Notice regarding the offering of insurance products by automobile and recreational and leisure vehicle dealers

The *Autorité des marchés financiers* (the "Authority") regulates the distribution of financial products and services other than through a representative pursuant to Title VIII of the *Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 (the "Distribution Act"). As such, dealers of new or used automobiles and recreational and leisure vehicles (the "dealers") may act as distributors and offer certain insurance products, including Q.P.F. No. 5 – Complementary Insurance for Damage Caused to Insured Vehicle Form (*Replacement Insurance*) ("Q.P.F. No. 5") and debtor life, health and employment insurance.

Under section 222.2 of the *Act respecting insurance*, CQLR, c. A-32 (the "Insurance Act"), every insurer must adhere to sound commercial practices, properly inform persons being offered a product or service and act fairly in dealings with them.

The Sound Commercial Practices Guideline published by the Authority under the Insurance Act communicates its expectations pertaining to the fair treatment of consumers. In particular, this guideline reminds insurers that they must ensure compliance process control for the supply of products and services, whether or not the network offer is independent of them. In addition, the Authority expects incentives not to affect the fair treatment of consumers.

The Authority is concerned by consumer dissatisfaction with the commercial practices followed by some dealers when offering insurance products. The main reasons given were incomplete or inadequate explanations or disclosures, the sales tactics used by certain dealers to force the sale of insurance products and the consequences of having the insurance premium financed by the financial institution in the event an insurance contract is terminated.

Between 2009 and 2017, the Authority took a number of steps to correct commercial practices related to the offering of insurance products by dealers. Several notices were published to inform insurers and dealers of their obligations and responsibilities. In addition, the business practices of the main insurers in this market were reviewed, and penalties were imposed on certain dealers, firms and lenders. Despite the Authority's actions and interventions, deficiencies in commercial practices persist.

Consequently, the Authority deemed it appropriate to identify additional measures to correct improper commercial practices. The Authority therefore established a round table and held meetings with insurers and dealer associations to discuss measures that will help them meet the Authority's expectations regarding sound commercial practices that promote the fair treatment of consumers.

In this notice, the Authority would like to remind insurers of certain obligations and present measures that it considers necessary to halt improper commercial practices and promote the fair treatment of consumers.

1. Withdrawal of indemnity option in Q.P.F. No. 5

Q.P.F. No. 5 provides the following indemnity options:

Option 1: Replacement of the vehicle through the named dealer;

Option 2: Payment of an indemnity to replace the vehicle through a dealer of the customer's choice.

The Authority has observed that Option 1 is selected for most policies sold. This finding is consistent with reports from consumers that certain dealers did not present both options, or in some instances, that Option 1 was selected by default on the insurance application provided to them.

The Authority has noticed that some consumers are informed only when filing a claim that they are required to obtain a replacement vehicle through the dealer that initially sold them their vehicle and replacement insurance. Also, in some cases, consumers are offered less attractive terms than those they could otherwise obtain if they were not replacing their vehicle. The Authority believes that this situation adversely affects the fair treatment of consumers.

Consequently, in the coming months, the Authority will review Q.P.F. No. 5 in order, in particular, to remove Option 1 (vehicle replacement through the named dealer). The new Q.P.F. No. 5, whose use will be mandatory, will be available on the Authority's website as of December 1, 2018.

2. Extension of the period for earning remuneration to a minimum of 180 days

The Authority has observed that the short period for earning remuneration, combined with the substantial remuneration that dealers receive from insurance product sales, could lead to improper commercial practices. In particular, the Authority has noticed that consumers are sometimes pressured to purchase an insurance product and then to cancel it immediately once the period for earning remuneration is over.

The Authority believes that sound remuneration practices must include a remuneration-earning period that corresponds to the lifespan of the insurance product. The average lifespan of products is between 5 to 7 years and, in some cases, may be as high as 15 years.

The Authority's prior initiatives to eliminate this improper practice have not been successful. It expects insurers to review their practices so that the period during which the dealer earns remuneration is better aligned with the lifespan of the product and is a minimum of 180 days.

3. Implementation of a fact sheet

Some consumers reported having purchased insurance products based on incomplete disclosures or inadequate information.

As stated in the Sound Commercial Practices Guideline, the Authority believes that consumers should have the information they need to be properly informed and make enlightened decisions regarding insurance products, before, during and after the purchase.

Under the Distribution Act, the insurer must take all appropriate steps to ensure that dealers are sufficiently familiar with the insurance product they are distributing. The dealer must describe the insurance product to the consumer, explain its nature and clearly indicate the exclusions thereunder.

In this context and to ensure that consumers are better informed, the Authority will make a fact sheet available on its website as of December 1, 2018. It will draw consumers' attention to certain aspects of the offering of the insurance product and address the points raised by consumers: the disclosure of remuneration and non-mandatory insurance through a named insurer.

The Authority believes that completing, signing and giving this fact sheet to consumers upon offering insurance products, in addition to the other required documents, will enable consumers to be better informed and prevent improper commercial practices. Insurers must be able to confirm for their own purposes that each consumer received this information (e.g., by obtaining a signed copy of the fact sheet from the dealer) and to demonstrate this to the Authority. The other documents given to consumers when insurance products are offered are the distribution guide, the Notice of Rescission provided for in section 440 of the Distribution Act and the Notice of Free Choice of Insurer or Representative provided for in section 443 of the Distribution Act, if applicable.

4. Prohibition from selling similar products having different rates of remuneration

It has come to the Authority's attention that some insurers offer dealers the possibility of distributing a range of insurance products with similar coverage for which the remuneration is different. This situation could allow dealers to offer a product based solely on the potential remuneration they would receive and thus favour the product with the highest remuneration. This practice goes against sound commercial practices and thereby undermines the fair treatment of consumers. Consequently, the Authority believes that dealers cannot offer similar products from the same insurer that have different rates of remuneration.

5. Implementation of control measures by insurers

The Authority has noticed that, despite the interventions made in the scope of its supervisory activities, the implementation of the recommendations for strengthening oversight mechanisms and monitoring dealers' activities is lagging.

In the Authority's view, insurers must put in place structures, robust oversight processes and accountability controls to ensure that they meet their obligations, particularly in the following areas:

a) Disclosure of remuneration

The Distribution Act stipulates that when the remuneration received by a dealer for the sale of an insurance product exceeds 30% of the sale price of the product, it must be disclosed to the consumer. The remuneration must include all direct and indirect incentives.

The Directives concerning the obligations of disclosure of distributors, published by the *Bureau des services financiers* on April 9, 2001, define remuneration as follows:

[Translation]

> "Any amount, benefit or advantage of a monetary nature received by a distributor in exchange for the distribution of an insurance product and that includes the following in particular: commissions, salaries, royalties, amounts paid as compensation, benefits paid based on the volume of sales made, benefits paid for the sale of other products offered in conjunction with the insurance product (e.g., replacement coverage)."

Insurers must also implement control measures to ascertain whether the dealer fulfilled its disclosure obligation, namely by using the fact sheet.

b) Training of dealers

The Distribution Act stipulates that insurers must take all appropriate steps to ensure that dealers are sufficiently familiar with the insurance product they are offering. The Authority therefore believes that the training should, at a minimum, ensure the acquisition, comprehension, application and updating of knowledge in the following areas:

- the insurance product, specifically the target clientele, the coverage offered, the eligibility criteria and the applicable exclusions;
- the distributor's legal and regulatory obligations, specifically documentation delivery and information disclosure;
- the insurer's complaint examination policy;

- commercial practices promoting the fair treatment of consumers and prohibited behaviours, for example, adding insurance coverage without consumer knowledge;
- the procedure and time limits for making a claim.

Those responsible for developing and implementing the training should have the necessary knowledge and competencies so that dealer employees are adequately trained, and have a minimum degree of independence in carrying out their duties.

Insurers should implement regular controls for evaluating the knowledge acquired by dealer employees, but also and more specifically:

- before product distribution begins;
- when a change is made to the product or the legislative framework.

c) Other control measures

Insurers must ensure that:

- compliance staff is independent from the staff who monitors sales;
- compliance staff does not receive variable remuneration based on the insurance product sales of the dealers they are overseeing;
- management indicators are put in place to detect improper commercial practices.

The control measures indicated in this section are not exhaustive; other measures could be implemented to ensure distribution compliance.

6. Other initiatives of the Authority

To strengthen its role as a local regulator close to its markets, the Authority will continue to work with different industry stakeholders and to share information, in particular regarding the nature of the reports it receives from consumers about the sale of insurance products by dealers.

The Authority also wishes to construct an overview of the market with respect to dealers' distribution practices. To do so, the Authority will collect specific data annually from insurers on insurance product sales made by dealers, including remuneration. The data will be collected using a standardized form that insurers will have to complete and send to the Authority.

Finally, although the measures set out in this notice do not specifically address premium financing, the related issues are of concern to the Authority. The Authority is not imposing the elimination of single premiums or monthly payments; however, it does expect financing methods not to prejudice the fair treatment of consumers.

Reminder

The Authority expects all insurers who are or will be active in this market to adhere to these sound commercial practices and to implement the measures described in this notice. Insurers are encouraged to make a commitment in this regard.

The Sound Commercial Practices Guideline states that, in the provision of products and services, the institution must take, upon first contact with the consumer, a commitment to him and hold it to the extinction of all its obligations.

The Authority reminds insurers that under the Insurance Act and the Distribution Act, it may take steps to correct or end any commercial practice that is not in compliance with these statutes. As such, it may impose an administrative sanction or take penal proceedings against any person who fails to comply with these statutes. It may also order the insurer to cease selling an insurance product through distributors.

To foster the establishment of sound commercial practices by insurers, the Authority, acting within the scope of its supervisory activities, intends to assess the degree of compliance with the measures set out in this notice.

Additional Information

Further information is available from our Information Centre:

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