

chapter D-9.2, r. 2

Regulation respecting firms, independent representatives and independent partnerships

O.C. 838-99, Title; O.C. 1014-2003, s. 2.

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 marketer including the insurer, in the case of insurance products.

O.C. 838-99, s. 10; M.O. 2009-06, s. 1.

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.

11.1. The firm or independent partnership may not introduce any incentives that could have an influence on the performance of the obligations of a representative to the detriment of his client.

A contest or promotion to sell specific products is deemed to have such influence.

The firm or independent partnership may however provide non-pecuniary benefits that are of a promotional nature and of low value where such benefits are not sufficiently material, in value or frequency, to have an influence on the performance of the obligations of a representative to the detriment of his client.

M.O. 2013-12, s. 1.

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, must include the following information:

- (1) the client's name;
- (2) the client's address, telephone number, and facsimile number or 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 and signed, at the time of replacement of an insurance policy, where applicable, as prescribed in Division VII of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10);
- (10) a copy of the documents prescribed in sections 8, 9 and 16 of the Regulation respecting the pursuit of activities as a representative.

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; M.O. 2013-12, s. 2.

18. *(Repealed).*

O.C. 838-99, s. 18; M.O. 2009-06, s. 2.

19. *(Repealed).*

O.C. 838-99, s. 19; M.O. 2009-06, s. 2.

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:

- (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;
- (4) a copy of the mandate and report prescribed in sections 8.1 and 9.1 of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10).

O.C. 838-99, s. 20; M.O. 2013-12, s. 3.

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:

- (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; M.O. 2013-12, s. 4.

§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.

§7. *Register of incentives*

28.1. A firm or independent partnership must keep a register of the incentives that it introduces.

The firm or independent partnership must provide in such register a description of the terms and conditions of each incentive introduced, including its duration, related benefits, applicable products or services, a description of the group of representatives concerned and the names of the winners.

M.O. 2013-12, s. 5.

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 coverage amount must not be less than \$500,000 per claim and, for each 12-month period, not less than

(a) \$1,000,000 for an independent representative ;

(b) \$1,000,000 for a firm or an independent partnership having three representatives or fewer acting on behalf of the firm or the independent partnership ; and

(c) \$2,000,000 for a firm or an independent partnership having more than three representatives acting on behalf of the firm or the independent partnership ;

(2) The insurance contract may stipulate a deductible not exceeding

(a) \$10,000 for an independent representative ;

(b) \$10,000 for a firm or an independent partnership having three representatives or fewer acting on behalf of the firm or the independent partnership ; or

(c) \$25,000 for a firm or an independent partnership having more than three representatives acting on behalf of the firm or the independent partnership ;

(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.

The amount of the deductible stipulated in the insurance contract may nevertheless be greater than the amount set out in subparagraphs a to c of subparagraph 2 of the first paragraph, provided that the insured maintains at all times liquid assets at least equal to the amount stipulated in the contract. "Liquid assets" means the total of cash and securities immediately convertible into cash.

O.C. 838-99, s. 29; O.C. 1014-2003, 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, c. 45, a. 407

O.C. 1014-2003, 2003 G.O. 2, 3006

M.O. 2009-06, 2009 G.O. 2, 3886A
Decision 2009-PDG-0124, 2009-09-04
Bulletin de l'Autorité: 2009-09-25, Vol. 6, n° 38

A.M. 2013-12, 2009 G.O. 2, 3257
Décision 2013-PDG-0102, 2013-06-19
Bulletin de l'Autorité: 2013-07-25, Vol. 10, n° 29