CONSULTATION DRAFT

Superintendent's Guideline No. XX/18: Treating Financial Services Consumers Fairly

Introduction

Context

Risks to the stability of the financial system can arise not only through failings in financial and capital management, but also from poor conduct of business practices and unfair treatment of financial services consumers. Consumers need to be confident that providers of financial services and products will act in their best interest and treat them fairly.

The Financial Services Commission of Ontario ("FSCO") expects financial services providers it regulates to already be treating consumers fairly; in fact, FSCO audits this metric 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.

Scope

FSCO is issuing this Guideline to inform all those licensed or registered by FSCO in the insurance, credit union/caisse populaire, loan and trust and mortgage brokering ("the financial services") sectors of FSCO's 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, financial services consumers and members of credit unions/caisse populaires and Ontario farm mutuals will be referred to collectively as "consumers"; and those FSCO-licensed or registered individuals and businesses to which this Guideline applies will be referred to as "Licensee(s)." The term "consumers" includes all actual and potential customers of Licensees.

Purpose

The purpose of this Guideline is to ensure there is common understanding between FSCO and its Licensees as to what it means to treat consumers fairly. The Guideline provides direction for the conduct of financial services business, and seeks to strengthen public trust and consumer confidence in the financial services sectors regulated by FSCO.

Much of what FSCO expects is already contained, directly or indirectly, in existing legislation or is part of accepted industry best practices. However, treating consumers fairly is not just about the law; it is also about an ethical way of doing business, and a corporate culture that places consumer interests at the centre of business decisions. It is about putting consumer first, and considering what they expect or need at every stage of the product life cycle, from the moment a product is envisioned and distributed, through to the fulfillment of a business contract.

Implementation

Responsibility to treat consumers fairly

FSCO's expectations apply to all Licensees, whether or not they have a direct interface with the consumer, and whether or not they are involved in all stages of the product life cycle. These include Licensees designing a financial services product, and those distributing or selling products to consumers (sometimes referred to as "intermediaries").

Where more than one Licensee is involved in the design, marketing, distribution and post-sale servicing of a financial product or service, FSCO sees treating consumers fairly as a shared responsibility among all those involved. The particular role or function fulfilled by a Licensee may vary based on the product or service, or particular arrangements in place. Licensees should ensure that documented arrangements are established in respect of their business dealings with each other, to clarify their respective roles and responsibilities on matters related to the fair treatment of consumers. Consumer outcomes should not be affected by whether a product is provided by one, two or more Licensees.

Licensees are also accountable/responsible for ensuring that their non-licensed employees and third party contractors involved in the product life cycle, and any intermediaries distributing the Licensee's product to the consumer, know and comply with FSCO's expectations to treat consumers fairly.

Principle of proportionality

Although FSCO's expectations apply to all Licensees including individuals, sole proprietorships, partnerships, and corporations, implementation of this Guideline is not a "one size fits all" approach and may differ in a manner proportionate to:

- the Licensee's size, ownership structure, risk profile, and the nature and complexity of its operations;
- the characteristics of the financial services sector in which the Licensee operates;
- the complexity of the financial product or service offered; and
- the sophistication of the financial services market segment or consumers.

The proportionality principle gives room for Licensees to tailor solutions to achieve the desired outcomes contained in FSCO's expectations. For example, FSCO may not expect extensive policies and procedures for a Licensee that is an individual or sole proprietor, but it would still expect the Licensee to have appropriate internal controls in place to ensure and demonstrate it has met the treating consumers fairly principles.

Principle-based approach

This Guideline applies to multiple financial services sectors. In addition, the activities of Licensees to whom this Guideline applies are diverse, ranging from large financial services institutions offering many highly complex products to individuals who give advice on the suitability of a product. Therefore, FSCO believes it is neither possible nor desirable to specify exactly what it expects from every Licensee against detailed or prescriptive rules. This Guideline is not intended to be an exhaustive list of best practices. Rather, it provides guidance and examples of what FSCO expects to see during compliance examinations and other touchpoints such as questionnaires and attestations, as part of its consumer protection mandate. FSCO has set high-level principles that provide Licensees, owners, officers, directors and senior management with the flexibility to apply these principles in a way that is best suited to their particular organization.

FSCO's Expectations for Treating Financial Services Consumers Fairly

The Guideline uses "must" when a statutory requirement is in place for all Licensees, and "should" when there is not a consistent statutory requirement, but a Licensee is still expected to consider a particular conduct to comply with a principle. The Guideline provides examples to illustrate some of the various ways to achieve the outcome, without necessarily implying there is only one prescribed course of action. Licensees are responsible for knowing their legal obligations.

1. **FSCO expects that a core component of a Licensee's business governance and culture is fair treatment of consumers.**

- A treating consumers fairly culture should be driven from 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 codes of conduct, and/or policies and procedures that reinforce a culture of treating consumers fairly. Policies should also be made publicly available, especially those relating to how consumers can obtain advice, access to information and services, or file a complaint.
- Policies and procedures that promote treating consumers fairly should be incorporated into any outsourcing contract or arrangement with intermediaries that clarifies roles and responsibilities in relation to specific duties or the product life cycle.
- All Licensees should comply with the code of conduct and treating consumers fairly policies and procedures of their business, organization or association.
- FSCO's expectation to establish a culture of treating consumers fairly applies to all Licensees, regardless of their size. Licensees who are individuals, sole proprietorships, or 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

scrutinize their day-to-day business decisions as to whether or not they support the fair treatment of consumers.

- Licensees should have appropriate mechanisms in place that are reasonably designed to measure the effectiveness of treating consumers fairly policies and practices (e.g. regularly soliciting consumer feedback).

2. FSCO expects Licensees to act with due skill, care and diligence at all times, but especially when dealing with consumers or designing financial services or products for consumers.

- 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 disclosed 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 product performance in changing market conditions, and monitoring products post-launch to ensure they meet the needs of the selected market).

- 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 financial services and products in a manner that is clear, fair and not misleading or false.

- Licensees must comply with the legal requirements to provide consumers with product information and illustrations that are accurate, clear and not misleading or false.
- 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 receive 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 important information is prominently displayed; and
    - is based on the disclosed personal circumstances and financial needs of the consumer.
- Where there is no statutory format for disclosure, industry best practices should be adopted.

- Where there is no statutory timing for disclosure, Licensees should consider when the information may be most useful to the consumer during their decision-making process.
- 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, responsibilities to disclose material changes), including whom they may contact.
- Licensees involved in the design and governance of products should establish controls to ensure that those soliciting, selling and/or providing advice understand the target market for which the product was developed, and are not inappropriately selling outside this target market.
- Licensees involved in developing marketing material should obtain the approval of the product manufacturer, as necessary, and ensure that a consumer lens and a high degree of objectivity are used when reviewing promotional or advertising materials and other communications intended for consumers, to ensure there is clarity, plain language and compliance.
- If financial products and services are offered digitally, the same level of transparency and disclosure should be applied as with traditional means, in a manner appropriate to the medium, including, where necessary, access to an 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 consumer should have a common understanding of the nature of products or services to be provided, e.g., determine whether the consumer wants to purchase a specific product, or if they are seeking professional advice and/or a product recommendation. This common understanding should be documented. FSCO recognizes that there are simple transactions like making payments or deposits that are more service-oriented and do not require a recommendation or advice.
- 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 means and information collected may differ depending on the type of product and legal requirements, but generally, Licensees should collect information about the consumer's financial knowledge and experience; needs; life-stage priorities and circumstances; ability to afford the product; and risk appetite. The discussion should be documented.

2. Understand the products fully – do your own due diligence around the products, including how they work, their limitations, exclusions, and material risks.

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

Licensees should only provide a recommendation or 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.

- In cases where advice would normally be expected but the consumer chooses not to accept the advice, acknowledgment of the consumer's decision to decline the advice should be documented.

- Licensees who do not interface with consumers but have responsibility for the product should establish systems and controls to promote/monitor the suitability of the advice given to consumers related to that product. They should provide continuous training programs and monitor mandatory education to make sure their employees and intermediaries distributing the Licensee's products are aware of market trends, economic conditions, product innovations, and changes to the law.

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 potential 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 sale 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 names of all the companies or markets the Licensee represents. If there is a situation where a conflict cannot be managed satisfactorily, Licensees should decline 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 distributing the Licensee's products, and third-party contractors involved in the product life cycle.
- 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 conflicts and 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 or the diligent provision of benefits.

- Licensees must comply with legal requirements to keep a record of their claims-handling procedures, including all steps from the claim being raised to its settlement or conclusion.
- Licensees should have agreements in place that clearly define the conditions, scope and limits of contracted services, and clarify roles and respective responsibilities on matters such as post-sale policy servicing, claims notification and handling, and any other matters related to the relationship with consumers.
- 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 product, and any other information relevant to the consumer (e.g. corporate or legislative changes that may affect the consumer).
- 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 of the contract, the consumer should be notified of their rights and obligations; their consent should be obtained as needed.

- Licensees should provide ongoing service to consumers when they switch between products, and information about cancelling a contract early.

7. FSCO expects Licensees to have policies and procedures in place to handle complaints in a timely and fair manner.

- Consumers are encouraged to make complaints directly to industry as a first step. A complaint is an expression of dissatisfaction about the product or services provided. FSCO considers complaints, including those not required to be reported to FSCO, to be a key indicator of how a Licensee's business is conducted. Licensees should analyze complaint data to identify individual or systemic issues that are adversely affecting consumers and take corrective action, as necessary.

- 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, and a system for record-keeping for each complaint and the measures taken for its resolution. Where a complaint cannot be resolved, Licensees must provide the complainant with a final position letter that includes options to seek further redress.
- Where the Licensee does not have a statutory obligation to be part of an independent dispute resolution mechanism, the Licensee should consider what alternative resolution mechanisms it might establish.
- Licensees should monitor complaints-handling processes and outcomes to ensure their ongoing effectiveness.

8. FSCO expects Licensees to protect the private information of financial services consumers and inform them of any privacy breach.

- Licensees must comply with applicable privacy legislation, including legal requirements to obtain consent prior to accessing or using a consumer's personal information (e.g. obtaining a credit report), and to notify consumers of a privacy breach.

- 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 access or communication of any personal information in their records, and providing a safe online environment for consumers.
- Licensees should establish and comply with policies and processes that mitigate cyber risk, enhance cyber resilience, and help prevent cyber crime. They should have a well-functioning risk management program that allows them to

understand, prevent, detect, respond to, and address cybersecurity incidents.

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