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SOUND COMMERCIAL PRACTICES GUIDELINE

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1 Commercial practices and the fair treatment of clients

Financial institutions have a legal obligation to adhere to sound commercial practices.[1]

The commercial practices, or conduct of business, of financial institutions[2] reflect their behaviour in their relationships with clients,[3] from before a contract is entered into until all the institution's obligations under the contract are fulfilled. Commercial practices incorporate all stages of the life cycle of a product, from product design to after-sale service.

Sound commercial practices help ensure, in particular, that an offer of products[4] is fair, effective and transparent. Conversely, unsound commercial practices expose clients to risks or situations that could negatively impact them. Adhering to sound commercial practices entails treating clients fairly.

The fair treatment of clients (FTC) is based on core principles and guidance published by various international bodies.[5] It encompasses concepts such as ethical behaviour, acting in good faith and the prohibition of abusive practices. FTC manifests itself at every stage of a product's life cycle and involves, among other things:

- Developing, marketing and offering products in a way that pays due regard to the interests and needs of clients
- Providing clients with accurate, clear and sufficient information, before, when and after a product is offered, allowing them to make an informed decision
- Minimizing the risk of sales that are not suited to the clients' needs and circumstances
- Examining client claims and complaints in a fair and timely manner
- Protecting the privacy of client information

[1] *Insurers Act*, CQLR, c. A-32.1, sections 50 and 51
Act respecting financial services cooperatives, CQLR, c. C-67.3, sections 66.1 and 66.2
Trust Companies and Savings Companies Act, CQLR, c. S-29-02, sections 34 and 35
Deposit Institutions and Deposit Protection Act, CQLR, c. I-13.2.2, sections 28.11 and 28.12

[2] The generic terms "financial institution" and "institution" refer to all the entities that are subject to the legal obligation to adhere to sound commercial practices. Consequently, these terms do not refer to a federation of mutual insurance associations.

[3] Although the enabling statutes (supra note 1) refer specifically to the notion of "clientele," the terms "client" and "clients" are also used in this guideline. These broad notions cover both current and potential clients of the financial institution and may also include, for example, a person with an interest in the product sold, such as the beneficiary of an insurance policy, where appropriate for the context.

[4] The generic expression "offer of products" used in this guideline refers both to the product and the service that is offered, sold or provided.

[5] Organisation for Economic Co-operation and Development, International Financial Consumer Protection Organisation (FinCoNet), Financial Stability Board, International Association of Insurance Supervisors, Basel Committee on Banking Supervision, International Organization of Securities Commissions.

2 Business culture

Business culture is one of the main vectors of staff behaviour within an institution. It refers to the common values (e.g., ethics and integrity) and standards that characterize a business and influence the mindset, behaviour and actions of its entire staff. It informs decision-making for both strategic decisions and decisions made by client-facing staff.

An FTC-centric business culture creates an environment that fosters client confidence and long-term client relationships. Conversely, a deficient business culture can cause serious harm to clients and damage the reputation of the business to the point of compromising its solvency.

An FTC-centric business culture:

- Places clients' interests at the centre of decisions and the conduct of business
- Recognizes and manages risks that could compromise FTC
- Ensures that results demonstrate, through indicators, that staff are acting ethically and with integrity in their dealings with clients
- Communicates FTC outcomes across all levels of the organization

3 Stakeholder accountability

In providing products, the financial institution, upon first contact with the client, makes a commitment to them and holds it throughout the life cycle of the product, whether or not its distribution channel is independent. With this in mind, the institution adopts commercial practices ensuring FTC at all stages of the relationship with the client. The institution consequently monitors the product offering process to ensure compliance.

The fact that ultimate responsibility lies with the institution does not relieve intermediaries[6] of their own obligations to clients.

[6] Intermediaries are the individuals and firms authorized to offer financial products and services pursuant to the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2.

4 Financial institutions' relationships with intermediaries

In managing their relationships with intermediaries, financial institutions are expected to:

- Implement due diligence controls providing, from intermediary selection on, assurance that intermediaries are authorized to act, where appropriate, and have the appropriate knowledge and ability to conduct business
- Enter into written agreements that clearly set out intermediaries' responsibilities in order to ensure FTC, and reporting and controls for obtaining reasonable assurance that they are fulfilling them. These agreements must not hinder the financial institutions and intermediaries in fulfilling their obligations to clients
- Ensure that intermediaries are providing clients with timely information necessary for enlightened decision-making
- Ensure that intermediaries have appropriate controls in place to detect unsuitable sales and practices and take the necessary corrective action
- Implement measures necessary to ensure that clients receive an appropriate level of service after they enter into a contract
- Obtain relevant information from intermediaries in order to review, if necessary, their product designs, target client group definitions or distribution strategies
- Obtain relevant information from intermediaries about the complaints they received so as to develop a complete picture of the client experience
- Identify any issues to be addressed and discuss remedial actions or any other matters related to client relationships

5 Financial institutions' relationships with service providers

When functions related to commercial practices are outsourced,[7] the service provider performs such functions in compliance with the laws, regulations and guidelines applicable to the institution's activities.

In managing their relationships with service providers, institutions are expected to:

- Deal only with service providers that have high ethical and professional standards
- Develop outsourcing agreements that do not compromise the quality of services or adversely affect their ability to fulfill FTC-related obligations
- Reassess their existing arrangements with service providers, upon renewal or as required, to ensure that they continue to contribute to the achievement of FTC outcomes

7 The expectations expressed in this guideline provide additional details regarding commercial practices while complementing those contained in the *Outsourcing Risk Management Guideline*, December 2010.

6 Expected outcomes for clients

6.1 Governance

> The AMF expects financial institutions' decision-making bodies to make a firm commitment to, and exercise strong leadership in, making FTC a core component of their business culture.

Since the risks resulting from inappropriate practices with clients are harder to quantify and monitor using standard compliance tools, it is important to establish an FTC-centric business culture.

Senior management and the board of directors are responsible for ensuring, on an ongoing basis, that the institution's commercial practices and culture are strengthened and reflected in its risk management approach and risk appetite.

Roles and responsibilities of the board of directors[8]

- Ensure that committees are established to monitor changes in the business culture and the risks of inappropriate practices that could adversely affect FTC
- Ensure that monetary and non-monetary incentives granted by the financial institution to staff, intermediaries or any other person acting on behalf of the institution who is involved in offering its products take FTC into account
- Ensure that the institution's code of ethics preserves and strengthens the business culture and enables ongoing adherence to high standards of ethics and integrity from recruitment onward
- Review the institution's FTC performance on set objectives and strategies and, if necessary, ensure that the required remedial action is taken

[8] *Insurers Act*, CQLR, c. A-32.1, section 94
Trust Companies and Savings Companies Act, CQLR, c. S-29.02, section 75
Deposit Institutions and Deposit Protection Act, CQLR, c. I-13.2.2, section 28.38
Act respecting financial services cooperatives, CQLR, c-C-67.3, sections 66.1 and 99

Roles and responsibilities of senior management

- Ensure the development of objectives, strategies, policies and procedures that are consistent with the institution's values and enable the achievement of the expected FTC outcomes
- Implement controls to:
    - Identify and address any departure from the institution's objectives, strategies, policies and procedures
    - Ensure that staff conduct is consistent with the institution's FTC-related values and commercial practices
    - Identify and react promptly to any risks or situations likely to adversely affect FTC
    - Generate information for the board of directors that supports the monitoring and measurement[9] of the institution's performance and a process for its continuing improvement in FTC
- Ensure that staff members who offer products receive ongoing training on the policies, procedures and processes established in this regard
- Ensure that the institution's integrated risk management takes into account risks and commercial practices that could adversely affect FTC
- Ensure the establishment of a robust and transparent policy and set of processes for determining the consequences of staff non-compliance with the applicable obligations

[9] In addition to the client satisfaction rate or the number of complaints received, the indicators used by institutions should make it possible to measure the achievement of FTC outcomes over the entire life cycle of products and throughout their contractual relationship with clients. It should be possible to use the collected information to illustrate trends (Who is buying the product? Is it the target client group? What are the reasons given by clients for not renewing contracts or cancelling them: limited benefits of this type of product, poor understanding of how it works or the coverage provided?).

6.2 Handling conflicts of interest

The AMF expects any real or potential conflicts of interest to be avoided or managed in a manner that ensures FTC.

Major sources of conflicts of interest include monetary and non-monetary incentives that arise from:

- Established compensation and performance management programs
- Financial institutions’ relationships with intermediaries or any other person acting on their behalf who is involved in offering their products

A conflict of interest situation could result in an inappropriate sale or have an impact on the quality of services provided. It could also affect the advice given to clients.

The institution should therefore ensure that every situation is assessed to prevent a conflict of interest or ensure that it is managed in a way that ensures FTC.

<u>Expectations to achieve this outcome</u>

- Take all reasonable steps to identify and avoid or manage real or potential conflicts of interest
- Put clients’ interests first
- Avoid any real or potential conflict of interest that cannot be managed in a way that ensures FTC. The financial institution is able to demonstrate that it has put controls in place to ensure that the conflict of interest can be managed in a way that ensures FTC
- Disclose in writing to the client concerned any real or potential conflict of interest that might reasonably have an impact, given the circumstances, on the offer of products or the client’s decisions. This disclosure is made in a timely manner, i.e., made before or at the time the product is offered, and it is not sufficient in and of itself for the conflict of interest to be considered to have been properly managed
- When relying, among other things, on disclosure of a conflict of interest, ensure that such disclosure does not place an unreasonable burden on the client:
    - It allows the client to assess the nature and scope of the conflict of interest, its potential impact on the services provided, the potential risk it could pose for him or her and the way it is managed
    - It is disclosed in a timely manner, i.e., before or when the product is offered or promptly after the conflict of interest has been identified
- Notify the client of any significant change that occurs regarding previously disclosed conflicts of interest

- Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for assessing the extent of the harm that may be caused to the client by a such a conflict of interest[10]

[10] For example, if the harm to the client is insignificant, the financial institution could record the information in a more general manner, such as by category or type, rather than recording each case and the way it was handled.

6.3 Product design

The AMF expects the needs and interests of the various target client groups to be taken into account when designing new insurance products or significantly altering existing products.

Not taking the needs and interests of the various target client groups into account when designing new products or making significant adaptations to existing products increases the likelihood of unsuitable offers or negative impacts for clients, particularly with complex and risky products.

Expectations to achieve this outcome

- Product development relies on the use of adequate information enabling the identification of client needs
- When developing a new product, including selecting a product originating from a third party, the main features of the product[11] and the disclosure documents provided to clients are thoroughly assessed by individuals from the institution who have the skills to perform such an assessment[12]
- The process for approving a new product enables the institution to:
    - Define the target client group that the product is likely to be appropriate for
    - Offer a product that delivers the benefits reasonably expected by the target client group
    - Identify, monitor or reduce any risks that the product might present for target clients
    - Take into account applicable statutory and regulatory amendments, technological developments or changes in market conditions

- Defining the target client group involves identifying the common needs, interests, characteristics[13] and objectives of the members of the group.

  The level of detail of the criteria used by the institution to identify a target client group is based on the type of product (e.g., nature, features, risk profile) and enables the institution to determine which clients belong to the group:
    - For commonly used, low-risk products, the target client group may be less precisely defined because the product more often than not suits the needs and interests of a wide range of clients

[11] For example, for deposit products, the assessment of the product's features could take into account criteria such as accessibility, yield and security.

[12] For example, compliance, integrated risk management, finance, sales, taxation, actuarial services, legal affairs.

[13] For example, preferences, financial capacity, known types of behaviour.

- For more complex, higher-risk products, the target client group definition is more precise and includes criteria for identifying clients for whom the product may not be suitable

- Product monitoring:[14]
  - Ensures, by relying on sufficient, relevant, clear information, that the product's main features always meet clients' needs[15]
  - Enables remedial action to be taken, if necessary, to:
    - Tailor the product to clients' changing needs[16]
    - Ensure that clients understand the product and its main features
    - Revisit the definition of the target client group when the control shows that the product is not or is no longer suited to the target group's needs, interests, objectives and characteristics

14 Also applies to products no longer offered but still held by clients (e.g., investments in certain segregated funds). Product monitoring helps ensure that clients receive ongoing information supporting informed decision-making.

15 For example, regular information from employees and intermediaries offering the product; information from the quality control department, the claims examination department, the complaint processing department, the analysis of competing products and client satisfaction assessment methods. Moreover, some insurance industry indicators such as a high claim denial rate or a low claim rate may indicate that the product is not suited to the needs and interests of the target client group.

16 For example, ensure that the exclusions in the insurance contract are still relevant and drafted in a way that is clear to clients. Consider economic conditions (e.g., take into account clients' level of indebtedness).

6.4 Product marketing

The AMF expects distribution methods to take into account the needs and interests of the target client groups and to be tailored to the products.

The financial institutions act as guarantors of the distribution methods they use for their products and are ultimately responsible for overseeing all aspects of the distribution process.

Expectations to achieve this outcome

- The distribution methods for a product are chosen using appropriate information to assess the target client group's needs and taking into account the level of complexity of the product and its potential impact on clients' financial situation
- Staff, intermediaries or any person acting on behalf of the institution who is involved in offering its products receive relevant information and appropriate training on the products. They have an adequate grasp of the product's features and the target client group
- The indicators used and controls applied with respect to distribution methods make it possible to:
    - Assess the performance of the various distribution methods in terms of expected FTC outcomes and to take any necessary remedial action
    - Ensure that the distribution methods used for a product meet the target client group's needs at all times and would not adversely affect clients' interests

6.5 Product advertising

The AMF expects product advertising materials to be accurate, clear and not misleading.

Before using advertising material, financial institutions should take the necessary steps to ensure that it is accurate, clear and not misleading.

Expectations to achieve this outcome

- Prior to being disseminated, product advertising materials are reviewed by a unit that is independent from the one that prepared or designed them
- Advertising materials:
  - Are easy to understand
  - Clearly identify the institution in accordance with the law
  - Adequately convey the benefits that the target client group may reasonably expect from the product
  - Highlight information or key elements that could affect a client's decision
- Advertising materials are presented in a format that is easy to read and understand
- The statistics used are relevant to the product. The sources of the statistics used are indicated, if applicable
- Testimonials used are authentic, and, if paid for, mention is made of that fact
- If the institution notes that advertising material is inaccurate, unclear or misleading, it withdraws it immediately and promptly notifies everyone it is able to identify who relies on the information contained in the material

6.6 Disclosure to clients before or when a product is offered

The AMF expects client to have information, before or when a product is offered, that allows them to be properly informed with a view to making an enlightened decision.

Such disclosure should enable clients to understand the product and its main features and help them determine whether the product meets their needs.

The level of detail of disclosure will vary depending on the nature and complexity of the product or other specific requirements that could apply to the product

<u>Expectations to achieve this outcome</u>

- Disclosure to clients:
  - Is up-to-date and available on paper or any other durable medium
  - Is drafted in clear and plain language and in a manner that is not misleading[17]
  - Is presented in a format that facilitates reading and comprehension
  - Focuses on information quality, not quantity
  - Clearly identifies the name of the institution, in accordance with the law, and provides its contact details
  - Gives prominence to and explains the main features of the product [18] that are important for finalizing or performing the contract, including the consequences for the client of not complying with the terms of the contract
  - Sets out the client's rights and obligations, including any right of cancellation or rescission
  - Discloses conflicts of interest, if any[19]
  - Gives the contact details for the claims examination and settlement department[20]
  - Gives the contact details for the complaint processing and dispute resolution department and the steps for accessing the summary of the complaint processing and dispute resolution policy

17 When technical, complex or hard-to-understand language cannot be avoided, make tools or other support available to clients to help them to clearly understand the information, or give them the institution's contact information for obtaining further information or assistance.

18 Examples: For insurance products, the type of contract, the coverages offered, eligibility requirements, perils covered, restrictions, limitations, deductible, premium. For credit products, the interest rate, fees and charges, total cost, term, repayment terms, type of security required, etc.

19 In order to further highlight information regarding conflicts of interest, Institutions should consider using a separate and succinct conflict disclosure document.

20 Applicable only to the insurance sector.

6.7 Offering a product to a client[21]

The AMF expects the client's needs and situation to be taken into account when a product is offered.

The institution's policies, procedures and controls should ensure that the product offered is suitable for the client.[22]

Expectations to achieve this outcome

- The client's needs and situation are taken into account using information relevant to the type of product involved
- When assessing the client's situation, factors such as the person's goals, current financial position, ability to repay, risk tolerance, investment horizon, other personal commitments and the financial products already held are taken into account
- The information provided to the client takes into account the client's knowledge and personal experience and assists the client in making enlightened decisions

21 The offering of products and services through intermediaries is governed by the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2, and its regulations.

22 For example, the policies, procedures, controls and information systems relating to the granting of credit should enable the identification, control and mitigation of major risks to clients, including those related to mis-sold credit products, and to prevent, insofar as possible, repayment problems and what they logically lead to, i.e., debt overload.

6.8 Disclosure to clients after a product is purchased

The AMF expects clients to have information allowing them to be properly informed, in a timely manner, with a view to making enlightened decisions about the products they hold.

A lack of communication with clients increases the risk of harm being caused to them.

<u>Expectations to achieve this outcome</u>

Information is communicated to clients to:[23]

- Remind them, in a timely manner, of the options that can be exercised by them
- Inform them, when applicable, of the impact of changes to the features of their contract and the performance of their contract, rights and obligations, and to obtain their consent, when necessary
- Provide for the timely disclosure to clients of:
    - Any relevant information depending on product type, including any changes to the contract terms
    - Renewal or automatic renewal of the product
    - Expiry of a promotional period
    - Likelihood that they will be required to incur fees
    - Replacement of the product or early termination of the contract
    - A portfolio transfer
    - Any significant change in already provided information regarding the disclosure of conflicts of interest
    - Amendments to applicable legislation or changes in market conditions that could affect the product's main features
    - Any organizational or operational change by the institution that could have an impact on the client and the products held by and services offered to the client[24]

Annual or periodic communications remind clients, as necessary, of the importance of reviewing their needs based on changes in their personal situation to ensure that the product is still appropriate for them. The institution therefore takes the necessary steps to ensure that clients receive ongoing and adequate service.

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[23] As with information provided to clients before or when a product is purchased, information provided to clients after a product is purchased is drafted in clear and plain language and presented in a format that is easy to read and understand.

[24] For example, if the financial institution operates physical sites such as branches or automated teller machines and it decides to close or convert them, it discloses its intentions to clients sufficiently in advance and makes them aware of available alternatives.

When clients wish to replace a product or switch products, cancel a contract or change institutions, the procedures in place facilitate such transactions.

6.9 Claims examination and settlement[25]

The AMF expects claims to be examined diligently and settled fairly following a process that is simple and accessible for clients.

Claims examination and settlement are key steps in an insurer's relationship with its clients.

Expectations to achieve this outcome

- Clients are informed when filing a claim of the main steps in the claims examination process and of the formalities and expected timeframes, which may be extended in exceptional cases[26]
- Clients are updated on their claim's status in a timely and appropriate manner
- Additional requests for information from the institution related to the examination of claims are commensurate with the perils covered and do not hinder or delay the examination process
- When the claims examination process cannot be completed within the expected timeframe, clients are told why additional time is required and when the process will be completed
- Claim-determinative factors (e.g., depreciation, negligence) and, when applicable, the reasons why the claim was wholly or partially denied are carefully and clearly explained to clients. Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision
- The decision review takes into account the legitimate interests of the client. It is a simple process without any red tape
- Clients are informed that they may contact the complaint processing department if they are dissatisfied with the way their claim has been handled
- Insurance contract provisions are interpreted in a consistent manner
- The claims examination and settlement process is free of conflicts of interest
- Staff responsible for claims examination and settlement:
  - Are familiar and comply with the institution's claims examination and settlement process. They are able to provide appropriate information to clients and properly assist them in making a claim and throughout the examination process
  - Possess the necessary competencies depending on the type of product

[25] Applies only to the insurance sector.

[26] Where applicable, a damage insurer's procedure creates a favourable environment for a claims adjuster to meet the obligations set out in the *Act respecting the distribution of financial products and services,* CQLR, c. D-9.2.

6.10 Complaint processing and dispute resolution

The AMF expects complaints to be processed fairly and diligently following a process that is simple and accessible for clients.

The various laws administered by the AMF[27] require financial institutions to keep a complaints register and adopt a policy for processing complaints and resolving disputes that complies with the established obligations.[28]

Expectations to achieve this outcome

- A summary of the policy, describing the main steps in the complaint process, the formalities to be completed and the processing timeframes, is made available to clients on the website and disseminated by any other appropriate means to reach them
- Clients are not faced with constraints or administrative barriers[29] when they want to file a complaint
- The institution designates a complaints officer who, in particular:
    - Has the authority and competence to perform the function
    - Ensures that the policy is implemented and complied with
    - Develops an overall picture of the complaints received (e.g., number, reasons, causes) in order to identify common causes and address the issues they raise for clients
    - Acts as official respondent with clients and, where applicable, with the AMF on complaint records sent to the AMF
- The complaint process is free of any conflicts of interest
- The complaints register is used to compile relevant information about complaints, complaints reporting and actions taken to resolve complaints
- Complaints are classified in the register in a detailed manner so that the reasons and causes are clearly identifiable
- Staff responsible for processing complaints:
    - Are independent in the performance of their duties

[27] *Insurers Act,* CQLR, c.- A-32.1*,* sections 50, 52 to 58
Act respecting financial services cooperatives, CQLR, c.- C-67.3, sections 66.1, 131.1 to 131.7
Trust Companies and Savings Companies Act, CQLR, c. S-29.02, sections 34, 36 to 42
Deposit Institutions and Deposit Protection Act, CQLR, c.I-13.2.2, sections 2811, 28.13 to 28.19

[28] Draft Regulation respecting complaint processing and dispute resolution in the financial sector in public consultation until November 8, 2021.

[29] For example, clients should not have to submit their complaints more than once, regardless of how many complaint processing levels there are within the institution.

- Are familiar and comply with the institution's complaint process. They are able to disclose appropriate information to clients and properly assist them in filing a complaint and throughout the process
- Possess the necessary competencies to process the complaints assigned to them

6.11 Protection of personal information

The AMF expects the privacy policy and procedures to ensure compliance with the *Act respecting the protection of personal information in the private sector*[30] and reflect best practices in this area.

Theft, loss or inappropriate use of personal information obtained from clients represents a risk to clients and a threat to the reputation of the institution.

The protection of personal information is a key issue for an institution. The sustainability of its operations depends, among other things, on its clients' trust in this respect. They expect their information to remain confidential and to be handled accordingly.

<u>Expectations to achieve this outcome</u>

- The board of directors and senior management are informed of the challenges pertaining to the protection of clients' personal information
- The policies and procedures concerning the protection and use of personal and financial information establish safeguards against the misuse of information, improper access to information or the unauthorized disclosure of personal information contained in files
- The institution ensures that service providers with access to personal information on the institution's clients have appropriate policies and procedures in place to ensure compliance with the *Act respecting the protection of personal information in the private sector*
- The institution assesses the potential effects of new or emerging risks that could threaten the confidentiality of the personal information it holds and takes appropriate action to mitigate them
- The institution identifies the actions that may need to be taken to respond to failures to comply with its obligations relating to the protection of personal information, including reporting any information security incident to the regulators and any persons affected, including clients

[30] *Act respecting the protection of personal information in the private sector*, CQLR, c. P-39.1

- Before entering into a contract, and in accordance with the initial information collection goal, the institution informs clients that their personal information will be used only for the purposes for which it was collected, with the explicit, informed consent of the client, as required under the *Act respecting the protection of personal information in the private sector*