

chapter D-9.2, r. 2

Regulation respecting firm, independent representative and independent partnership

An Act respecting the distribution of financial products and services
(chapter D-9.2, s. 196, 223 and 224)

DIVISION I
ADVERTISING, REPRESENTATIONS AND CLIENT
SOLICITATION

1. A firm, independent representative or independent partnership must, in all its advertising, representations or client solicitation pertaining to its activities, use its name or, where applicable, the other names it uses in Québec in the pursuit of its activities and may not use a trademark, slogan, symbol or any other thing that is likely to cause confusion.

Such firm, independent representative or independent partnership must also indicate the title under which it pursues activities.

O.C. 838-99, s. 1.

2. No firm, independent representative or independent partnership may, by reason of its registration with the Bureau des services financiers, purport in its advertising, representations or client solicitations that the actions performed by it in the pursuit of its activities are approved or recognized by the Bureau des services financiers.

O.C. 838-99, s. 2.

3. No firm, independent representative or independent partnership may, falsely, by any means whatsoever, in its advertising, representations or client solicitations:

(1) claim that a particular service or product is recognized by a particular organization;

(2) appear to promise results that it is unable to provide.

O.C. 838-99, s. 3.

4. The financial products sold and the financial services rendered by a firm, independent representative or independent partnership must comply with its representations and advertising.

O.C. 838-99, s. 4.

5. No firm, independent representative or independent partnership may, by any means whatsoever, make false, misleading, or deceptive representations or engage in false, misleading or deceptive advertising.

O.C. 838-99, s. 5.

6. Where a firm, an independent representative or an independent partnership uses statistics in its advertising or written representations, the source of the statistics must be clearly identified.

O.C. 838-99, s. 6.

7. Sections 238 to 240, 244 and 247 of the Regulation applying the Act respecting insurance (chapter A-32, r.1) apply, *mutatis mutandis*, to advertising and the representations made by firms, independent representatives and independent partnerships in respect of the financial products they sell.

O.C. 838-99, s. 7.

8. In all its written representations, a firm, independent representative or independent partnership must, in respect of its financial products or services, describe the service or product without emphasizing its advantages to the detriment of its disadvantages.

O.C. 838-99, s. 8.

9. In its advertising, a firm, independent representative or independent partnership may not directly or indirectly criticize the financial products, services or methods of its competitors.

O.C. 838-99, s. 9.

10. The advertisement of a financial product by a firm, an independent representative or an independent partnership requires authorization from the mutual fund or the organization offering units in scholarship plans, from the issuer of a security or from the marketer including the insurer, in the case of insurance products or the manager, in the case of unincorporated mutual funds.

O.C. 838-99, s. 10.

11. Where, in respect of an activity not governed by the Act respecting the distribution of financial products and services (1998, c. 37), a firm or independent partnership, through a representative, engages in advertizing or client solicitation for the purpose of selling a financial product or providing a financial service governed by the Act, the firm, independent representative or independent partnership must state the title that it is authorized to use according to the relevant Bureau des services financiers regulation pursuant to subparagraph (13) of the first paragraph of section 223 of the Act, or the fact that it is a distributor of financial products and services.

O.C. 838-99, s. 11.

DIVISION II RECORDS AND REGISTERS

§1. General provisions

12. A firm, independent representative and independent partnership must keep client records in respect of each of its clients.

O.C. 838-99, s. 12.

13. A firm, independent representative or independent partnership that uses computers or any other data-processing method, must take the necessary measures to prevent loss, destruction or falsification of entries. The firm, independent representative or independent partnership must also ensure that the information contained in each client file can be provided within a reasonable time and in a precise form that is comprehensible to any person authorized under the Act to audit the records.

O.C. 838-99, s. 13.

14. To the extent permitted by the Act, a firm, independent representative or independent partnership may consolidate its client records in a single document, provided that all required information is recorded in such document and that the information can be separated.

O.C. 838-99, s. 14.

15. A firm or independent partnership may keep the information in the client records in various locations provided that the information is recorded with the firm or the independent partnership and provided that every client record can be provided within a reasonable time and in a precise form that is comprehensible to any person authorized under the Act to audit such records.

O.C. 838-99, s. 15.

16. Sections 13 to 15 apply, *mutatis mutandis*, to the commissions register prescribed in Subdivision 3 and to the complaints register prescribed in Subdivision 5.

O.C. 838-99, s. 16.

§2. *Client records*

17. The client records that must be kept by firms, independent representatives and independent partnerships in respect of each client in connection with the pursuit of their activities, save those relating to the sectors of damage insurance or real estate brokerage, must include the following information, where necessary:

- (1) the client's name;
- (2) the client's address, telephone and facsimile numbers, and electronic mail address, if any;
- (3) where the client is a natural person, his date of birth where such information is obtained by the representative;
- (4) the amount, object and nature of the product sold or service rendered, as the case may be;
- (5) the policy number, contract issue dates and the date of the signature of the proposal or request for services, as the case may be;
- (6) the name of the representative involved in the transaction and the method of remuneration for each product sold or service rendered to the client;
- (7) the method and date of payment of the products sold or services rendered;
- (8) a copy, in any medium, of the needs analysis prescribed in section 6 of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10);

(9) a copy of the form completed at the time of replacement of an insurance policy, where applicable, as prescribed in Division VII of the said Regulation.

All other information or documents concerning products sold or services rendered to the client and obtained from him must also be inscribed on or filed in the client's record by the firm, the independent representative or the independent partnership.

O.C. 838-99, s. 17.

18. In addition to the information prescribed in section 17, the client records that must be kept by firms registered in the securities sector in respect of each client in the pursuit of their activities must contain the following information, where necessary:

(1) the client's occupation, the name, address and telephone number of his employer, if applicable, and the employer's sector of activity;

(2) how contact was first established, such as, through advertising, a personal meeting, a referral, a telephone call or an office visit;

(3) the type of account;

(4) the client's investment objectives and level of investment knowledge;

(5) the client's annual income and net worth;

(6) the account number of the bank, trust company or savings and credit union of any person authorized to give orders in the account;

(7) the name and signature of any person authorized to give orders in the account;

(8) any power of attorney whereby the client has conferred on another person the power to give instructions on his behalf and the address of such person;

(9) in the case of a joint account or an account opened in the name of a legal person or a partnership, the name and address of the person authorized to give instructions and the document conferring this power;

(10) the form used to open the account and updates.

O.C. 838-99, s. 18.

19. Upon receipt of \$10,000 or more, the firm registered in a securities sector must insert in the client's file a duly completed "Declaration of Funds" form which must contain the following information:

(1) the name and occupation of the person from whom the money was received;

(2) that legal status and place of residence of the person;

(3) the name and address of the person's place of business;

(4) the date and nature of the transaction;

(5) the account numbers to which the transaction pertains;

(6) the amount of money received in cash and the type of currency;

(7) information regarding the amount of money received in cash on behalf of a third person.

O.C. 838-99, s. 19.

20. In addition to the information prescribed in section 17, the client records that must be kept by firms, independent representatives or

independent partnerships registered in the sector of group insurance of persons in respect of each client in the pursuit of its activities must include the following information, where necessary:

- (1) the name of the holder of the group insurance policy;
- (2) the name of the person designated as the policyholder's contact person;
- (3) the calls for tenders and the proposals submitted.

O.C. 838-99, s. 20.

21. The client records that must be kept by firms, independent representatives or independent partnerships registered in the sector of damage insurance in respect of each client in the pursuit of their activities must include the following information, where necessary:

- (1) the client's name;
- (2) the amount, object and nature of the insurance coverage;
- (3) the policy or contract number and the contract issue dates and proposal signature dates, where applicable;
- (4) the method and date of payment of the insurance contact;
- (5) any list evaluating the insured's property transmitted by the insured, where applicable.

Any other information or document pertaining to the products sold or services rendered gathered from the client must also be filed or inscribed in the register.

O.C. 838-99, s. 2

§3. *Commissions register*

22. The commissions register that must be kept by firms, independent representatives and independent partnerships in the pursuit of their activities must contain the following information for each commission:

- (1) the contract number or client name, as the case may be;
- (2) the name of the client, the insurer or any other person who has paid a commission to the firm, independent representative or independent partnership;
- (3) the statement pertaining to each commission or other remuneration received by the firm, the independent representative or the independent partnership.

However, in the event that the statement provided for in subparagraph (3) of the first paragraph includes the information prescribed in subparagraphs (1) and (2) of said paragraph, the filing of the statement in the register of commissions is regarded as sufficient.

Where a firm is an insurer, the commissions register must contain, in addition to the name of the person who received payment of the commission, the information prescribed in subparagraph (1) of the first paragraph.

O.C. 838-99, s. 22.

23. The commissions register that must be kept by firms, independent representatives and independent partnerships must contain the following information in respect of shared commissions:

- (1) the name and business address of each person sharing the commission and the sectors, if applicable, for which they are registered with the Bureau;
- (2) the names of the parties to the transaction and the object and date of the transaction;

(3) the percentage of the commission or the fixed amount resulting therefrom and the manner in which the commission is allocated between the persons sharing it.

O.C. 838-99, s. 23.

§4. Sharing of commissions and entry in the commissions register

24. Payment of the commission to those sharing it shall not be made in cash.

O.C. 838-99, s. 24.

25. Any sharing of commission must be promptly entered in the commissions register.

O.C. 838-99, s. 25.

§5. (Implicitly revoked; 2002, chapter 45, s. 407)

26. *(Implicitly revoked; 2002, chapter 45, s. 407)*

O.C. 838-99, s. 26.

§6. (Implicitly revoked; 2002, chapter 45, s. 407)

27. *(Implicitly revoked; 2002, chapter 45, s. 407)*

O.C. 838-99, s. 27.

28. *(Implicitly revoked; 2002, chapter 45, s. 407)*

O.C. 838-99, s. 28.

DIVISION III PROFESSIONAL LIABILITY INSURANCE

29. Except regarding the category of claims adjuster employed by an insurer, the insurance contract covering the liability of an independent representative, firm or independent partnership must satisfy the following conditions:

(1) The minimum insurance coverage is \$500,000 per claim and, for a 12-month period, is \$1,000,000 for an independent representative and \$5,000,000 for a firm or an independent partnership;

(2) The insurance contract may stipulate a deductible not exceeding \$5,000. The deductible may exceed \$5,000 provided that the insured at all times maintains net liquid capital at least equal to the amount of the stipulated maximum deductible;

(3) The insurance contract must also contain provisions to the following effect:

a) in the case of a firm, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the pursuit of the firm's activities and from those committed by its mandataries, its employees or the trainees of its representatives, in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;

b) in the case of an independent representative, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the performance of his duties and those committed by his mandataries, his employees or his trainees in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;

c) in the case of an independent partnership, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the pursuit of activities of his partners and the representatives in his employ and from those committed

by their mandataries, their employees or the trainees of the partners and representatives in his employ, currently or in the past, in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;

d) that the coverage provided in respect of the activities of a firm, an independent representative or the partners or representatives employed by an independent partnership for the period during which the contract is in effect will continue to apply beyond the insurance period provided for in the contract in respect of the activities contemplated by such coverage for a further term of five years from the time the firm, independent representative or independent partnership was struck off or suspended from the Bureau's roll;

e) that the time within which an insurer must notify the Bureau of its intention not to renew or its intention to cancel the contract is 30 days prior to the date of non-renewal or cancellation;

f) that the insurer must notify the Bureau upon receiving notice of cancellation of an insurance contract from a firm, an independent representative or an independent partnership;

g) that the insurer must give notice to the Bureau of the receipt of any claim, irrespective of whether or not the insurer decides to honour the claim.

For the purposes of subparagraph (2) of the first paragraph, "liquid assets" means cash and securities immediately convertible into cash.

O.C. 838-99, s. 29.

DIVISION IV FRANCHISES

30. A firm that wishes to act as franchiser must:

(1) send the Bureau a list containing the names and registration numbers of the firms to which it intends to give a franchise;

(2) advise the Bureau of the trademarks, graphic symbols, logos and names that it will allow its franchisees to use.

The franchiser must also send the Bureau an amended list if it grants another franchise or if a firm ceases to operate as a franchise.

O.C. 838-99, s. 30.

31. A franchisee must clearly identify itself as such in the pursuit of its activities, particularly as regards its letterhead, business cards, advertising and signs.

O.C. 838-99, s. 31.

32. Where the franchiser or the franchisee provides insurance coverage in accordance with Division IV, the insurance contract must indicate that it pursues its activities either as franchiser or franchisee.

O.C. 838-99, s. 32.

33. *(Omitted).*

O.C. 838-99, s. 33.

SCHEDULE 1

CLASS 1: Representations

Sub-classes

- (a) general advertising
- (b) false or misleading representation
- (c) comprehension of the policyholder or securities holder
- (d) replacement of contract in the insurance of persons
- (e) conduct of the representative
- (f) tied sales
- (g) privacy and confidentiality
- (h) all other types of complaint relating to representation or sales

CLASS 2: Settlements

Sub-classes

- (a) delays
- (b) unsatisfactory settlements
- (c) refusal of an application for settlement
- (d) suspension in benefit payments
- (e) all other types of complaint relating to settlement

CLASS 3: Client Services

Sub-classes

- (a) invoicing
- (b) delays
- (c) administrative problems
- (d) all other types of complaint relating to customer services
- (e) execution of the mandate

CLASS 4: Products

Sub-classes

- (a) low initial surrender values
- (b) rate of return
- (c) pre-existing conditions, exclusions
- (d) all other types of complaint relating to products

O.C. 838-99, App. 1.

O.C. 838-99, 1999 G.O. 2, 2092

Amendments

L.Q. 2002, chapter 45, a. 407