AUTORITÉ DES MARCHÉS FINANCIERS

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.

Sound commercial practices help ensure, in particular, that a product offer[4] is fair 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 needs and interests 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 that the product offered is not suited to the client's 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] In this guideline, the terms "institution" and "financial institution" refer to the financial institutions that are subject to the legal obligation to adhere to sound commercial practices in accordance with the statutes listed in Note 1. Consequently, these terms do not include 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] In this guideline, the term "product" also includes, where appropriate for the context, a "service".

[5] The Organisation for Economic Co-operation and Development, the International Financial Consumer Protection Organisation, the Financial Stability Board, the International Association of Insurance Supervisors, the Basel Committee on Banking Supervision, the 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 and actions of its entire staff. It informs the institution's strategic decisions and the conduct of 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 institution to the point of compromising its solvency.

A financial institution with an FTC-centric business culture:

- Places clients' interests at the centre of its decisions and the conduct of its business
- Recognizes and manages risks that could compromise FTC
- Ensures that FTC outcomes are demonstrated, including through indicators developed for this purpose
- Communicates FTC outcomes to the persons concerned at all levels of the organization

3. Responsibility of the financial institution

The AMF expects financial institutions to fulfill their FTC obligation at all stages of the product life cycle.

A financial institution's FTC obligation continues to apply even though some intermediaries[6] involved in offering the financial institution's products may have their own obligations.

Financial institutions therefore obtain reasonable assurance that the actions of intermediaries and any other persons acting on its behalf who are involved in offering their products enable them to discharge their FTC obligation.

Moreover, financial institutions remain fully responsible for any activities that may be outsourced by them.[7]

[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.

[7] Autorité des marchés financiers, Outsourcing Risk Management Guideline, April 2010.

4. Financial institutions' relationships with intermediaries

The AMF expects financial institutions to establish business relationships with intermediaries that enable them to discharge their FTC obligation.

As part of financial institutions' relationships with intermediaries, the AMF expects:

- Criteria for selecting Intermediaries to enable the identification of intermediaries with the authorization to act and the appropriate competencies and resources, and follow-up to be performed to ensure the criteria are maintained
- Agreements entered into to clearly set out the financial institution's expectations for intermediaries with regard to FTC
- Reporting, indicators and controls put in place to be adjusted based on the risks specific to and characteristics of each intermediary[8] and to allow the financial institution to obtain reasonable assurance that the intermediary is meeting its expectations with regard to FTC

Among other things, the financial institution:

- Ensures that the intermediary has the means to provide clients with timely information necessary for enlightened decision-making
- Provides for the implementation of measures guaranteeing clients an appropriate level of service after they enter into a contract
- Considers the controls put in place by the intermediary sufficient to identify inappropriate sales, transactions and practices in respect of clients and is satisfied with any corrective action, where required
- Obtains relevant information from the intermediary enabling it to review, if necessary, its product designs, target client group definitions or distribution strategies
- Obtains relevant information from the intermediary about the complaints it has received regarding its products or their distribution so the financial institution can obtain a complete picture of the client experience and identify any FTC-related issues

[8] For example, reporting, indicators and controls include the insurer's liability with respect to a distributor (s. 65 of the Insurers Act).

5. Expected FTC outcomes

5.1 Governance

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

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

The board of directors is responsible for promoting an FTC-centric business culture and sound commercial practices, and senior management is responsible for ensuring that that culture and those practices are reflected in the financial institution's risk management framework.

Roles and responsibilities of the board of directors[9]

- 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 compensation and performance management programs, including incentives granted by the financial institution to staff, intermediaries or other persons acting on behalf of the institution who are 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

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

Roles and responsibilities of senior management

- Ensure the development of objectives, strategies, policies, processes and procedures that are consistent with the institution's values and enable achievement of the expected FTC outcomes
- Ensure the implementation of controls to:
    - Identify and address any departure from the institution's objectives, strategies, policies, processes and procedures
    - Ensure that staff conduct is consistent with the institution's FTC-related values
    - 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[10] of the institution's performance and a process for its continuing improvement in FTC
- Ensure that staff members who offer products receive training, periodically and as needed, on established FTC-related policies, processes and procedures
- Ensure that the institution's integrated risk management takes into account risks and commercial practices that could adversely affect FTC
- Ensure that appropriate action is taken to correct staff member practices that are contrary to FTC

[10] Accordingly, in addition to the client satisfaction rate or the number of complaints received, the indicators used by the institution should make it possible to measure the achievement of expected FTC outcomes at every stage of the product life cycle.

5.2 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.

A conflict of interest situation may arise from, among other things, the compensation and performance management programs put in place or the relationships established between the financial institution and the intermediary and any other person acting on its behalf who is involved in offering its products.

A conflict of interest situation could result in an inappropriate sale, transaction or practice or have an impact on the quality of services provided or advice given to clients, as applicable.

The institution should therefore regularly identify and assess the risks of practices with a potentially adverse impact on FTC that may result from conflict of interest situations.

Expectations to achieve this outcome

- Put clients' interests first
- Take all reasonable steps to identify and avoid or manage real or potential conflicts of interest
- Avoid any real or potential conflict of interest that cannot be managed in a way that ensures FTC
- Demonstrate that controls have been put in place to ensure that conflicts 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, and it is not sufficient in and of itself for the conflict of interest to be considered to have been properly managed
- When relying on, among other things, disclosure of a conflict of interest, ensure that such disclosure 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
- Notify the client of any significant change that occurs regarding the previously disclosed conflict of interest
- Document each conflict of interest situation that arises and how the institution managed it. The information collected should provide a basis for illustrating the extent of the harm that may be caused to the client by a such a conflict of interest

5.3 Product design

The AMF expects financial institutions to take the common needs and interests of the various target client groups into account when designing products.

Designing products includes developing new products and significantly altering existing ones. For the financial institution, not taking the common needs and interests of the various target client groups into account when designing products could increase the risk of inappropriate offers.

Expectations to achieve this outcome

- Product design relies on the use of adequate information enabling the identification of client needs and interests
- Product design, including the selection of products originating from third parties, involves an appropriate assessment of the main features of the product[11] and the disclosure documents provided to clients by institution staff who have the competencies to perform such an assessment[12]
- The process for approving a 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 and features reasonably expected by the target client group
    - Identify and manage any risks that the product might present for the target client group
    - 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 and interests 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, complexity, level of risk) and enables the institution to determine which clients belong to the group and those for whom the product may not be appropriate
- Product monitoring:[13]

[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, type, compliance, integrated risk management, finance, sales, taxation, actuarial services, legal affairs.

[13] 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.

- Ensures, by relying on sufficient, relevant, clear information, that the product's main features continue to suit the target client group's needs and interests[14]
- Enables action to be taken, if necessary, to:
  - Tailor the product to the target client group's changing needs and interests[15]
  - Ensure that clients understand the product and its main features
  - Revisit the definition of the target client group

[14] 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.

[15] 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 in taking into account changes in clients' level of indebtedness.

5.4 Product marketing

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

Financial institutions are responsible for the distribution strategies they use for their products and provide strategy oversight.

Expectations to achieve this outcome

- The distribution strategies for a product are chosen using appropriate information to assess the target client group's needs and interests and are tailored to the level of complexity of the product
- Staff, intermediaries or other persons acting on behalf of the institution who are 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 groups
- The indicators used and controls applied with respect to distribution strategies make it possible to:
    - Assess the performance of the various distribution strategies in terms of expected FTC outcomes and to take any remedial action, as required
    - Ensure that the distribution strategies used for a product continue to meet the target client group's needs and would not adversely affect clients' interests

5.5 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 persons other than those who prepared or designed them
- Advertising materials:
  - Are easy to understand
  - Clearly identify the financial institution
  - Adequately convey the benefits that the target client group may reasonably expect from the product
  - Highlight information or key elements required for informed decision-making by clients
  - Provide a clear understanding of the product and does not cause confusion
- 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, misleading or is causing confusion, it withdraws it promptly and takes any other actions required to remedy the situation

5.6 Disclosure to clients before or when a product is offered

The AMF expects clients to have information, before or when a product is offered, that allows them to be properly informed in order to make an enlightened decision.

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

The level of detail of disclosure will vary depending on, among other things, the nature and complexity of the product.

Expectations to achieve this outcome

- Disclosure to clients:
  - Is up-to-date and readily accessible
  - Is drafted in clear and plain language, in a manner that is not misleading,[16] and is presented in a format that facilitates reading and comprehension
  - Focuses on information quality, not quantity
  - Clearly identifies the name of the institution and provides its contact details
  - Gives prominence to and explains the main features of the product [17] 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
  - Gives the contact details for the claims examination and settlement department[18]
  - 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

[16] When technical, complex or hard-to-understand language cannot be avoided, make tools or other means accessible to clients to help them clearly understand the information.

[17] 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.

[18] Applicable only to insurers authorized under the Insurers Act.

5.7 Offers of product by deposit institutions[19]

The AMF expects deposit institutions to assess whether the product that is offered is appropriate for the client.

The deposit institution's policies, processes, procedures and controls should ensure that the product that is offered is appropriate for the client, having regard for their circumstances, including their financial needs.[20]

Expectations to achieve this outcome

- The nature of the information collected varies depending on the client's circumstances[21] and the type of product that is offered[22]
- The Know Your Client (KYC) information that is collected is analyzed to understand the client's circumstances and assess the appropriateness of the product that is offered

[19] Financial services cooperatives, trust companies and other authorized deposit institutions.

Product offers regulated by the Act respecting the distribution of financial products and services are not covered by this section.

[20] For example, the policies, processes, 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.

[21] The assessment of the client's circumstances, including their financial needs, may require consideration of a number of factors, such as the client's objectives, financial situation, repayment ability, risk tolerance, investment horizon and other commitments.

[22] Features, charges, risks and benefits for clients.

5.8 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, in order to make enlightened decisions about the products they hold.

Disclosure to clients after a product is purchased is timely and enables clients to determine whether the product they hold is still suited to their needs and interests.

Expectations to achieve this outcome

Disclosure to clients:

- Is drafted in clear and simple language so as not to cause misunderstanding and is presented in a format that is easy to read and understand
- Reminds them about the options they can exercise
- Informs them of changes to the contract or changes related to the performance of their contract, the impact of the changes, and their rights and obligations, and when necessary, obtains their consent
- Notifies clients of events such as:
    - Date of renewal or automatic renewal
    - Expiry of a promotional period
    - Payment due date after which time fees will be charged
    - Replacement of the product or early termination of the contract
    - A portfolio transfer
    - 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 products held by and the services provided to the client[23]

Periodic communications remind clients 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.

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

[23] For example, if branches or automated teller machines are closed or converted, the financial institution contacts its clients within a reasonable period of time and informs them of available alternatives.

5.9 Claims examination and settlement[24]

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

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

Expectations to achieve this outcome

- When filing a claim, the client is informed of the main steps in the examination of the claim and of the expected timeframes for settlement of the claim[25]
- The client is informed in a timely and appropriate manner of the claim's status
- Additional requests for information from the institution related to the examination of a claim are commensurate with the perils covered and do not hinder or delay the examination process
- The client is informed, when the claim cannot be examined within the expected timeframe, 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 the client. Everything is confirmed in writing to the client, who is offered the opportunity to request a review of the decision
- Claim decisions take clients' interests into account and are made in an objective and consistent manner
- The claim decision review process is simple, without any red tape
- Clients are informed that they may contact the complaint processing and dispute resolution department if they are dissatisfied with the way their claim has been handled
- 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

24 Applicable only to insurers authorized under the Insurers Act.

25 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.

5.10 Complaint processing and dispute resolution

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

The complaints received by a financial institution and the handling of those complaints are, among other things, key elements to consider in assessing the financial institution's FTC performance.

The various laws administered by the AMF require financial institutions to do such things as keep a complaints register and adopt a policy for complaint processing and dispute resolution.[26]

Expectations to achieve this outcome

- The complaint process takes into account clients' interests and ensures that complaints are handled in an objective and consistent manner
- The institution designates a complaints officer who has the authority and competence to perform the function and ensures, among other things, that the complaint processing and dispute resolution policy is implemented, disseminated and complied with within the institution
- Staff responsible for processing complaints have the necessary competencies to process the complaints assigned to them
- Clients receive proper assistance throughout the processing of their complaint and are informed in a timely manner of the status of their complaint
- Clients are not faced with constraints or administrative barriers and any need the institution has for additional information does not hinder or delay the complaint process
- The institution develops an overall picture of the complaints received in order to identify common causes and the issues to be resolved to ensure FTC

[26] Insurers Act, CQLR, sections 50, 52 to 58
Act respecting financial services cooperatives, sections 66.1, 131.1 to 131.7
Trust Companies and Savings Companies Act, sections 34, 36 to 42
Deposit Institutions and Deposit Protection Act, sections 28.11, 28.13 to 28.19

5.11 Protection of personal information

The AMF expects financial institutions to establish and put in place measures enabling them to comply with their obligations with respect to the protection of personal information ("privacy obligations").

A financial institution is responsible for protecting the personal information it holds.

The sustainability of its operations depends, among other things, on its clients' trust in this respect, and clients expect personal information about them held by the financial institution or another person acting on the institution's behalf to remain private and protected accordingly.

Accordingly, the institution's policies, processes and procedures relating to the protection of personal information draw on best practices and enable it to discharge its privacy obligations, including those under the *Act respecting the protection of personal information in the private sector*.[27]

The AMF also expects the financial institution to assess the potential effects of new or emerging risks that could threaten the privacy of the personal information it holds and to take appropriate action to mitigate such risks.

[27] CQLR, c. P-39.1.