

Draft Regulation

Credit Assessment Agents Act

(chapter A-8.2, ss. 66 and 73)

Insurers Act

(chapter A-32.1, s. 485, par. 1, and s. 496)

Act respecting financial services cooperatives

(chapter C-67.3, ss. 601.1 and 601.9)

Act respecting the distribution of financial products and services

(chapter D-9.2, ss. 216.1, 223, pars. 8, 11, 12 and 13.1)

Deposit Institutions and Deposit Protection Act

(chapter I-13.2.2, s. 43, par. u, and s. 45.9)

Derivatives Act

(chapter I-14.01, s. 175, pars. 13, 16 and 19.1)

Trust Companies and Savings Companies Act

(chapter S-29.02, ss. 277 and 286)

Securities Act

(chapter V-1.1, s. 331.1, pars. 8, 26 and 27.0.4)

Regulation respecting complaint processing and dispute resolution in the financial sector

Notice is hereby given by the Autorité des marchés financiers (the “AMF” or the “Authority”) that, in accordance with section 67 of the *Credit Assessment Agents Act*, CQLR, c. A-8.2 (the “CAAA”), section 486 of the *Insurers Act*, CQLR, c. A-32.1, section 601.2 of the *Act respecting financial services cooperatives*, CQLR, c. C-67.3 (the “AFSC”), section 217 of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the “Distribution Act”), section 45 of the *Deposit Institutions and Deposit Protection Act*, CQLR, c. I-13.2.2 (the “DIDPA”), section 175 of the *Derivatives Act*, CQLR, c. I-14.01, section 278 of the *Trust Companies and Savings Companies Act*, CQLR, c. S-29.02 (the “TCSCA”) and section 331.2 of the *Securities Act*, CQLR, c. V-1.1, the following regulation (the “Draft Regulation”), the text of which is published hereunder, may be made by the AMF and subsequently submitted to the Québec Minister of Finance for approval, with or without amendment, after 30 days have elapsed since its publication in the Bulletin of the Authority:

- *Regulation respecting complaint processing and dispute resolution in the financial sector.*

The Draft Regulation is also available under “Public consultations” on the AMF’s website at www.lautorite.qc.ca.

Background

The Draft Regulation is intended to harmonize and strengthen the fair processing of complaints in Québec’s financial sector. It includes requirements drawn from national and international FTC (fair treatment of customers) principles and was drafted taking into account input from various AMF advisory committees and the comments of multiple financial sector stakeholders.

The Draft Regulation applies to the following financial institutions, financial intermediaries and credit assessment agents:

Financial institutions

- Insurers authorized under the *Insurers Act*;
- Deposit institutions authorized under the DIDPA;
- Financial services cooperatives within the meaning of the AFSC; and
- Trust companies authorized under the TCSC.

Financial intermediaries

- Firms, independent representatives and independent partnerships registered under the Distribution Act; and
- Dealers or advisers registered under the *Derivatives Act* or the *Securities Act*.

Credit assessment agents

- Credit assessment agents designated by the AMF under the CAAA.

The Draft Regulation proposes a framework complementing the already existing complaint processing and dispute resolution obligations imposed on financial institutions, financial intermediaries and credit assessment agents under the laws governing their respective activities and practices.

These obligations include adopting a complaint processing and dispute resolution policy and publishing a summary of the policy on their website or disseminating it by any appropriate means, keeping a complaints register and notifying the consumer of the complaint registration date within 10 days of such registration, and notifying the consumer of his or her right to request to have the complaint record examined by the AMF.

The Draft Regulation proposes a common set of complaint processing and dispute resolution requirements for financial institutions, financial intermediaries and credit assessment agents. It also differentiates, based on the various enabling statutes, between financial institutions, financial intermediaries and credit assessment agents, in the application of certain provisions.

Purpose of the Draft Regulation

The Draft Regulation establishes a common set of rules and practices to be followed by financial institutions, financial intermediaries and credit assessment agents in processing complaints and resolving disputes. These rules and practices also cover the keeping of complaint records and the sending of such records to the AMF for examination. The Draft Regulation would also prohibit certain practices.

The Draft Regulation identifies the elements to be included in a financial intermediary's complaint processing and dispute resolution policy.

Finally, it sets out the monetary administrative penalties that may be imposed on financial institutions or credit assessment agents by the AMF in the event of non-compliance with the Regulation's provisions applicable to their practices.

I. Provisions common to financial institutions, financial intermediaries and credit assessment agents

The Draft Regulation would apply from the moment a complaint is received by a financial institution, financial intermediary and credit assessment agent.

Under the rules and practices proposed in the Draft Regulation, a financial institution, financial intermediary or credit assessment agent would, among other things, be required to enter in its complaints register any complaint received by it without delay. The Draft Regulation also sets out the documents and

information that the complaints register and the complaint record would have to contain as a minimum. The financial institution, financial intermediary or credit assessment agent would also be required to provide a complaint drafting assistance service to any person expressing a need for it.

The Draft Regulation proposes a framework for the sending of an acknowledgement of receipt of a complaint and the final response following the financial institution's, financial intermediary's or credit assessment agent's analysis of the complaint. It determines the content of such communications and the time periods within which they are to be sent to the consumer.

i. Definition of a “complaint”

The Draft Regulation proposes a definition of a “complaint.” This definition is a critical element of the Draft Regulation as it specifies the types of dissatisfaction and reproach that must be processed in accordance with the Draft Regulation.

The definition was developed to respond to the needs of Québec financial consumers—who want their dissatisfactions or reproaches to be processed in a fair and diligent manner—while taking into account the realities of financial institutions, financial intermediaries and credit assessment agents.

This definition excludes dissatisfactions or reproaches that can be resolved at the time they are expressed by the consumer (e.g., when a consumer calls the financial institution's, financial intermediary's or credit assessment agent's client service department with a reproach and the reproach is addressed to the consumer's satisfaction during the call). Furthermore, to support this definition, the Draft Regulation includes examples of what does not constitute a complaint. Such situations would not need to be entered in the complaints register or processed in accordance with the Draft Regulation.

ii. Complaint processing time period

All complaints would have to be processed promptly and efficiently within no more than 60 days. The 60-day period would be non-extendable. This period would be calculated from the time the financial institution, financial intermediary or credit assessment agent receives the complaint until the time the final response is sent to the consumer.

This amount of time is sufficient for financial institutions, financial intermediaries and credit assessment agents to ensure that the complaints are processed fairly and, for consumers, would provide a tangible indicator for complaint follow-up.

Where there is an offer to resolve the complaint (which would be presented to the consumer in the final response), the consumer's assessment and acceptance of the offer, if applicable, and the financial institution's, financial intermediary's or credit assessment agent's resolution of the complaint would be steps separate and distinct from the processing of the complaint. As a result, they would be excluded from the calculation of the proposed time period and could be completed after the 60-day period set out in the Draft Regulation is over.

iii. Simplified process for certain complaints

The AMF is aware that certain complaints may be resolved more quickly than others, with some being resolved within a few days of receipt. The Draft Regulation therefore proposes a simplified process for situations where a complaint is processed and the offer to resolve it is accepted within 10 days following the complaint registration date. For these kinds of situations, the financial institution, financial intermediary or credit assessment agent would be able to send the consumer a single notice that would combine the information relating to the receipt, processing and resolution of the complaint.

iv. Prohibitions

The Draft Regulation proposes prohibiting the use of the term “ombudsman” or similar qualifiers in referring to the complaint process of a financial institution, financial intermediary or credit assessment agent.

The Draft Regulation also proposes prohibiting certain practices with respect to the offer presented to a consumer to resolve his or her complaint. Under the Draft Regulation, no condition could be attached to such an offer that, in particular, would prevent the complainant from exercising the right to make a request to have the complaint record examined by the AMF, require the complainant to withdraw another complaint that he or she has filed, or prevent the complainant from contacting the AMF or from reporting an ethical breach to a self-regulatory organization.

II. Specific provisions applicable to financial institutions and credit assessment agents

The Draft Regulation sets out the monetary administrative penalties that the AMF may impose on financial institutions or credit assessment agents that contravene certain provisions.

The Financial Markets Administrative Tribunal may impose administrative penalties on financial intermediaries that contravene those provisions.

III. Specific provisions applicable to financial intermediaries

The Draft Regulation specifies the elements of a financial intermediary’s complaint processing and dispute resolution policy, including:

- Establishment of a complaint process
- Training on the complaint process for financial intermediary staff
- Designation of a complaints officer and the functions of the designee
- Assignment of complaints to the staff responsible for processing them
- Periodic reporting regarding the complaint process

A financial intermediary’s complaint processing and dispute resolution policy would also have to provide that the underlying causes of complaints that are processed will be analyzed to identify the causes common to the complaints, if any, and to address the issues that they raise.

Finally, the complaint processing and dispute resolution policy would require that the reasons supporting a complaint be analyzed to determine whether they could have repercussions for other persons who are members of the financial intermediary’s clientele and to take measures to remedy them, if necessary.

These requirements would not apply to financial institutions governed by a similar prudential framework, set out in the Sound Commercial Practices Guideline, or to credit assessment agents for which the AMF has established a prudential framework tailored to their activities.¹

¹ Notice relating to the development and implementation of a new guideline applicable to credit assessment agents (section 28 et seq. of the Credit Assessment Agents Act (S.Q. 2020, c. 21)): <https://lautorite.qc.ca/fileadmin/lautorite/reglementation/agents-evaluation-credit/avis/2021fev04-avis-aec-en.pdf>.

Comments

Comments regarding this Draft Regulation may be made in writing before **November 8, 2021**, to the following:

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la cité, tour Cominar
2640, boulevard Laurier, 3^{ième} étage
Québec (Québec) G1V 5C1
Fax: 418-525-9512
E-mail: consultation-en-cours@lautorite.qc.ca

Unless otherwise noted, comments will be posted on the AMF's website at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Additional Information

For additional information, send an e-mail to questions-projetRTPRD@lautorite.qc.ca.

September 9, 2021