

Draft Regulations

An Act respecting the distribution of financial products and services
(R.S.Q., c. D-9.2, ss. 202, 211, 213 and 223)

Regulation to amend the Regulation respecting the pursuit of activities as a representative and its concordant regulation

Notice is hereby given by the *Autorité des marchés financiers* (the "Authority" or the "AMF") that, in accordance with section 217 of *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2, the following draft Regulations, the texts of which are published hereunder, may be made by the Authority and subsequently submitted to the Minister of Finance for approval, with or without amendment, after 45 days have elapsed since this publication in the Bulletin of the Authority:

- *Regulation to amend the Regulation respecting the pursuit of activities as a representative;*
- *Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships.*

REGULATION TO AMEND THE REGULATION RESPECTING THE PURSUIT OF ACTIVITIES AS A REPRESENTATIVE

PURPOSE OF DRAFT REGULATION

This draft Regulation is made under sections 202, 211 and 213 of *An Act respecting the distribution of financial products and services*, R.S.Q., c. D-9.2 (the "Distribution Act"), and is intended to amend the *Regulation respecting the pursuit of activities as a representative* (the "Regulation") pertaining to various aspects of the practice of representatives governed by the Distribution Act.

PROPOSED AMENDMENTS

Incompatible occupations – sections 2 and 3

Certified management accountant, certified general accountant and chartered administrator

An **exclusive profession** means a profession that no person may claim to carry on or have the right to carry on, or may act in such a way as to lead to the belief that he is authorized to do so, unless he is listed on the roll of the relevant order. The profession of lawyer, for example, is an exclusive profession; in other words, a profession whose activities can only be performed by a lawyer who is a member of the Bar. Likewise, the profession of notary or chartered accountant can only be performed by, respectively, a notary or a chartered accountant.

The professions of certified management accountant, certified general accountant and chartered administrator have **reserved titles**: Only members of the professional orders concerned may use these titles. However, as non-members may also pursue these professional activities, currently, a conflict of interest analysis is conducted to determine whether they are in an

incompatible situation. To ensure fairness, it is proposed to withdraw the professions of certified management accountant, certified general accountant and chartered administrator from the list in section 2 of the Regulation. A conflict of interest analysis will be conducted on a case-by-case basis to determine whether or not a representative's certificate can be issued to these professionals.

Real estate broker

The coming into force of the new *Real Estate Brokerage Act* (R.S.Q., chapter C-73.2) in 2010 abolished the incompatibility between the activities of a real estate broker and those of a representative.

For consistency, the draft Regulation proposes to remove the similar incompatibility in the Regulation.

Funeral director

Life insurance is currently offered to existing or future funeral home clients.

As the AMF seeks to prevent conflicts of interest in the financial industry, the occupation of funeral director is added to the list in section 2 of the Regulation. This addition is necessary given the vulnerability of funeral home and funeral insurance clients and the real potential conflict of interest to which the person selling both prefuneral arrangements and funeral insurance is exposed.

A funeral director may not obtain a certificate as an insurance representative. Conversely, an insurance representative would not be authorized to obtain a funeral director's licence or to pursue activities in the funeral industry. Consequently, an insurance representative should not, as part of his activities, inform clients about specific funeral needs or the products and services offered by funeral homes. He should only propose an average amount of insurance, and should refer clients to a funeral home if they are seeking a more accurate evaluation of their funeral needs and the related costs.

Time devoted to activities as a representative – section 4

The concept of availability is brought into the Regulation and replaces the concept of devoting time primarily to activities as a representative.

The purpose of this section is to require representatives to pursue activities in such way as to remain available and useful to clients. Regardless of the time actually devoted to activities as a representative, it is the impact on the service provided to the client that is important.

Sections 2 and 3 of the Regulation relate to the issue of incompatible occupations by preventing the representative from occupying certain functions that could place him in a real or apparent conflict of interest.

Section 4 concerns cases where a representative holds other employment or where, without having other professional occupations, he does not devote sufficient time to his activities as a representative.

Sales contests – section 5

The purpose of existing section 5 of the Regulation is to protect consumers from the sale of products that do not necessarily meet their needs. It is intended to ensure that representatives do not recommend specific products to clients solely in order to derive a personal gain, in particular through a contest.

Provisions regarding contests introduced by firms or independent partnerships are added to the *Regulation respecting firms, independent representatives and independent partnerships*. Therefore, it is proposed that sales contests still be allowed, provided that they are not likely to influence the performance of the representative's obligations to the detriment of his client. Contests must not promote the sale of a particular product.

The draft *Commercial Practices Guideline* raises the issue of contests as they pertain to insurers. Under the guideline, the AMF may expect insurers to establish global compensation strategies (which include contests) so that incentives do not prejudice the fair treatment of consumers.

Financial needs analysis – section 6

Section 6 of the Regulation covers **ALL** insurance of persons representatives, whether they are **financial security advisors** (sector) or **representatives in accident and sickness insurance** (sector class). Insurance of persons representatives offer insurance of persons products, regardless of the title they hold for certification purposes and the type of insurance product offered (life, disability, sickness, critical illness, etc.).

Section 6 does not create the obligation to prepare a financial needs analysis. This responsibility exists under the Distribution Act (in particular, section 27). Therefore, the purpose of section 6 of the Regulation is to clarify the basis on which the representative should prepare the analysis of the client's financial needs.

Rules are provided for representatives who complete insurance proposals, but do not stipulate cases where a representative offers an insurance product that includes an investment component (e.g., segregated funds, universal life insurance). This section was amended to clarify the situation and specifically require the representative to gather additional information and to consider the "investment" portion of the transaction. In such cases, insurance of persons representatives must determine the client's investment needs and objectives, as well as his risk tolerance profile.

Broker/agent – section 7

The Distribution Act distinguishes between two types of damage insurance representative: agent and broker. It stipulates as follows:

- "5. A **damage insurance agent** is a natural person who, on behalf of a **firm** that is an insurer **or** that is bound by an **exclusive contract** with a **single** damage insurer, offers damage insurance products directly to the public."

- "6. A **damage insurance broker** is a natural person who offers a range of damage insurance products from **several insurers** directly to the public, or who offers damage

insurance products from one or more insurers to a firm, an independent representative or an independent partnership.”

Existing section 7 of the Regulation restates the distinction established in sections 5 and 6 of the Distribution Act between a damage insurance agent and a damage insurance broker. Therefore, it seems unnecessary to have a similar section in the Regulation, and it is proposed that it be withdrawn.

Mandate of financial planner and insurance representative – sections 8 and following

Section 8 of the Regulation sets out the obligations of financial planners regarding the **mandate** (agreement) they are required to prepare for the client. This section currently refers only to financial planners, whereas it should extend, with the necessary adaptations, to insurance of persons representatives, damage insurance representatives who require compensation and group insurance of persons representatives. Logically, the obligations set out in this section apply to them as well.

Representatives must also comply with the rules set out in the *Regulation respecting information to be provided to consumers*, particularly in the division on the disclosure of fees.

Representations and client solicitation – sections 10 to 15

The rules regarding representations are intended to protect clients. They ensure that a client has all the information needed to identify his representative, is aware of his representative’s area of expertise, and can easily contact him. Representations are sometimes viewed as a marketing tool that distances representatives from their primary responsibility: providing information to the public.

In this respect, it is important to clarify the rules, which have been relaxed.

It is proposed to import into the Regulation the concept of representations existing in securities law, namely, that no part of the representation should cause confusion. Therefore, information may be part of written representations where:

- it pertains to the activities as a representative; and
- does not cause confusion.

Policy replacements – sections 18 to 27

Insurance of persons representatives **must endeavour** to ensure that all insurance contracts are **maintained in effect**. Replacement of an insurance contract is only justified when in the interest of the purchaser (policyholder) or the insured. Consequently, the representative must not encourage an insured or a purchaser to cancel, cause to lapse or abandon one insurance contract in favour of another insurance contract, unless he complies with the replacement procedure. The representative must demonstrate that the replacement is justified.

As part of its mandate, the Canadian Insurance Services Regulatory Organizations (“CISRO”) designed a life insurance policy replacement form.

The AMF is proposing a new form that is based on the CISRO form but specific to Québec:

- Information given to the client for his understanding;
- Representative must reply in writing to the form questions;
- One form for all products (section 23 of the Regulation will therefore be repealed);
- Structure of core components of contract more logical and sequential (parts, type of coverage, insured amount, premiums, etc.);
- Comparison using answers to precise but open questions corresponding to the reality of several products;
- Caution regarding suicide and incontestable clauses;
- Remittance of form to client and insurer of replaced policy;
- Signature by client.

Although there is only one form for all products, the representative must complete one form for each replaced contract.

Representatives subject to obligation

The obligations regarding policy replacement apply to insurance of persons representatives who replace an insurance of persons contract. The concepts of insurance of persons representative and, incidentally, insurance of persons contract, are encompassing and inclusive. They pertain to:

- ALL insurance of persons representatives, whether they are financial security advisors (sector) or representatives in accident and sickness insurance (sector class);
- ALL insurance of persons contracts, whether life insurance contracts or accident and sickness insurance contracts and, therefore, the coverage related, in particular, to disability and critical illness. They also cover other insurance of persons contracts that could be introduced on the market.

Availability of forms

Forms can be printed or downloaded free of charge via the AMF website. A fee will however apply where the AMF provides printed forms.

Representatives would use the AMF form, regardless of the type of product offered or replaced. In addition, representatives must have the client initial each page of the completed form and sign it, and must immediately give the client a copy.

In all cases, a copy of the form must be sent to the insurer whose policy is being replaced, within five days of the client signing the insurance proposal.

It is proposed that the previous versions of the forms sold by the AMF be used for a period of one year after the new Regulation comes into force.

Designation E – section 28

The Distribution Act provides an exception to the general principle whereby a claims adjuster may not act in another sector. Therefore, under section 46 of the Act, the AMF may authorize a damage insurance agent or broker to act as a claims adjuster, in certain circumstances and under certain conditions as determined by the Act and the Regulation.

Designation E is an exceptional and circumstantial solution. A damage insurance agent or broker may not act as a claims adjuster on a permanent basis. The Regulation proposes clarifications.

Signature and time periods

Requirements regarding the dating of documents and their signing by clients, the remittance of such documents to clients and compliance with time periods are added.

Terminology

Some linguistic modifications were made.

REGULATION TO AMEND THE REGULATION RESPECTING FIRMS, INDEPENDENT REPRESENTATIVES AND INDEPENDENT PARTNERSHIPS

PURPOSE OF DRAFT REGULATION

The proposed amendments to the *Regulation respecting firms, independent representatives and independent partnerships* essentially ensure consistency with the amendments to the *Regulation respecting the pursuit of activities as a representative*. Therefore, the rules related to the content of client records will be amended to align them with the changes made to the *Regulation respecting the pursuit of activities as a representative*.

Sales contests – section 5

Provisions regarding incentives introduced by firms and independent partnerships are added to the *Regulation respecting firms, independent representatives and independent partnerships*.

Consequently, contests or promotions focusing on specific products are prohibited. Moreover, firms and independent partnerships must keep a register of these incentives.

Request for comments

Comments regarding the above draft Regulations may be made in writing before October 17, 2011 to:

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Comments will be made public unless otherwise noted.

Further information

Further information is available from:

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