

Notice relating to the application of the Regulation respecting alternative distribution methods

This notice is intended for all firms and independent partnerships that offer financial products and services without the intermediary of a natural person (“Internet offerings”) and all insurers that offer insurance products through a distributor (“distribution without a representative”).

Its purpose is to explain how the *Autorité des marchés financiers* (the “Authority”) intends to apply certain provisions of the Regulation respecting alternative distribution methods (the “Regulation”), made under the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the “Distribution Act”), and the *Insurers Act*, S.Q. 2018, c. 23, s. 3. With certain exceptions, the provisions of this regulation will come into effect on June 13, 2019.

The notice reiterates, in the order in which they were presented, the explanations provided by the Authority upon publication for comment of the draft Regulation respecting alternative distribution methods and highlights the changes made following the comment period.

I. Products and services offered via the Internet

1. Background

The *Insurers Act* and the Distribution Act contain new provisions that come into force on June 13, 2019 and provide clarity regarding Internet offerings. The *Insurers Act* states that an insurer must deal with a client either through a natural person, who is a representative or a distributor within cases permitted under Title VIII of the Distribution Act, or via the Internet. Under the Distribution Act, a firm may offer products and services without the intermediary of a natural person.

The Regulation specifies that a firm interacting in such a manner do so through a digital space, such as a website or mobile application, in compliance with the requirements provided in the Regulation.

2. Prescribed persons

Under section 70 of the Distribution Act, a legal person that offers financial products and services is acting as a firm. Accordingly, except for distributors subject to Title VIII of the Distribution Act, any legal person that offers a financial product or service via the Internet, including an insurer, must be registered as a firm.

Moreover, the Distribution Act permits any firm to offer a financial product or service via the Internet, provided the offer is made in a sector in which the firm is registered.

The Regulation covers all firms that, through a digital space, enable clients to enter into insurance contracts or obtain financial planning or claims adjustment services. Except for the provisions dealing specifically with insurance product offerings (sections 9 to 12, par. 1(2)(b) of section 14 and par. 2 of section 14 of the Regulation), the requirements set out in Chapter II of the Regulation apply to all firms, regardless of the sector.

Furthermore, the obligations under the Regulation apply, with the necessary modifications, to independent partnerships.

The Regulation does not cover the enrollment in a group insurance, annuity or pension plan contract. The insurer must see that the participant is provided in sufficient time with the information necessary to make an enlightened decision and for contract performance purposes, in accordance with section 62 of the *Insurers Act*.

Only firms with digital spaces that enable clients to enter into contracts (transaction sites) are subject to the obligations set out in the Regulation. Therefore, the Regulation does not cover firms that direct clients to other firms or firms where the offering process begins on the Internet but systematically requires that a representative conclude the transaction. A firm whose business model enables contracts to be entered into via the Internet or through a representative is subject to the Regulation. Therefore, a firm must comply with the Regulation as soon as it enables clients to enter into contracts through its digital space.

2.1 Comparison shopping websites

The Authority is of the opinion that most comparison shopping sites and other on-line businesses that direct clients to a firm's website to enter into an insurance contract must be registered as firms, even if their sites are non-transactional. This is the case when such businesses receive remuneration based on products sold or financial services rendered.

This is also the case when these businesses purport to be firms or when they provide advice about a product and are remunerated, directly or indirectly, by the representative or the firm to whom they refer the client.

The collection of client information alone does not trigger the requirement to register as a firm. Furthermore, regardless of the digital space on which a client has begun the process, the firm that sells the insurance product must ensure that the product suits the client's needs.

In addition, the Authority believes that firms are responsible for ensuring that any natural or legal persons with which they have referral arrangements comply with the applicable legislation and do not mislead clients as to the scope of their offerings.

3. Intervention of a representative

The Distribution Act authorizes firms to allow clients who wish to do so to enter into contracts over the Internet without the intervention of a representative. However, the firms must take the necessary steps to ensure that their attached representatives, who are authorized to act in the sector required to offer the given product or service, interact in sufficient time with clients who ask to deal with a representative.

The third paragraph of section 14 of the Regulation includes the requirement for a firm to suspend, in certain situations, the process initiated to enter into a contract through the digital space when the client asks to interact with a representative and no representative is immediately available. The firm could identify these situations based on, for example, the type of product, type of client, and moment when the client asks to interact with a representative. Firms could of course choose to make representatives available at all times.

4. Other applicable regulatory obligations

It is important to state that the obligations set out in Chapter II of the Regulation apply in addition to those that already apply to firms under the Distribution Act and its regulations.

As indicated in section 86.0.1 of the Distribution Act, firms that offer financial products or services via the Internet must comply with certain obligations applicable to representatives.

Firms offering insurance products via the Internet must, in particular, provide clients with appropriate advice as would representatives. Therefore, they must, through their digital spaces, inquire into their clients' situation to assess their needs and, if applicable, ensure that the products they are offering meet those needs. In all cases, firms, like representatives, will remain responsible for the reliability of the information needed to comply with this obligation.

Section 7 of the Regulation requires firms offering products or services over the Internet to provide, through their digital spaces, certain information and documents that representatives are required to give to clients under the Distribution Act and its regulations. This includes the requirements regarding the delivery to clients of the information collected to assess their needs and disclose the firm's business relationships.

The second paragraph of section 14 of the Regulation specifically provides that a firm that is unable to comply with the rules respecting the replacement of an insurance product must interrupt a transaction that is likely to replace an existing contract.

5. Products offered

The Authority is of the opinion that the requirements of the Regulation will ensure adequate consumer protection and orderly market development, without limiting the products that can be offered over the Internet. Firms must implement processes for Internet offerings that allow them to meet their legal and regulatory obligations, regardless of the product offered.

In fact, the Distribution Act and the *Insurers Act* do not set out any such limitation regarding the products that are offered. The *Insurers Act* gives the Authority the power to issue orders requiring authorized insurers to cease the distribution via the Internet of the contracts it determines. The Authority could also exercise the remedies provided under the Distribution Act against a firm that contravenes the Regulation.

Firms will have to ensure that their sales via the Internet are adapted to the products offered and meet clients' needs. As part of its activities, the Authority will ensure that the measures taken by firms are consistent with the types of products offered via the Internet.

6. Information to be provided to the Authority

Any firm that offers a financial product or service via the Internet must inform the Authority without delay. The courts generally interpret "without delay" as meaning "immediately." That said, in the event of a constraint beyond the firm's control, it means "as quickly as possible." A form provided to that effect is available on the Authority's website. The legal person that seeks to become a firm must first register as a firm and then disclose that it makes offerings via the Internet. Required annual disclosures must be made through the firm's maintenance of registration application. In addition to transaction volume, section 5 of the Regulation requires firms disclose annually to the Authority the number of cases where insurance contracts entered into over the Internet were cancelled.

7. Information to be provided to the client

7.1 Presentation of information

A client transacting over the Internet makes a decision regarding the financial product or service offered based on information that is presented by the firm through the digital space. The Regulation therefore specifies that the information that is presented must be clear, readable, specific and not misleading so as to highlight the key elements required for informed decision-making regarding the product or service offered and not cause confusion or misunderstanding.

7.2 Information accessible for the client

To enable the client to easily identify information, the Regulation provides that certain information must be readily accessible on the digital space, particularly the information used to identify the firm, validate its registration with the Authority and file a complaint. Requiring a firm's representative to interact in sufficient time with the client who asks to interact with a

representative is a key element of the consumer protection framework; the means to interact with a representative must therefore be visible at all times.

7.3 Disclosures related to an insurance product offering

The Regulation states that the client must be made aware of certain things before entering into an insurance contract. A firm must provide all the required information through its digital space, regardless of the information a representative might provide when intervening at a specific point during the transaction or when finalizing the transaction with the client, when the firm offers this option. Consistent with section 28 of the Distribution Act, the firm must present the coverage, exclusions and limitations related to the needs identified.

7.4 Policy specimen

In general, representatives have in their possession the policies that they offer and can refer to them to give clients additional clarification. Similarly, section 10 of the Regulation thus requires that a firm make readily accessible on its digital space a specimen of the policy for each product offered and any available endorsement, if applicable.

In accordance with section 38 of the Regulation, firms have a one-year transition period, as of June 13, 2019, to comply with this requirement.

7.5 Validation of consent

To avoid potential errors and ensure that the client's consent is valid, section 11 of the Regulation states that the firm must, immediately before a contract is entered into, recap for the client the information that was used to determine his or her needs and complete the proposal. It must also recap for the client the options and conditions that the client has chosen regarding the product he or she is about to purchase, particularly the date when the coverage becomes effective. This will allow the client to validate this information and correct it, if need be, before finalizing the transaction.

7.6 Post transaction

As soon as the client has taken the final step of subscribing for the contract, the firm must confirm that such transaction has been concluded and, if applicable, give the client the temporary insurance.

The firm must also, in accordance with section 12 of the Regulation, inform the client of the right of rescission provided for in section 20 of the Distribution Act, if applicable. It must also inform the client of the right of cancellation pursuant to section 64 of the *Insurers Act* and provide him or her with the notice of cancellation set out in Schedule 1 of the Regulation. It is important to note that section 64 of the *Insurers Act* creates a 10-day right to cancel a contract only if no representative interacted with the client at the time the client entered into the contract. Therefore, the right of cancellation does not apply when a transaction is concluded with a representative, even if the process was initiated through a digital space.

The firm must also indicate to the client how to access the policy. Therefore, this document could be delivered directly via the firm's digital space or be made available at an address at which the client indicates that he agrees to receive the document.

8. Design, operation and monitoring of the digital space

The digital space used by a firm for its offering via the Internet must provide adequate consumer protection and the firm must implement measures to mitigate process automation risks.

In such a context, the Regulation provides for requirements applicable to the firm with respect to the design, operation and monitoring of the digital space. The Regulation establishes the minimum requirements for the digital space and requires that the firm adopt a procedure describing the design and operation of its digital space and the related monitoring measures. Firms have a one-year transition period to comply with this requirement to adopt a process.

The design and operation of the firm's digital space and the related monitoring measures must achieve the objectives described in the Regulation. In particular, the firm must require an action from the client each time confirmation or consent is required. This may be the case when clients must confirm the accuracy of prefilled fields or consent to have information about them collected from third parties. The digital space must also detect if a discrepancy or irregularity in the information provided by the client may lead to an inappropriate result or if the client does not meet the product eligibility criteria. Where necessary, the transaction must be suspended or terminated in such cases.

The traceability of transactions is a key element to ensure consumer protection. The information that the firm must enter in the client file must help trace the complete process followed by the client and include the interactions with a representative, if applicable. The Authority is of the opinion that such information will be essential, in particular to determine a representative's responsibility regarding a given transaction.

More specific guidance on the Authority's expectations and good practices pertaining to governance with respect to technological tools could be published at a later date.

II. Distribution without a representative

1. Information to be provided to the Authority

The Authority must have a good understanding of market practices to fully assume its regulatory oversight and development role. It is therefore requiring that insurers send it, for each product distributed without a representative, an initial disclosure and an annual disclosure containing the prescribed information.

The insurer must notify the Authority of any change to the initially provided information prescribed by the Regulation. It must also notify the Authority without delay of changes to the list of distributors, in accordance with section 66 of the *Insurers Act*. It must also notify the Authority of the reasons for terminating an agreement with a distributor.

2. Information to be provided to the client

The premise of the regime governing distribution without a representative is that adequate, accurate and complete information is given to the client.

The Regulation provides that information be disclosed through more than one document. The information specific to distribution without a representative is provided in a fact sheet, the content of which is prescribed by the Authority. The information on the product offered, which helps the client make an informed decision about the product, is presented in a summary prepared by the insurer.

The insurer must ensure that the distributor provides the client with the fact sheet and the summary. The Regulation sets out the conditions under which these documents are provided when the offer is made remotely, such as by telephone.

In accordance with section 37 of the Regulation, insurers that have filed a distribution guide with the Authority before June 13, 2019 can continue to use it during the year following the coming

into force of the Regulation. During that time, delivery of the guide is equivalent to the delivery of the fact sheet and the summary, and the guide must be accessible on the insurer's website. Moreover, insurers whose distributors already deliver a fact sheet must continue to require its delivery during the one-year transition period.

2.1 Fact sheet

The content of the fact sheet focuses on the information relating to the obligations stipulated in the Distribution Act, such as the disclosure of the remuneration received by the distributor, or that reflects sources of recurrent consumer dissatisfaction. The fact sheet cannot be modified.

2.2 Summary

The summary must meet information presentation and minimal content requirements. The information to be provided is similar to that required in a distribution guide. However, the Regulation allows the insurer greater flexibility in how to present the information. When necessary, the insurer can refer to the relevant sections of the contract to avoid making the text cumbersome. However, the summary must indicate the manner in which the specimen of the policy or the insurance certificate can be accessed on the insurer's website. The Regulation requires that, where the policy provides for a formula to calculate the portion of the refundable premium in the event of cancellation, the summary include an example of such a formula.

In the case of group insurance, the insurer must make a specimen of the policy or the insurance certificate accessible for each product offered by a distributor, as well as any available endorsement, if applicable. A one-year transition period is provided to insurers in this regard.

The insurer must also make the product summary accessible on its website. Insurers that rely on the transition period provided for in section 37 and that continue to use a distribution guide during the year following the coming into force of the Regulation must make the guide accessible on the Internet.

3. Supervision of distributors

Under section 65 of the *Insurers Act*, "An authorized insurer is liable for the acts done by distributors, or natural persons to whom the latter have assigned the task of dealing with clients or participants, toward underwriting an insurance contract or enrolling a participant."

In this regard, the Regulation requires that insurers implement adequate measures for supervising, monitoring and training distributors.

4. Prohibitions

The Regulation sets out specific prohibitions for insurers offering replacement or debtor life, health and employment insurance through distributors. These prohibitions focus on the remuneration practices of distributors that undermine the fair treatment of consumers.

5. Distribution without a representative via the Internet

Insurers that offer a product directly over the Internet must comply with the requirements of Chapter II of the Regulation. Moreover, the Authority notes that the exception under section 425 of the Distribution Act is only valid when an insurer distributes a travel insurance product through its employees.

However, an insurer could allow a distributor to offer its insurance products on-line, that is, on the distributor's Internet site. The insurer would therefore be responsible for monitoring the

compliance of the site used by its distributor, in particular by ensuring that the fact sheet and the summary are given to the client at the times prescribed by regulation. In addition, the rules applicable to firms that make offerings without the intermediary of a natural person do not apply to distributors that make offerings via the Internet.

Additional information

Additional information may be obtained from the Information Centre at:

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Montréal: 514-395-0337

Toll-free: 1-877-525-0337

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May 15, 2019