would have to enter in the client file should help trace the complete process followed by the client and include the interactions with a representative, if applicable. The Authority is of the opinion that such information will be essential, in particular to determine a representative's responsibility regarding a given transaction.

More specific guidance on the Authority's expectations and good governance practices with respect to technological tools could be published at a later date.

II. Distribution without a representative

1. Information to be provided to the Authority

The Authority must have a good understanding of the market to fully assume its regulatory oversight and development role. It is therefore proposing that insurers be required to send it, for each product offered via distribution without a representative, an initial disclosure and an annual disclosure containing the prescribed information.

Insurers should notify the Authority of any changes to the information initially provided, including changes to the list of distributors. They will also have to notify the Authority of the reasons for terminating an agreement with a distributor.

2. Information to be provided to the client

The premise of the regime governing distribution without a representative is that adequate, accurate and complete information is given to the client.

The Authority is proposing that information be disclosed through more than one document. The information specific to distribution without a representative would be provided in a fact sheet, the content of which would be prescribed by the Authority. The information on the product offered, which helps the client make an informed decision about the product, would be presented in a summary prepared by the insurer.

The insurer should ensure that the distributor provides the client with the fact sheet and the summary, along with a sample contract in situations where the summary refers to it. The Draft Regulation would set out the conditions under which these documents are provided when the offer is made remotely, such as by telephone.

2.1 Fact sheet

The content of the fact sheet proposed by the Authority focuses on the information relating to the requirements stipulated in the Distribution Act, such as the disclosure of the remuneration received by the distributor, or that reflects sources of recurrent consumer dissatisfaction. A fact sheet was initially created as part of work done with stakeholders involved in offering insurance products through dealers of automobiles and recreational and leisure vehicles. Consumer focus groups were consulted to ensure that the language used and the presentation of the information assist in readability and comprehension for

consumers. The issues raised in the context of this work are, however, likely to be valid for all types of products offered through distributors. The fact sheet set out in the Draft Regulation is therefore based on this work.

2.2 Summary

The Authority is recommending that the summary meet information presentation and minimal content requirements. The information to be provided would be similar to that required in a distribution guide. However, the Draft Regulation would allow the insurer greater flexibility in how to present the information. When necessary, the insurer could refer to the relevant section of the contract to avoid making the text cumbersome. The Authority is also recommending that an example of the calculation for determining the refundable portion of the premium upon rescission be included in the summary when the policy includes such a calculation.

Insurers, like firms that offer insurance via the Internet, should make available at all times a sample policy for each product offered by a distributor. They should also make a product summary available on their sites.

3. Supervision of distributors

Under section 65 of the *Insurers Act*, “an authorized insurer is liable for the acts done by distributors, or natural persons to whom the latter have assigned the task of dealing with clients or participants, toward underwriting an insurance contract or enrolling a participant.”

In this regard, the Authority is proposing that insurers be required to implement adequate measures for supervising, monitoring and training distributors.

4. Prohibitions

The proposed framework would set out specific prohibitions for insurers offering replacement, life, health and job loss insurance through distributors. These prohibitions focus on the remuneration practices of distributors, an area that was highlighted in the course of the above-mentioned work and that undermines the fair treatment of consumers.

5. Distribution without a representative over the Internet

Insurers that offer a product directly over the Internet must comply with the Draft Regulation requirements applicable to this distribution method. Moreover, the Authority notes that the exception under section 425 of the Distribution Act is only valid when an insurer distributes a travel insurance product through its employees.

However, an insurer could allow a distributor to offer its insurance products on-line, that is, on the Internet site of the distributor. The insurer is therefore responsible for monitoring the compliance of the site used by its distributor, in particular by ensuring that the fact sheet and the summary are given to the client at the times prescribed by regulation. In addition, the rules applicable to firms that make offerings without the intermediary of a natural person would not apply to distributors that make offerings over the Internet.

Additional Information

Additional information is available from the following:

Mélissa Perreault

Senior Policy Analyst

Distribution Policies and SROs

Autorité des marchés financiers

Telephone: 418-525-0337, ext. 4825

Toll-free: 1-877-525-0337

E-mail: melissa.perreault@lautorite.qc.ca

Isabelle Déry

Standardization Analyst

Prudential Oversight of Financial Institutions

Autorité des marchés financiers

Telephone: 418-525-0337, ext. 4179

Toll-free: 1-877-525-0337

E-mail: isabelle.dery@lautorite.qc.ca

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