

Draft Regulation

Act respecting the distribution of financial products and services
(chapter D-9.2, s. 200, par. (10) and s. 223, pars. (1), (4), (5), (8), (11) and (13.1))

Regulatory consultation on the processing of claims by non-certified persons to implement the changes to the Distribution Act

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

The draft regulations are also available under “[Public consultations](#)” on the [AMF’s website](#). For ease of reading, the Authority also offers an administrative version of the complete text of the regulations, including the proposed amendments.

Background

An Act to amend various provisions mainly with respect to the financial sector, 2024, chapter 15 (“Bill 30”) was assented to on May 9, 2024. Among other things, the Act amends the Distribution Act and introduces new provisions concerning claims adjustment.

Section 45 of the Distribution Act, which prohibited claims adjusters from acting in another sector, has been repealed. This means that, since May 9, 2024, claims adjusters have been able to also be damage insurance agents or brokers, for example.

Section 46 of the Distribution Act, which authorized damage insurance agents and brokers to act as claims adjusters in respect of policies purchased through the firm for which they act (Designation E), has also been repealed. Representatives who took advantage of this possibility¹ may, if they wish, obtain a certificate in the claims adjustment sector.

These changes will enable more people to obtain their claims adjuster certificate and the firms involved to manage claims more efficiently.

Section 10 of the Distribution Act is also amended to allow, effective May 9, 2025, subject to certain conditions, non-certified persons to settle certain claims under the supervision of a claims adjuster

¹ Persons who are interested have until November 30, 2025, to express their interest. After that date, this option will no longer be available. Between now and then, the Authority will contact the persons affected to explain the situation and provide assistance with obtaining the certificate.

(persons referred to in subparagraph 3 of the second paragraph of section 10 of the Distribution Act, or "Referred-to Persons").

Persons domiciled in Canada and employed by a firm, an independent partnership or a claims adjuster registered as an independent representative ("Registrant") may, solely by means of information technologies and under the supervision of a claims adjuster, carry out functions in three situations:

- for an automobile claim arising from a claim provided for by the direct compensation agreement referred to in section 173 of the *Automobile Insurance Act* (chapter A-25);
- for an automobile claim arising from a glass breakage; or
- for the settlement of a claim not exceeding \$5,000.

Bill 30 provides that Referred-to Persons "must inform the claimant of the fact that they are acting under the supervision of a claims adjuster and of the identity of that claims adjuster and, at the claimant's request, refer the claimant's record to that claims adjuster." The [clause-by-clause consideration of Bill 30](#) also states that [translation] "the supervising claims adjuster remains fully responsible for the record."

Bill 30 also provides that the Referred-to Persons are bound to act with honesty and loyalty in their relations with a claimant.

The Distribution Act has been further amended to cause the Financial Services Compensation Fund to also apply in cases of fraud committed by Referred-to Persons and to give the Authority the power to determine the rules relating to the qualifications and obligations of representatives who supervise such persons.

The regulatory changes that are the subject of this consultation are being made in connection with these amendments, which will come into force on May 9, 2025.

Processing of claims submitted to the Financial Services Compensation Fund

In order to process a Financial Services Compensation Fund claim involving a Referred-to Person, the Authority needs information to identify the person and determine the periods during which they have carried out the functions of a claims adjuster.

The *Regulation respecting the registration of firms, representatives and independent partnerships* would therefore be amended (sections 2, 4, 6 and 10) to require Registrants to transmit to the Authority the names, addresses and dates of birth of Referred-to Persons and the date on which such persons began or ceased to act in accordance with section 10 of the Act.

This information will need to be provided (1) when the sections come into force, in the case of firms or independent partnerships that already employ such persons (transitional provision, section 6 of the Amending Regulation), (2) once a year, and (3) every time a change occurs.

Section 9 of the *Regulation respecting the registration of firms, representatives and independent partnerships* already provides that Registrants must notify the Authority in writing of any change in circumstances which affects the accuracy of the information and documents provided. This section would be amended to specify that Registrants will also need to notify the Authority of the date on which a Referred-to Person began or ceased, as the case may be, to act in accordance with section 10 of the Act.

Supervision of Referred-to Persons

Referred-to Persons must be supervised in a manner that both protects consumers and helps ensure the efficiency of the new regime.

The supervision of Referred-to Persons differs significantly from that of trainees who are going through their probationary period.

Over the course of a probationary period, a trainee gradually assumes all the tasks reserved for representatives, developing and consolidating their skill set with a supervisor's help and guidance. A probationary period is a relatively short, closely supervised period of integration that precedes the issuance of a certificate. At the end of the period, the trainee becomes a representative who is authorized to act without supervision.

A Referred-to Person will always act under the supervision of a claims adjuster. They may nevertheless, over time, acquire solid experience in processing the claims they are authorized to process, which, as explained in the [clause-by-clause consideration of Bill 30](#), would be [translation] "simple claims" or [translation] "claims for relatively low amounts." As indicated, the Referred-to Persons will carry out their functions by means of information technologies, limiting the tasks they can perform. This should therefore be considered in supervising such persons.

A supervisor of a person referred to in subparagraph 3 of the second paragraph of section 10 of the Act should have a minimum amount of experience, have not been the subject of a sanction in the preceding five years and not hold a certificate carrying conditions or restrictions (draft sections 9.11 and 9.12 of the *Regulation respecting the pursuit of activities as a representative*).

The Authority is proposing (section 9.13) that supervising claims adjusters be available for Referred-to Persons, that they review the tasks and steps completed by such persons either randomly or, if a settlement proposal does not match the client's claim, systematically, and that they document such reviews. The Regulation further provides that the supervisor should systematically review each claim record for which the compensation claimed by the client would not be granted.

Given that, under the Act, each claim record is to be processed under the supervision of a claims adjuster to whom it may be referred at any time at the claimant's request, the supervising claims adjuster will conduct an adequate review to ensure the quality of the Referred-to Person's work.

In accordance with section 28.4 of the *Regulation respecting firms, independent representatives and independent partnerships*, a Registrant that employs a Referred-to Person should determine which tasks the person may carry out, present in writing the steps to follow to process a claim and ensure that the supervisor is available for the person in a timely manner and documents their review.

It is proposed that Registrants keep a register of Referred-to Persons and the claims adjusters supervising them (section 28.1.1) and that each client record include, where applicable, an indication that it is processed by a Referred-to Person, the name of such person and the name of the claims adjuster supervising them (section 17, subparagraph 11).

Finally, it is provided (section 16) that sections 13 to 15 of the Regulation apply to documentation relating to the review by the supervisor. The purpose of this change is to enable the Registrant to decide, as in the case of documentation relating to the records, books and registers it is required to keep, how to preserve the documentation relating to the settlement of claims by Referred-to Persons, but also how to ensure the security of such documentation and make it available to the Authority upon request.

Comments

Comments regarding the regulatory amendments may be made in writing before **November 23, 2024** to:

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Unless otherwise noted, comments will be posted on the Authority's website at www.lautorite.qc.ca. Please do not include personal information directly in comments to be published and state on whose behalf you are making the comments.

Additional Information

Additional information may be obtained from:

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