



Amendments proposed to regulations governing Quebec insurance representatives

The logo for McMillan, featuring the word 'mcmillan' in a red, lowercase, sans-serif font.

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A one-size-fits-all model that does not fit all

In a September 2 2011 bulletin⁽¹⁾ the *Autorité des marchés financiers* (AMF) – the Quebec regulator of incorporated insurance companies and of extra-provincial insurance companies licensed to conduct insurance business in the province – issued a consultation notice stating that it intends to submit two draft regulations for approval to the minister of finance in accordance with Section 217 of an act respecting the distribution of financial products and services:⁽²⁾

- the regulation to amend the regulation respecting the pursuit of activities as a representative; and
- its concordant regulation, the regulation to amend the regulation respecting firms, independent representatives and independent partnerships.⁽³⁾

Members of the financial and insurance sectors were invited to submit their comments regarding the main regulation and the concordant regulation in writing to the AMF before October 17 2011.

The draft regulations have received mixed responses from the financial and insurance sector.⁽⁴⁾ While certain organisations expressed reservations about the deletion, addition and modification of certain provisions, others commended or expressed no opinion about these changes, but rather targeted other provisions. There was no consensus among the various commentators as to whether the draft regulations represent an improvement or otherwise.

Purpose of the draft regulations

The purpose of the proposed amendments to the main regulation is to revise various aspects pertaining to the

practice of representatives governed by the distribution act (eg, incompatible occupations, availability of representatives, sale contests). The purpose of the concordant regulation is to render it consistent with the main regulation, especially as pertains to promotional incentives or rules related to the content of client records. If approved, the draft regulations would clarify and modify certain obligations of the institutions, firms, agents and representatives governed by these regulations.

The proposed amendments to the draft regulations suggest the following changes:

- The professions of certified management accountant, certified general accountant and chartered administrator would be withdrawn from the list of incompatible occupations with the pursuit of activities of a representative. The AMF would conduct a conflict of interest analysis on a case-by-case basis to determine whether a representative's certificate could be issued to these professionals.
- The incompatibility of the activities of a real estate broker would also be withdrawn in order to maintain consistency with the Real Estate Brokerage Act (Quebec), which abolished the incompatibility in 2010.
- The occupation of funeral director would be added to the list of incompatible occupations, due to the vulnerability of clients of funeral homes and the conflict of interest that may arise should a funeral director be permitted to sell both pre-funeral arrangements and funeral insurance.
- The concept of availability (in terms of time) would be added to the obligations of representatives in order to ensure that representatives remain available and useful to their clients, as opposed to allowing other obligations to encroach on their time to the detriment of their clients.
- Provisions regarding sales contests would be modified to allow for sales contests, provided that they are unlikely to influence the representatives' obligations to the detriment of their clients and do not promote the sale of a particular product to the detriment of the client.
- Provisions regarding incentives introduced by firms and independent partnerships would be added to the concordant regulation, with the effect that contests or promotions focusing on specific products would be prohibited, but promotional activities providing non-pecuniary benefits of low value and low materiality would be permitted.
- The concordant regulation would be amended so that firms and independent partnerships would be required to keep a register of promotional incentives.
- With respect to all insurance representatives (including financial security advisers and representatives in accident and sickness insurance), where insurance products include an investment component, representatives would be required to gather additional information regarding a client's investment needs and objectives, as well as its risk-tolerance profile, and to consider the 'investment' portion of the transaction.
- The difference between a damage insurance agent and a damage insurance broker would be withdrawn, since this difference is already provided for in the distribution act.
- The obligations of financial planners regarding the mandate or agreement that they are required to prepare for the client would be extended to insurance representatives, damage insurance representatives which require compensation and group insurance representatives, with the effect that all representatives would need to enter into a signed, written agreement with a client identifying a list of specific items before any products could be sold or services rendered.
- The rules on representation of representatives and client solicitation would be clarified to ensure that representation provided by representatives did not cause confusion to clients. For instance, on first meeting a client and in all subsequent meetings, a representative would be required to give the client a written document such as a business card indicating, for example, the representative's name, contact information, organisation and title.

- Schedule I of the main regulation would provide for a form in order to assist insurance representatives with their obligation to ensure that all insurance contracts are maintained in force. This form would be based on the life insurance policy replacement form offered by the Insurance Services Regulatory Organisations, but would be specific to Quebec and available free of charge through the AMF website.
- The ability of the AMF to authorise damage insurance agents or brokers to act as claims adjusters in certain situations would be clarified, since the general rule under the distribution act is that claims adjusters may not act in another sector.
- Requirements regarding the dating of documents and their signing by clients, the remittance of such documents to clients and compliance with time periods would be added.
- Some linguistic modifications would be made.

Practical issues unresolved

While the aim of the draft regulations seems to be to clarify certain obligations of representatives in the financial and insurance sectors in order to protect consumers, the approach is, at best, inconsistent with the realities encountered by these representatives and, at worse, completely insufficient in achieving this goal.

For instance, without delving into the details of each proposed amendment, the draft regulations create inconsistencies when viewed holistically with other laws and regulations that regulate the insurance and financial sectors.

Further, the draft regulations fail to resolve the following issues (when they are clearly attempting to provide clarification and guidance):

- By removing or adding certain occupations to the incompatible occupations list and including a case-by-case analysis component for some of these occupations, the objective of preventing against conflicts of interest becomes less effective, as the underlying rationale for why a particular occupation is or is not incompatible with the activities of a representative becomes less clear.
- By prohibiting contests aimed at promoting a particular product, while allowing for 'on-pecuniary benefits of a promotional nature of low value and low materiality without specifically defining what this means, and by failing explicitly to specify to whom the prohibitions apply, the objective of protecting consumers is diluted, as there is room for inconsistent application across different types of representative and organisation and a flexible interpretation as to what is actually prohibited or allowed.
- By imposing stricter administrative requirements (eg, to keep a registry of incentives, to enter into agreements before offering any type of product or service, to provide clients with contact information at each and every meeting), the objective of clarifying regulatory obligations becomes counterproductive, as little is actually clarified. Rather, obligations are simply added, making the regulation regime for representatives even more burdensome and in many cases impractical, given the types of product and service being offered.

Entry into force

As mentioned above, the consultation period for the draft regulations ended on October 17 2011. In its September bulletin, the AMF explained that it may submit the draft regulations, with or without amendment, to the minister of finance for approval after 45 days have elapsed from the date of publication in the bulletin. However, despite this, the draft regulations would come into force only on the date of their publication in the *Gazette Officielle du Québec* or on a later date specified in the draft regulations.(5)

To date, no such date has been established in the draft regulations; nor have the draft regulations been published in the *Gazette Officielle du Québec*. Only time will tell as to whether or how the AMF has incorporated the various comments received from market participants in its final draft of the regulations before submission to the minister of finance for publication in the *Gazette Officielle du Québec*.

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Endnotes

(1) *Autorité des marchés financiers, Bulletin de l'Autorité des marchés financiers*, volume 8/35, *Distribution de produits et services financiers 3.2 Réglementation* (September 2 2011), online at www.lautorite.qc.ca/files/pdf/bulletin/2011/vol8no35/vol8no35_3-2.pdf.

(2) RSQ, c D-9.2, s217.

(3) These draft regulations would amend the regulation respecting the pursuit of activities as a representative, c D-9.2, r10 and its concordant regulation, the regulation respecting firms, independent representatives and independent partnerships, c D-9.2, r2.

(4) The comments submitted by the various organisations may be viewed at www.lautorite.qc.ca/en/previous-consultations-insurance-conso.html.

(5) *Supra*, note 2.

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