AUTORITÉ
DES MARCHÉS
FINANCIERS

SOUND COMMERCIAL PRACTICES GUIDELINE

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Preamble

Under the laws of their respective activities[1], financial institutions must adhere to sound commercial practices, including properly informing persons being offered a product or service[2] and acting fairly in dealings with them.

Under this guideline, the AMF communicates its expectations regarding expected results in matter of fair treatment of consumers. The AMF provide financial institutions with the necessary latitude to determine the requisite strategies, policies and procedures in order to facilitate achieving such results and to apply them based on the nature, size and complexity of their activities.

AMF Notes:

The AMF considers governance, integrated risk management and compliance (GRC) as the foundation stones for a financial institution's sound commercial practices and, consequently, as the basis for the commercial practices framework provided by the AMF.

This guideline is part of this approach and sets out the AMF's expectations regarding the fair treatment of consumers[3] of financial products and services, a sound commercial practice expected from financial institutions.

[1] *An Act respecting insurance,* R.S.Q., c. A-32, s. 222.2;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, s. 66.1;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, s. 177.3.

[2] The generic term "product" used in this guideline refers both to financial products and financial services.

[3] The generic term "consumer" used in this guideline refers both to consumers of financial products and users of financial services.

Introduction

The rapid growth of financial markets and technologies, the increasing complexity of financial products and the greater transfer of risks to consumers are among the factors that have contributed to the increased risk that they falling victim to careless practices, abuse or fraud.

The supervision conducted and the framework developed for financial institutions' commercial practices are intended to protect consumers against the inherent risks in these products and foster consumer confidence in Québec's financial system.

Otherwise, a number of factors have contributed to creating a higher-risk environment for financial institutions, including the globalization of financial markets, the deregulation of financial product offerings, increased reliance on financial engineering, changes in information technologies and matters of ethics, integrity and competence.

The AMF's oversight and prudential monitoring are intended to foster the solvency of financial institutions and, ultimately, maintain the stability of Québec's financial system so as to protect the interests of consumers. It is with this in mind that the AMF will ensure that the risks resulting from commercial practices are taken into consideration by institutions in their integrated risk management.

The combination of these two roles, together with the macroprudential oversight of systemic risk and the AMF's role in disseminating financial education throughout Québec, are intended to identify and mitigate the risks that threaten financial stability and public confidence, prevent negative impacts on consumers, encourage market discipline and make Québec's financial system more resilient and stable.

In this context and pursuant to the authority conferred upon the AMF under the various statutes[4] it administers, it is issuing this guideline to inform financial institutions of its expectations. Thereby, the AMF's intent is to ensure that the fair treatment of consumers constitutes a key component of each institution's corporate culture.

[4] *An Act respecting insurance*, R.S.Q., c. A-32, ss. 325.0.1 and 325.0.2;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, s. 565;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, s. 314.1.

Scope

This guideline is intended for insurers of persons (life and health), damage insurers, holding companies controlled by an insurer, mutual insurance associations, financial services cooperatives as well as trust and savings companies, which are governed by the following statutes:

- *An Act respecting insurance*, R.S.Q., c. A-32
- *An Act respecting financial services cooperatives,* R.S.Q., c. C-67.3
- *An Act respecting trust companies and savings companies*, R.S.Q., c. S-29.01.

This guideline applies to financial institutions operating independently as well as to financial institutions operating as part of a financial group.[5] As regards financial services cooperatives and mutual insurance associations that are members of a federation, the standards or policies adopted by the federation should be consistent with—and even converge on—the expected results regarding the fair treatment of consumers set out in this guideline.

The generic terms “financial institution” and “institution” refer to all entities covered[6] by the scope of this guideline.

[5] For purposes of this guideline, “financial group” refers to any group of legal persons composed of a parent company (financial institution or holding company) and legal persons affiliated therewith.

[6] This guideline does not apply to insurers that are engaged only in reinsurance.

Implementation

This guideline express the expectations of the AMF dated June 13, 2013.

With respect to the legal requirement of institutions to adhere to sound commercial practices, the AMF expects each institution to comply with this requirement by developing strategies, policies and procedures commensurate with its nature, size, complexity and risk profile, and implement upon its publication in the AMF's Bulletin of June 13, 2013.

Where an institution has already implemented such a framework, the AMF may verify whether this framework enables the institution to satisfy the requirements prescribed by law.

This guideline will be updated in response to developments with respect to commercial practices and the fair treatment of consumers and in light of the AMF's observations in the course of its supervision of financial institutions, complaint data collected and investigations or surveys carried out among industry participants and consumers.

Concepts addressed in this guideline

Commercial practices

Commercial practices encompass the conduct of an institution towards its clients or any other market participant with an interest in the institution (e.g., shareholders, partners, counterparties, market analysts and regulatory bodies). Having sound commercial practices means notably acting fairly and responsibly.

The commercial practices' results that the AMF expects are expressed as follows:

- fair treatment of consumers is a core component of governance and corporate culture of financial institution;
- design and marketing of new products take into account the needs of the various target consumer groups;
- consumers have information allowing them to be properly informed and make enlightened decisions regarding products, before, during and after the purchase thereof;
- incentives do not affect the fair treatment of consumers;
- product advertising is accurate, clear and not misleading;
- claims are examined diligently and settled fairly, using a procedure that is simple and accessible to claimants;
- complaints are examined diligently and fairly, using a procedure that is simple and accessible to consumers;
- protection of the confidentiality of personal information policy adopted by a financial institution ensure compliance with the provisions of *An Act respecting the protection of personal information in the private sector*[7] and reflect best practices in this area.

[7] *An Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1

Fair treatment of consumers

Fair treatment of consumers is an integral part of sound commercial practices and a fundamental issue that impacts the reputation of every financial institution and consumer confidence in the financial system. It involves the institution's conduct at each stage of the life cycle of a product, from the moment product-related obligations arise until they expire.

Fair treatment of consumers is based on the core principles and guidance published by a variety of international bodies[8] to guide countries in bettering consumer protection across all financial services sectors. For the purpose of this guideline, the core principles and guidance considered can be summarized as follows:

- consumers are confident when dealing with a financial institution that makes the fair treatment of consumers a core component of its governance and corporate culture;
- the design and marketing of new products take into account the needs of the various target consumer groups;
- consumers have information allowing them to be properly informed and make enlightened decisions regarding products, before, during and after the purchase thereof; and
- the performance of the products and related services available to consumers are consistent with the institution's statements. When consumers want to switch products, change institution, or file a complaint or claim, procedures in place within institution facilitate such operations.

Governance and corporate culture

Corporate culture develops from a combination of values. These values[9] and the extent to which they are integrated in an organization's corporate culture are essential components of its governance system. They guide the conduct of persons within the organization.

It is the duty of the board of directors to define the corporate culture and the duty of senior management to promote it, in particular, by incorporating its values into a code, so that all staff are fully aware of the standards of conduct expected of them.

[8] Including the principles on financial consumer protection developed jointly by the Organisation for Economic Co-operation and Development and the Financial Stability Board, which oversees the International Association of Insurance Supervisors, the Basel Committee on Banking Supervision and the International Organization of Securities Commissions. The other organizations concerned, such as the World Bank and the International Monetary Fund, must also report on their progress in implementing these principles.

[9] For example: Honesty, integrity, independent thought, openness, transparency and trust.

Empowerment of stakeholders

In the provision of products and services, the institution shall take, upon first contact with the consumer, a commitment to him and hold it to the extinction of all its obligations, regardless of whether the network offer is or not independent of the institution. In this regard, the institution should adopt a conduct that ensures the fair treatment of consumers at all stages of their contractual relationship.

Accordingly, the institution should ensure compliance process control upon the supply of products and services (choice of intermediaries, contractual agreements, monitoring service delivery, etc.).

Governance and corporate culture

The AMF expects that the fair treatment of consumers is a core component of governance and corporate culture of financial institution.

Incorporating a fair treatment of consumers culture at each stage of the life cycle of a product, from its design to after-sales services and from the moment obligations arise until they expire, requires the involvement of all the institution's levels and processes, from strategic planning to decision-making and from governance structures to operations.

The AMF expects fair treatment of consumers to be implemented in every area of a financial institution's operations by concerted action, a firm commitment and strong leadership at decision-making levels.

Among the best practices identified by the AMF, institutions can refer to the following:

- the development of objectives, strategies and initiatives in line with the institution's fair treatment of consumers vision and values;
- the appointment of a senior officer in charge of ensuring the development, implementation and enforcement of fair treatment of consumers-related operational policies and practices;
- a compensation program that is consistent with the institution's fair treatment of consumers-related objectives and expected results;
- codes of ethics that maintain and reinforce a fair treatment of consumers culture, place a value on responsible conduct and compliance with internal and external obligations, and allow the institution to maintain high standards of ethics, integrity and competence;
- mechanisms and controls to identify and deal with any departure from the institution's strategies, policies and procedures, any conflicts of interest or any other situation likely to interfere with fair treatment of consumers;
- generation of management information that makes it possible:
    - to assess the institution's performance with respect to fair treatment of consumers;
    - to react, in a timely manner, to changes or risks likely to have a negative impact on the institution's clients; and
    - to prove that fair treatment of consumers forms part of the institution's corporate culture.

Lastly, the AMF believes that public disclosure of comprehensive information regarding an institution's initiatives, assessment tools and results pertaining to fair treatment of consumers could motivate the institution, and the industry in general, to achieve or improve fair treatment of consumers results, in addition to encouraging better market discipline.

Design[10] and marketing of products

The AMF expects that the design and marketing of new products take into account the needs of the various target consumer groups.

With the development of complex products, sometimes high-risk, or that may difficult to understand, a weakness in the design and marketing process can increase the likelihood of inappropriate choices of consumers.

In particular, the AMF expects that institutions:

- design and market products with long life cycles in the market;
- identify consumer groups for whom products are likely to be suitable, while access to consumers for whom products are likely to be unsuitable should be limited; and
- use distribution methods tailored to the products and target consumers, that is, methods taking into account the need for advice and disclosure and what potential impact the product can have on consumers' financial situations.

Among the best practices identified by the AMF, institutions can refer to the following:

- having a formal process for approving new products;[11]
- using of appropriate information to assess the needs of the various consumer groups;
- making an evaluation of the risks inherent in new products, in light of changes in the environment[12] that could harm consumers;
- proceeding to the assessment of new products and related disclosure documents by competent individuals from the relevant departments in the institution;[13]
- training the sales force to ensure it is knowledgeable about the institution's products, the disclosure documents and the target markets;

[10] Including the selection of third-party products.

[11] Including material changes to existing products likely to have an impact on clients.

[12] For example: economic, legal and market environment.

[13] For example: Compliance, integrated risk management, finance, sales, taxation and actuarial.

- developing outsourcing agreements that do not hinder the quality of services or jeopardize the institution's ability to fulfill its fair treatment of consumers-related obligations;[14]

- monitoring of products after their launching to ensure that they do, in fact, meet the needs of the initial target consumers and that any necessary changes are made; and

- making the assessment of the distribution methods used, particularly in terms of fair treatment of consumers.

[14] *Autorité des marchés financiers*, Outsourcing Risk Management Guideline, December 2010.

Incentives management

The AMF expects that incentives do not affect the fair treatment of consumers.

The term "incentive" refers to a broad sense. It is for example fees, commissions, premiums and bonuses in compensation programs, and other benefits (sales contests, promotions, privileges, gifts).

In particular, the AMF expects that:

- consumers to be confident that products advised truly meet their needs;
- incentive do not interfere with the obligation of the institution or any intermediary between the institution and the client to act fairly when dealing with consumers.

Among the best practices identified by the AMF, institutions can refer to the following:

- performance criteria related to variable compensation that are clearly defined and measurable;
- institution adopts incentives that are not likely to affect the obligations of a representative to the detriment of his client;
- institution develops incentives to avoid conflicts of interest, for example, in light of the individual in question and his role within the institution;[15]
- institution promotes the development of incentives based on the fair treatment of consumers, in contrast, an incentive-oriented only towards the sale of specific products may affect the fair treatment of consumers;
- incentives paid take into account in particular the fair treatment of consumers-based performance of sales staff and sales managers;
- the prohibition of certain types of high-risk incentives, such as incentives based solely on sales volumes or incentives to stimulate the sale of investment products that present a risk for consumers;

[15] For example: The sales manager with respect to his sales staff, staff in charge of examining claims or staff in charge of examining complaints.

- maintaining a register of incentives, which describes the terms and conditions including incentives, duration, products, services and persons covered by these incentives;

- frequent reassessment of the risks inherent in the incentives forming part of the compensation structure, in light of factors such as the product and method of distribution, so as to ensure the effectiveness of controls set up by the institution.

Disclosure to consumers

The AMF expects that consumers have information allowing them to be properly informed and make enlightened decisions regarding products, before, during and after the purchase thereof.

<u>Disclosure before or at the time a product is purchased</u>

The AMF expects financial institution to implement appropriate disclosure system that allow consumer to make an enlightened decision and also be a source of information on which representatives can rely in order to provide advice, when required. The level of product information depends on the type and complexity of the product.

In particular, the AMF expects the disclosure to consumers:

- clearly identify the institution and provide its contact information;
- clearly identify the product and set out its main features;[16]
- clearly identify the risks associated to the product;
- clearly identify any right of termination or resolution;
- be drafted in clear and plain language and in a manner that is not misleading;
- be presented in a format that is easy to read and understand;[17]
- be up to date and available, in a timely manner, on paper or any other durable medium;
- disclose any situation that could potentially place the institution in a conflict of interest.

Among the best practices identified by the AMF, institution may submit information relating to a product testing with target consumers in order to ensure that the information is intelligible and suits their needs.

[16] For example: Conditions, exclusions, restrictions, fees, as well as interest rate fluctuations. When granting credit, this could include factors taken into account when assessing the borrower's ability to repay the loan. When dealing with bundled products, the consumer should be able to understand the various components.

[17] In certain cases, the AMF may prescribe formats allowing consumers to compare similar competing products and services. For example: AMF's Guideline on Individual Variable Insurance Contracts Relating to Segregated Funds, January 2011.

Disclosure after a product is purchased

The AMF expects that the disclosure system established by the institution allows consumers to determine whether the product continues to suit their needs and expectations. This system should include the disclosure of information on:

- after-sales transactions;
- performance;
- contract amendments during the term of the contract;
- if applicable, the rights and obligations of consumers in connection with the changes;
- event of the substitution or replacement of a product;
- event portfolio transfers;
- changes in the environment, such as legislative amendments that have an impact on the products they hold; and
- organizational or operational changes involving the institution that have an impact on clients, products or related services.

When consumers wish to replace or substitute a product or change suppliers, the AMF expects that the procedures in place within the institution facilitate such operations.

Product advertising

The AMF expects that product advertising is accurate, clear and not misleading.

In particular, the AMF expects that:

- the name of the institution is clearly indicated on all material in accordance with legal requirements;
- complete address of the institution are given;
- advertising is tailored to the target consumer group;
- written advertising is presented in a format that is easy to read and understand;
- messages sent electronically are visible and remain accessible for a reasonable period of time;
- if applicable, the source of any statistics used is identified;
- testimonials used are authentic and whether the institution pays for a testimony, a statement is made.

Among the best practices identified by the AMF, institutions can refer to the following:

- prior to being disseminated, advertising material regarding the institution's products is reviewed independently of the person that prepared or designed it for the institution; and
- any product advertising that is misleading, unclear or inaccurate is immediately modified or withdrawn.

Claims examination and settlement[18]

> The AMF expects that claims are examined diligently and settled fairly, using a procedure that is simple and accessible to claimants.

The claims examination and settlement process are key indicators for assessing an institution's performance regarding the fair treatment of consumers.

In particular, the AMF expects that:

- consumers are aware of the existence of the claims examination and settlement service and the contact information for accessing the service;
- claimants are aware of the main steps of the claims examination process and the anticipated time frame;
- claimants are informed, on a timely basis, of his rights and obligations;
- claimants are provided with a clear and careful explanation of the determining factors of the assessment and the reasons for the total or partial rejection of a claim, where applicable. If a claim cannot be examined within the anticipated time frame, the claimants are informed of the cause of the delay and the moment when the examination will be completed; and

Among the best practices identified by the AMF, institutions can ensure that inappropriate behaviour by staff in charge of the claims examination and settlement process are identified and appropriate measures taken.

[18] Applicable only to the insurance sector.

Complaint examination and dispute resolution

The AMF expects that complaints are examined diligently and fairly, using a procedure that is simple and accessible to consumers.

Pursuant to the provisions in the laws administered by the AMF,[19] institutions[20] are required to comply with complaint examination obligations. For more information on these obligations, please visit the AMF website at **http://www.lautorite.qc.ca/en/complaint-examination.html**.

The complaint examination and dispute resolution process are key indicators for assessing an institution's performance regarding the fair treatment of consumers. The AMF expects that consumers know about the existence of a complaints examination and dispute resolution service and the contact information for accessing the service.

Among the best practices identified by the AMF, institutions can refer to the following:

- common underlying causes of complaints are identified and appropriate measures taken to eliminate or reduce them; and
- inappropriate behaviour by staff in charge of the complaint examination and dispute resolution process are identified and appropriate measures taken.

[19] *An Act respecting insurance*, R.S.Q., c. A-32, ss. 285.29 to 285.36;
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, ss. 131.1 to 131.7;
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, ss. 153.1 to 153.7.

[20] Except holding companies controlled by an insurer.

Protection of personal information

The AMF expects that protection of the confidentiality of personal information policy adopted by a financial institution ensure compliance with the provisions of *An Act respecting the protection of personal information in the private sector*[21] and reflect best practices in this area.

The theft, loss or inappropriate use of personal information[22] obtained from consumers represents a risk to consumers and a threat to the reputation of institutions.

The protection of personal information is a key issue for a financial institution. The sustainability of its operations depends, among other public confidence in this regard. Consumers expect that their information remains confidential and be handled accordingly.

In particular, the AMF expects that:

- consumers are notified, on a timely basis, of any breach in confidentiality liable to jeopardize their interests or rights;
- institution inform AMF of any violation of the protection of personal information liable to jeopardize the interests or rights of consumers and the institution's reputation;
- responsible individuals within the institution are informed of any breach in confidentiality on a timely basis.

[21] *An Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1

[22] The concept of "personal information" is defined in section 2 of *An Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1.

Supervision of commercial practices

To foster the establishment of sound commercial practices within financial institutions, the AMF, acting within the scope of its supervisory activities, intends to assess the extent to which financial institutions are achieving the expected results set forth in this guideline in light of the specific attributes of each institution. To do so, the AMF will use the traditional supervisory tools provided for in its supervisory framework.[23] Moreover, the AMF intends to review its disclosure standards and use other supervisory tools.[24] All of this will allow the AMF to be proactive in identifying risks related to inadequate practices liable to interfere with the fair treatment of consumers.

The degree of supervision of a given institution's commercial practices will depend, among other things, on the level of risk it faces and risk it represents for consumers, any other market participants and for Québec's financial system.

Consequently, the AMF will examine the effectiveness and relevance of the strategies, policies and procedures adopted by financial institutions as well as the quality of the oversight and control exercised by them in light of their results with respect to the fair treatment of consumers.

[23] *Financial Institutions Supervisory Framework*, Superintendence of Solvency, October 2011.

[24] For example: Investigations or surveys carried out among industry participants and consumers.