



SUBMISSION BY THE CHAMBRE DE LA SÉCURITÉ FINANCIÈRE

**TO THE CANADIAN COUNCIL OF INSURANCE REGULATORS
AND THE CANADIAN INSURANCE SERVICES REGULATORY ORGANIZATIONS
(CISRO)**

INDUSTRY PRACTICES REVIEW COMMITTEE

RELATIONSHIPS BETWEEN INSURERS AND SALES INTERMEDIARIES

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THE CHAMBRE DE LA SÉCURITÉ FINANCIÈRE IS ENSURING PUBLIC PROTECTION

We are submitting the remarks of the Chambre de la sécurité financière, as part of the CISRO consultation on business practices in the insurance industry, in order to suggest policies aimed at preserving the integrity of the transactional process.

The Chambre de la sécurité financière was born of the will of the National Assembly, which resolutely opted for professional regulation in order to ensure both the quality of services rendered and the competency of practitioners—the highest guarantee of consumer protection. This model works and has proven effective.

The National Assembly, in adopting Bill 107, in fact reiterated its confidence in individual responsibility by granting the Chambre the status of a professional, self-regulatory organization. This political will is based on the success achieved in Québec by favouring the personal responsibility of each of our members, in light of the quality of their services and their compliance with strict ethics regulations, particularly through continuous training.

One of the major benefits generated by this model was to establish a better balance between the interests of our fellow citizens and the business interests of the financial institutions for which our members distribute products. We must ensure this essential

balance and see that it is maintained. That is why we subscribe to CISRO's analysis process.

The Québec National Assembly clearly communicated its desire to maintain this safeguard in regulating financial services. In all of the debates that took place in Québec on the issue of consumer protection, there have always been those who believe in the simplest and least constraining methods and try to convince us that a minimum of regulation leads to better business practices.

On at least three occasions, Québec society, via the National Assembly, chose a more fundamental path to ensure the balance between business and consumer interests. This path, based on professional regulation, remains the best, even if its constraints require everyone to provide better services and increase consideration of the consumer public, whether in relation to those who save, those who invest or those who acquire L&H insurance.

The mission of the Chambre de la sécurité financière therefore consists of ensuring public protection by maintaining discipline and monitoring the training and ethics of its approximately 28,000 members. More specifically, the Chambre makes sure that professionals in the Québec financial sector, under its governance, conduct their activities in the consumer's best interest by offering products and services that aim at protecting financial wealth. Its mission is realized through vigilant regulation of practices and continuous improvement in the knowledge of its professionals.

The members of the Chambre de la sécurité financière work in the following six areas: L&H insurance, group L&H insurance, financial planning, group savings brokerage, investment contract brokerage and scholarship/bursaries plan brokerage.

The quality of L&H insurance services has greatly improved in the past thirty years and practitioners have vastly enhanced their credibility and competence, which is an unquestionable benefit for consumers. We believe that anything that improves services and increases consumer confidence must be considered as an asset in the evolution of the industry and profession.

Thus, the Chambre is joining CISRO in its analysis process related to business practices in the insurance industry and is suggesting policies aimed at minimizing the risk of actual or potential conflicts of interest. In fact, the Chambre already has a code of ethics. It is published in “Codes of ethics of the Chambre de la sécurité financière,” which includes the Chambre’s code and ethics regulations governing securities disciplines (available on the Chambre’s web). The Chambre’s code of ethics stipulates that a representative must, in the practice of his profession, always remain independent and avoid any conflict of interest.

For consultation purposes, we are citing several articles of the Chambre’s code of ethics that allow us to deal with cases of conflict of interest, based on compensation or other business relationships, that may be brought to our attention and that may infringe upon a consumer’s rights.

Article 18

“A representative must, in the practice of his profession, always remain independent and avoid any conflict of interest.”

Article 19

“A representative must subordinate his personal interests to those of his client or any potential client.”

Article 20

“A representative must be objective when his client or any potential client asks him for information. He must express opinions and make recommendations objectively and impartially, without considering his personal interest.”

Article 21

“A representative must ignore any intervention by a third party that could influence the way in which he performs the duties related to his practice to the detriment of his client or any potential client.”

The Chambre de la sécurité financière therefore believes that it would be in the industry's and the consumer's interest to improve regulation of benefits not directly related to the sale of an individual policy. In addition, we encourage transparency with the client pertaining to compensation and business relationships. In our opinion, however, a new regulatory framework for compensation and benefits related to the sale of certain products would serve to improve the credibility of the transactional process. In short, it would act as a counterbalance to marketing logic with its business incentives. We prefer to think in terms of professional actions taken rather than sales closed.

We are also communicating our very deep concern about the proliferation of direct sales with no representative responsible for the actions taken (insurance on credit cards, direct or association insurers, Internet transactions). These sales do not offer the same degree of public protection and are not regulated. They represent a worrisome trend, since no one is governed by a code of ethics and no one commits to personal responsibility for transactions with the consumer. It is a trend that perfectly illustrates the need to establish a counterbalance to business interests. The professional path is this counterbalance. There should be no sales without the intervention of a regulated practitioner governed by clear and strict rules.

DISCLOSURE: ON STEP IN THE PROCESS

As part of this consultation, the Chambre de la sécurité financière supports the process that aims at disclosure. However, in our opinion, it is not a cure-all for CISRO's concerns. It is, nevertheless, a first step in the right direction. We believe that clarity and simplicity must be the criteria in cases of mandatory disclosure. If not, such disclosure is lost in the mass of information and does not really meet the objectives for which it was required.

We remind you that, in Québec, *An Act respecting the distribution of financial products and services* already provides for certain disclosure obligations on the part of the representative: Article 17 covers disclosure of compensation, Article 26 covers disclosure of business relationships and Article 31 covers disclosure of information on insurers.

We recommend that these requirements be reviewed to determine if the disclosure provided for in the Act is enough to ensure public protection.

In the longer term, we favour a legislative framework that would regulate and standardize compensation models according to the best practices in effect. This revision of the compensation framework should establish once and for all the quality of services rendered by allowing the practitioner to maintain his independence and credibility. We have no reason to believe that commissions as a basic model must be replaced. Commissions are not incompatible with professionalism. Variations in commissions can, however, be regulated. The same goes for the actual independence of brokers.

It is not a matter of making the transaction process more cumbersome, but rather of making it transparent and beyond all suspicion of conflict of interest. As the CISRO paper points out, no illegal action has been brought to its attention. The Chambre has not observed any illegal practices in this regard, either. However, we believe that it is a

normal step in the evolution of the profession and of the industry, in terms of quality and credibility, to be sure to avoid any conflict of interest — whether potential, actual or perceived. Consumers will be better protected as a result and they will have more confidence in the process.

That being said, we believe that the best way to protect the public is through a professional association.

We favour a network of intermediaries serving the public, built on a foundation of expertise and personal responsibility on the part of practitioners.

We believe that practitioners must continue to make a commitment to the effect that their primary loyalty and obligation are towards the client. This takes precedence over all other considerations. When a practitioner serves a client, he is not making a sale, he is performing a professional act. In doing so, he puts his personal responsibility, his future and his reputation on the line. In short, permission to practise is not a right but a privilege which entails duties. All this would benefit from being supported by a legislative environment that would confirm and safeguard the progress that has been made over the past thirty years.

ATTACHMENT

COMMENTS BY THE CHAMBRE IN RESPONSE TO THE QUESTIONS RAISED IN THE CONSULTATION PAPER PRODUCED BY THE INDUSTRY PRACTICES REVIEW COMMITTEE, JUNE 3, 2005

Policy Options

1. Repercussions of possible policies

1. One possible repercussion is that the adoption of the stated policies might make the sales process more complicated. To avoid the red tape, brokers might shy away from offering protection plans with lower commissions. Consumers with minimum requirements might find it difficult to obtain the protection that they need and want, and to obtain consulting services.
2. In Québec, looking after the consumer's interest is already a priority obligation.
3. Restrictions on performance-linked benefits will change the relationship with insurers; the "special offer of the month" will not necessarily be the big seller anymore. The obligation to give priority to the consumer's interest will also be easier for the market intermediary to fulfill, since financial gain will be less of an issue.
4. Restricting performance-linked benefits could affect the relationship between intermediaries and some insurers who offer such benefits: administrative sales support, bonuses on sales of a given product or for a given period of time, invitations to conferences, etc.
5. In cases where compensation is disclosed, disclosure will have to be in general and concise terms. In fact, this is becoming a trend in the financial products industry (reference: "Registration Reform Project" in transferable securities).

2. Changes to current methods of distributing insurance

1. Clearly disclosing the business ties and status of the intermediary (independent or not) would enable consumers to be aware of these facts and be better informed of their choices, while avoiding potential conflicts. This would serve consumers' interests.
2. What is meant by "independent intermediary" remains to be determined. One way of resolving the issue would be to define such an intermediary as a representative with no obligation towards any of his suppliers of financial products and services (e.g. minimum production in terms of business volume and/or number of contracts, and loan for the acquisition of clientele).

3. Best means of accomplishing the objectives

1. By disclosing the information in simple, clear and concise terms.
2. Through better control over sales without intermediary in order to ensure the same quality of professional advice as may be obtained by means of a sale with an intermediary.

4. Other approaches or considerations

1. Another option for restricting performance-linked benefits is to take inspiration from the rules governing mutual fund sales practices (NI 81-105). These rules, established many years ago, are well entrenched in the industry and prevent potential conflicts between intermediaries and product suppliers.

5. Protecting the interests of consumers / Value-added options

1. The information given to consumers must be appropriate and simple. A brief summary of the representative's status, business ties and compensation should be presented.
2. Financial products and services should always be sold by a duly certified representative, who must have the necessary training, knowledge and expertise.

6. Regional differences or circumstances

1. In Québec, the duty to put the consumer's interest first is already entrenched. The consumer's interest is also the priority of the Chambre de la sécurité financière by virtue of its mission.

Scope and applicability

7. Other suggested approaches

1. Establish a framework for controlling all distribution of products by certified representatives.

8. To which intermediaries should all possible policies be applied?

1. The policies should apply to all intermediaries, with adaptation as necessary, and should even be applied to the sales process without an intermediary.

9. Suggestions for describing or interpreting the concept of “independence”

1. Criteria should be general and flexible; if they are very specific, they will be more difficult to put into practice.
2. L&H insurance designations in Québec make no distinction between whether a financial security advisor offers the products of just one company or those of many companies. Succinct disclosure would enable consumers to easily understand how independent a representative is, and what his business ties are.

10. Additional services provided by intermediaries / conflicts of interest

1. “Incompatible” activities are already covered by regulations on the distribution of financial products and services in Québec.

Performance-linked benefits provided by insurers to intermediaries

11. Concept of “performance-linked benefits”

1. This concept is sufficiently clear. For consumers, knowing the details of all the bonuses and commissions would seem quite complex and of little benefit. We reiterate that it might be beneficial to take inspiration from the rules governing mutual fund sales practices (NI 81-105).

12. Regulation of performance-linked benefits

1. Business practices and overall compensation could be regulated in harmony with the regulations governing transferable securities. Canadian standard 81-105 governing mutual fund sales practices could serve as a model.

13. Absolute or limited restrictions

1. Limited restrictions, mainly in harmony with Canadian standard NI 81-105.

14. Principle-based or compliance-based legislation or regulations

1. Legislation should be based mainly on principles, while regulations should be based on compliance. We recommend a compliance-based approach, since this would provide clarification on performance-related benefits that are subject to restrictions, without the approach being absolute in terms of the criteria associated with such benefits.

15. Offer of services / assistance to intermediaries

1. It would certainly be preferable to avoid contributing to the representative's operating costs if the representative is considered to be independent. Such support might be permissible if it did not involve direct payments by the insurer.

Disclosure

16. Information that is meaningful and useful for an insurance purchase

1. The possible items to be disclosed, listed in the Consultation Paper, are too detailed.
2. Consumers must be given very pertinent information in terms that are concise and easy to understand.

17. Scope of the disclosure option for informed purchase decisions

1. The proposal put forward in the Consultation Paper is too detailed, difficult for a lay person to understand and of little interest.

18. Difficulties in disclosing the quantum of commissions and service fees

1. These details are not relevant to consumers. Instead, they should be informed of the total compensation, including all levels of distribution.

19. Understanding of how an intermediary is paid

1. Yes, but only in a general way (see item 18, above).

Life and health insurance

22. Same requirements for all L&H products, or some exemptions?

1. The same requirements should apply to all L&H products. Actually, our greatest concern relates to sales without a representative (sales directly by the companies). Examples: credit card insurance, direct or association insurers, car loan insurance, travel insurance and sales via the Internet. Consumers face real risks as they do not receive an analysis of their needs prior to the sale; the person who sells the product has no code of ethics to comply with; and it is questionable whether the suggested product is truly appropriate for their needs.

Enclosure:

“National Instrument 81-105 Mutual Fund Sales Practices”

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