

# **CONSULTATION DRAFT - CONFIDENTIAL**

## **Superintendent's Guideline No. 01/17: Treating Financial Services Consumers Fairly**

### Introduction

The Superintendent of Financial Services ("Superintendent") is issuing this Guideline to inform all those licensed or registered by the Financial Services Commission of Ontario (FSCO) in the insurance, credit union/caisse populaire, loan and trust and mortgage brokering ("the financial services") sectors of its expectations regarding the fair treatment of financial services consumers and members of credit unions/caisse populaires and Ontario farm mutuals.

For the purposes of this Guideline, consumers and members of credit unions/caisse populaires and Ontario farm mutuals will be referred to collectively as "financial services consumers" or "consumers"; and those FSCO-licensed/registered individuals and entities in the financial services sectors to which this Guideline applies will be referred to as "licensees".

The 2008 financial crisis demonstrated how risks to the stability of the financial system as a whole can arise not only through failings in financial and capital management, but also as a result of poor conduct of business practices and unfair treatment of financial services consumers. This experience and others that followed have also demonstrated a lack of confidence by financial services consumers that many of those providing financial services will act in their best interest and treat them fairly.

FSCO expects that licensees are already treating financial services consumers fairly and in fact, FSCO already looks for this during its monitoring and oversight activities. There is, however, a need to further clarify FSCO's expectations as part of its statutory mandate to protect the public interest and enhance public confidence in FSCO's regulated sectors.

### Purpose

The purpose of this Guideline is to ensure there is a common understanding between FSCO and licensees as to what it means to treat financial services consumers fairly. The Guideline provides direction for the conduct of financial services business in a way that allows licensees to demonstrate to consumers that they meet the Superintendent's expectations. It seeks to strengthen public trust and consumer confidence in the financial services sectors regulated by FSCO.

Much of what FSCO expects is already contained in existing legislation or is part of accepted industry best practices. However, treating financial services consumers fairly is not just about the law; it is also about an ethical way of doing business, and a culture that places consumers at the centre of all business decisions.

It is about putting the interests of the consumer first, and considering what financial services consumers expect or need at every stage the product life-cycle, right from the moment a product is envisioned, all the way through to the end or fulfillment of a business contract. Treating consumers fairly is focused on achieving clearly articulated, measurable and demonstrable outcomes for the financial services consumer.

#### Responsibility to treat financial services consumers fairly throughout the product life-cycle

The Superintendent's expectations apply to all licensees, whether they have a direct interface with the consumer or not, and whether or not they are involved in all stages of the product life-cycle. This includes licensees designing a financial services product, and those distributing or selling products to financial services consumers.

Licensees that are not directly selling products to, or advising financial services consumers themselves, still need to consider the Superintendent's expectations and the impact of their conduct of business on the financial services consumer. These licensees may have a role in designing products and defining their target market; providing promotional material to licensees that will sell and provide advice on financial products, or to the financial services consumers themselves; and post-sale service where they acquire an ongoing contractual relationship.

Licensees who are involved in sales and distribution, on the other hand, will generally be responsible for providing information at the point of sale, for the appropriate advice, and for the suitability of the sale of the financial product. Sometimes these licensees play just an advisory or intermediary role between the designer / manufacturer / provider of the financial product or service and the end-consumer. In this Guideline we will sometimes refer to these licensees as "intermediaries".

Regardless of the stage of the product life-cycle that the licensee is involved with, where more than one licensee is involved in the design, marketing, distribution and post-sale servicing of a financial product or service, the Superintendent expects treating consumers fairly to be a shared responsibility of all those involved.

Finally, licensees are accountable/responsible for ensuring that the Superintendent's treating consumers fairly expectations are known to, and complied with by their non-licensed employees, third party contractors, and intermediaries acting on their behalf.

#### Application of proportionality when implementing the Guideline

The Superintendent's expectations apply to all licensees including individuals, sole proprietorships, partnerships and corporations. Given that the nature and activities of licensees to whom this Guideline applies are so diverse, ranging from large institutions offering highly complex products, to individuals giving advice on the suitability of a product, FSCO believes it is neither possible nor desirable to specify exactly what it expects from every licensee against detailed or prescriptive rules. Implementation of this Guideline is not a "one size fits all" approach and may differ based on the licensee's

size, ownership structure, risk profile, nature and complexity of operations, as well as the sector and markets where it operates.

For example, the policies, record-keeping and analysis that would be expected from a licensee that is an individual or a sole proprietor in order to document fair treatment of consumers may not be as extensive, but FSCO still expects these licensees to have appropriate internal controls in place to ensure and demonstrate the licensee has met the principles of the fair treatment of financial services consumers. In other words, FSCO's proportionality principle recognizes nature, scale and complexity of the licensee, giving room for tailored solutions to achieve the desired objectives contained in the Superintendent's expectations.

This Guideline is also not intended to be an exhaustive list of practices. Rather, it provides some guidance and examples of what FSCO expects to see, as part of its consumer protection mandate, during compliance examinations and other touchpoints such as questionnaires and attestations.

The Superintendent expects licensees will consider the spirit of this Guideline and proportionally adapt it to all of their business activities. The Guideline uses "must" when a statutory requirement is in place for all licensees; and "should" where a licensee is expected by FSCO to consider a particular action to comply with a Principle, without necessarily implying that there is only one prescribed course of action. Notwithstanding the above, licensees are responsible for knowing what are their legal obligations.

### **The Superintendent's Expectations for Treating Financial Services Consumers Fairly**

#### **1. FSCO expects that treating financial consumers fairly is a core component of the licensees' business governance and culture.**

- A treating consumers fairly culture should be driven from the senior levels of an organization ("tone from the top"). It is the responsibility of the licensee, its owners, partners, officers, board of directors and/or senior management to build this culture.
- Licensees should design, implement, communicate and monitor compliance with a code of conduct, and/or policies and procedures that reinforce a fair treatment of consumers' culture. Policies should also be made publicly available, especially those relating to how financial services consumers can file a complaint.
- Policies and procedures that promote treating consumers fairly should be incorporated into any outsourcing contract or arrangement with intermediaries and third party contractors.
- All licensees should comply with the code of conduct and treating consumers fairly policies and procedures of their organization.
- The expectation to establish a treating consumers fairly culture applies to all licensees, regardless of their size. Licensees who are individuals, sole proprietorships, and partnerships should align their business decisions and priorities with treating consumers fairly outcomes in a manner proportionate to

the size and complexity of their business. For example, these licensees should subject their day-to-day business and all decisions that have an impact on financial services consumers to scrutiny in terms of whether or not they support their fair treatment.

- Licensees should have appropriate mechanisms in place that are reasonably designed to measure compliance with treating consumers fairly policies (e.g. conducting consumer satisfaction surveys).

## **2. FSCO expects licensees to act with due skill, care and diligence when dealing with consumers, and when designing products.**

- Licensees involved in sales, service and advice to consumers must meet the required statutory proficiency qualifications, and act with the due skill, care and diligence appropriate for the product involved and the personal circumstances and financial needs of the consumer.
- Licensees involved in the design and governance of products should have regard to the needs of their target market. This may also require choosing the most appropriate distribution methods tailored to the target market, and having an established process to identify/mitigate risks that a product may pose to particular consumers (e.g., stress-testing; monitoring of products post-launch to ensure they meet the needs of the initial target market).
- All licensees should regularly deliver and/or participate in training programs on ethics and integrity, specifically related to their own code of conduct or standards.

## **3. FSCO expects licensees to promote products and services in a manner that is clear, fair and not misleading or false.**

- Licensees must comply with the legal requirements to provide consumers only with information that is accurate, clear and not misleading or false, including any diagrams or projections.
- Although the level of product information that should be made available to consumers will depend on the type, complexity and specific legal requirements of each product, financial services consumers should always be provided with information that:
  - is easy to understand (plain language used wherever possible);
  - is clear regarding any risks, exclusions or limitations of a product;
  - does not hide, diminish or obscure important statements or warnings, but rather makes sure that important information is prominently displayed.
- Where there is no statutory standardized format for disclosure, industry best practices should be adopted. Licensees should consider when the information

may be most useful to the financial services consumer during their decision-making process.

- Financial services consumers should receive clear information about their rights and obligations (e.g., the right to file a complaint or to cancel a product or service, and any responsibilities to disclose material changes), including whom they could contact.
  - Controls should be in place so that licensees providing advice, or engaged in soliciting, sales and/or the provision of services, are familiar with and have access to the target market for which the product was developed.
  - Licensees involved in developing marketing material should obtain the approval of the product manufacturer, as necessary, and engage the services of a third party to conduct independent reviews of promotional or advertising materials and other communications intended for consumers to ensure clarity, plain language and compliance.
  - If financial products and services are offered digitally, the same levels of transparency and disclosure should be applied as with traditional means, including access to a licensed intermediary who is qualified to provide advice.
- 4. FSCO expects licensees to recommend products that are suitable, taking into account the consumer's disclosed personal circumstances and financial condition.**
- The licensee and the financial services consumer should have a common understanding of the nature of products or services to be provided, i.e., determine whether the consumer wants to purchase a specific product, or if they are seeking professional advice and/or a product recommendation. This understanding should be documented.
  - Licensees should follow a three-step process to ensure the product offered is in the best interest of the consumer, having regard for the consumer's needs and circumstances:

1. Get to know your client by using methods such as fact-finding.

The information collected may differ depending on the type of product and legal requirements, but generally, information about the consumer's financial knowledge and experience; needs; life-stage priorities and circumstances; ability to afford the product; and risk appetite should be collected, and there should be a written record of the discussion. .

2. Understand the products fully- how they work, their limitations, exclusions and material risks.

3. Conduct a thorough needs analysis to understand, based on the facts and information obtained from the consumer, what are the consumer's objectives and needs.

Licensees should only provide a recommendation/advice after completing the process above. The recommendation or advice should be documented and reflect the linkage between fact-finding, needs assessment and product. The financial services consumer should be able to understand why the recommendation was made.

- Licensees who do not interface with consumers but have responsibility for the financial product should review the sales files of those working on their behalf in order to monitor the quality and suitability of the advice given to financial services consumers related to that product. Remedial actions, including a report to the Superintendent, should be taken if the delivery of advice was unsuitable.
- In order to promote suitable advice, licensees should promote/provide continuous training programs and monitor mandatory education (as required) requirements to make sure their employees and intermediaries acting on their behalf are aware of market trends, economic conditions, product innovations, and changes to the law.
- In cases where advice would normally be expected but the consumer chooses not to accept the advice, written acknowledgment of the consumer's decision to decline the advice should be documented.

**5. FSCO expects licensees to disclose and manage any potential or actual conflicts of interest.**

- Licensees must comply with legal requirements to disclose and manage any potential or actual conflicts of interest. Actual or perceived conflicts of interest are best managed by avoidance.
- Some examples of situations where conflicts of interest may arise include:
  - Payment or acceptance of an incentive, commission, or any non-monetary benefit for the sales of financial services or products.
  - Making a financial gain or avoiding a financial loss at the expense of the consumer.
  - Inability to act in the best interest of one consumer without adversely affecting the interest of another.
  - Any relationship that may be perceived to potentially affect the independence of advice given.
- Licensees may manage conflicts of interest in different ways, depending on the circumstances. For example, some conflicts may be managed by disclosure, or by providing the consumer with information about the number of companies the licensee represents. If there is a situation where a conflict cannot be managed



satisfactorily, licensees should consider declining to provide the service and/or product.

- Licensees should develop, implement, monitor and communicate a conflict of interest management policy to all officers, directors, employees, intermediaries acting on their behalf, and third party contractors.
  - Licensees should develop incentives that take into account the fair treatment of consumers, rather than incentives oriented only towards the sale of specific products, or based solely on sales volumes.
  - Licensees should conduct audits to assess potential for product and commission biases.
- 6. FSCO expects licensees to provide continuing service and keep consumers appropriately informed, through to the point at which all obligations to the financial services consumer have been satisfied, including claims handling, and the diligent provision of benefits.**
- Licensees must comply with legal requirements to keep a written record of their claims-handling procedures, including all steps from the claim being raised to its settlement.
  - Licensees should provide consumers with timely information and easy access to the means of making a claim, applying for benefits, or accessing dispute resolution mechanisms.
  - The licensee should take all reasonable steps to disclose information to the consumer regarding any contractual changes during the life of the financial services or product, and any further information relevant to the financial services consumer. For example, if there are corporate or legislative changes that may affect the consumer, these should be communicated in a timely manner.
  - Financial services consumers should be informed of what their obligations are post-sale and throughout the product life cycle (e.g., inform the licensee if their life circumstances change).
  - Where there are changes in terms and conditions, the financial services consumer should be notified of their rights and obligations; their consent should be obtained as needed.
  - Licensees should provide ongoing service and/or information to financial services consumers when they switch between products or cancel a contract early.
- 7. FSCO expects licensees to have policies and procedures in place to handle complaints in a timely and fair manner.**

- A complaint is an expression of dissatisfaction about the product or services provided. FSCO considers complaints as a key indicator of how a licensee's business is conducted, and implements an approach where consumers are encouraged to make complaints directly to industry as a first step.
- Licensees must comply with legal requirements to have clear, transparent and accessible policies and procedures in place to review and resolve consumer complaints in a timely and fair manner, including a system for record keeping for each complaint, and the measures taken for its resolution. Where a complaint cannot be resolved, licensees should provide the complainant with a final position letter that includes options for seeking further redress.
- Licensees should monitor complaints-handling processes and outcomes to ensure their ongoing effectiveness.
- Licensees should analyse complaint data to identify individual or systemic issues that are adversely affecting consumers and take corrective actions, as necessary.

#### **8. FSCO expects licensees to protect the private information of financial services consumers and inform them of any breach.**

- Licensees must comply with the Personal Information Protection and Electronic Documents Act, including any legal requirements to obtain consent prior to accessing or using personal information of a consumer (e.g. pulling a credit report).
- Licensees should have policies and procedures for the protection and use of personal and financial data. This includes creating safeguards to prevent the misuse or inappropriate communication of any personal information in their records, and providing a safe online environment for financial services consumers.
- Licensees should notify financial services consumers in a timely manner of any breach in confidentiality.
- Licensees should establish and comply with policies and processes that help prevent cybercrime, and consider steps to take if a cyber-attack takes place.

### **Contact**

Should you have any inquiries regarding this guideline, please contact the contact centre.

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XX, 2018