Principles and Practices for the Sale of Products and Services in the Financial Sector

Companion Piece - Examples for Life Insurance Agents

This document is a companion piece to the *Principles and Practices for the sale of Products and Services in the Financial Sector* and sets out examples of business practices for each principle.

1. Interests of the Client

The client's interests take priority over the intermediary's interests and should not be sacrificed to the interests of others.

Commentary: This principle is paramount. All remaining principles and practices expand upon this fundamental principle.

Example: There are various regulatory bylaws or codes of conduct that require that licensees carry on business in utmost good faith. The Insurance Council of British Columbia's Code of Conduct for Insurance Agents, Salespersons & Adjusters goes on to say that "good faith is honesty and decency of purpose and a sincere intention on your part to act in a manner which is consistent with your client's or principal's best interests, remaining faithful to your duties and obligations as an insurance licensee".

The interests of the client would not be taken under consideration if:

- the licensee misrepresented or failed to disclose material information where required;
- the licensee made improper use of confidential information.

2. Needs of the Client

In order to understand the client's interests, the intermediary must obtain or confirm information about the needs of the client and, when making a recommendation, must reasonably ensure that any product or service offered is suitable to fulfill those needs.

<u>Commentary</u>: In assessing the needs of the client, the intermediary should take into account the financial significance and complexity of the product or service being sold.

Example: The sort of information that agents obtain through a needs analysis done prior to making an insurance recommendation includes:

- family and financial situation (dependents, income, personal and family obligations);
- other life insurance coverage (individual and group);
- objectives that client wishes to meet through insurance;
- other financial resources available to meet those objectives.

3. Legitimate Business Interests

The intermediary must collect enough information about the client and the transaction to reasonably determine the identity of the client and that the transaction is lawful. The intermediary must not act on behalf of a client when there are reasonable grounds to believe that the transaction is of an unlawful nature.

<u>Commentary</u>: When obtaining information about the client and his/her business, the intermediary must not continue to act for the client if it is known or should be known that the transaction is unlawful. In some circumstances, the intermediary will be required to report the transaction to regulatory authorities.

4. Professionalism

Intermediaries must act in good faith at all times. They must acquire an appropriate level of knowledge relating to their particular business and meet high standards of professional ethics, including acting with honesty, integrity, fairness, due diligence and skill. The concept of professionalism includes but is not limited to the following:

a. **Education:** In a rapidly changing financial marketplace, intermediaries must keep abreast of changes in products, regulations and other factors that will affect their ability to provide high standards of service to clients. Education, including continuing education, is a necessary component of professional skill.

   Example: Agents are required to pass a licensing examination demonstrating basic knowledge of the life insurance industry and its products. Regulators are proposing the introduction of mandatory pre-license training to enhance “entry-level” knowledge. Many provinces require continuing education as a condition of licence renewal. Those agents with professional designations are also required to meet continuing education requirements as a condition of maintaining their designations.

b. **Holding Out:** An intermediary must inform the client of the business licenses and registrations held, as well as the business name(s) of firm(s) under which he or she is licensed to operate.

c. **Advertising and all other Client Communications:** Intermediaries must ensure that all references to their business activities, services and products are clear, descriptive and not misleading.

   Example: Provincial regulations stipulate that agents may not make “a false or misleading statement, representation or advertisement”. (See, for instance, Ontario’s Regulation on Unfair and Deceptive Acts and Practices (O. Reg. 7/00) especially paragraphs 4 to 6.

d. **Business Operations:** Intermediaries must ensure that their financial records are properly maintained and that they follow sound business practices.

e. **Fair Practices:** Intermediaries must not engage in practices that intentionally mislead the client or place the interests of others ahead of the client’s interests. Unfair practices are contrary to the underlying spirit of the principles and practices set out in this document. The intermediary must refrain from practices that contravene, directly or indirectly, the spirit or intent of any of the requirements of these principles and practices.

   Example: Provincial regulations stipulate that agents shall not engage in unfair or deceptive practices. In some cases (i.e., Ontario Insurance Act, s.438, unfair and deceptive acts are defined.)

f. **Financial Accountability:** Intermediaries should have appropriate resources in place to compensate clients who suffer a loss as a result of an error, omission or fraudulent activity that is caused by the intermediary or someone for whom he or she is responsible. The intermediary must ensure that all financial obligations are met and should strive to exceed all existing requirements for professional liability insurance, errors and omissions insurance, trust accounts, deposits or other fiduciary measures.

   Example: In most provinces, agents are required to carry errors & omissions insurance, as a condition of licensing.

<u>Commentary:</u> Professionalism means that intermediaries will strive to adhere to best practices and will not be limited to standards required under law or regulation.

5. Confidentiality

Intermediaries must protect clients' personal information and take all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it was collected, unless the client provides proper authorization, as required by applicable laws or regulations, to divulge personal information to others for reasonable purposes. Intermediaries must not use personal information to the detriment of the client. However, personal information may be divulged without client consent to, for example, law enforcement agencies when required or authorized by law.

<u>Commentary</u>: The requirement of confidentiality extends to participants in group plans. A basic requirement for intermediaries is to ensure that proper care is taken when handling documents that contain personal information provided by clients/group plan participants. The damage to the client is the same regardless of whether personal information is divulged to someone willfully or as a result of careless handling of files.

Example: Provincial regulations specifically deal with the handling of medical and other confidential information, as does CLHIA's Right to Privacy Guideline. These deal with the collection, use and disclosure of personal information. They require the consent of the individual in both the collection and use of the information, and set out requirements for complaint resolution. Federal privacy legislation will apply to client information no later than January 2, 2004 where there is no comparable provincial legislation in force.

6. Conflicts of Interest

The intermediary must avoid situations where the underlying circumstances could tend to prejudice or bias the direction of advice he or she provides. In the case of a conflict of interest, the client must be made aware of the nature of the conflict before the transaction takes place.

<u>Commentary</u>: If a situation arises where a conflict exists and cannot be avoided, the condition can only be mitigated by objective, plain-language disclosure to the client of the nature and impact of the conflict. The client must then be given an opportunity to halt the transaction, to seek other professional advice, or to knowingly proceed with the transaction.

Example: Provincial regulations require that agents disclose actual or potential conflicts of interest. B.C.'s Code of Conduct goes on to state: "where there is an irreconcilable conflict between your duty to a client and your other duties as a licensee, you should decline to act in the transaction. For example, if a client asked you to conceal information from an insurer that was material to the risk, you should decline to act in the transaction."

7. General Information Disclosure

The intermediary has the responsibility to ensure that the client is fully informed of all relevant information before the client makes a decision. The client is entitled to disclosure of the risks and benefits of the financial products being considered and information about the intermediary's business relationships as they pertain to the transaction.

Commentary: *There are two aspects to disclosure and both must be satisfactorily taken into account under these principles and practices: (1) "product information" regarding product or service features, as well as the main risks and benefits inherent in the transaction or purchase; and (2) "intermediary information" regarding relationship issues which are important to the consumer.*

a. **Product Information:** In addition to clearly describing the product or service for the client and the ways in which the transaction will fulfil the needs of the client, product information includes disclosure of important assumptions underlying any illustrations or examples that have been provided to the client, as well as the fact that actual results may differ significantly from those shown. The intermediary should avoid using examples or illustrations which he or she knows, or ought to know, are based on unusual results or a period that generated much better than normally anticipated performance.

   Example: Ontario's Regulation on Unfair and Deceptive Acts and Practices, para. 4, contains a general prohibition against misrepresentation. The industry has also developed more detailed supplementary guidelines. For instance, the CLHIA's Sales Illustration Guideline underscores the importance of communicating to clients the risks involved and the potential variability of the product for those products not fully guaranteed. For Universal Life policies with an equity component, it requires that any illustrations of non-guaranteed elements prominently specify that actual results will vary from those illustration – upward or downward- depending on future experience. A minimum of two scenarios must be provided – the first within the "primary" scenario range established, on an annual basis, by the insurer; and the second that is less favourable than the primary scenario. The general basis for each scenario and its key assumptions must also be outlined.

b. **Intermediary/Business Relationship Information:** The intermediary must include the names of organizations or persons that are, to his or her knowledge, directly or indirectly, providing remuneration to the intermediary; the relationship between the intermediary and the firm whose product is being considered; and any relationship(s) among the firms involved in a transaction. Any other direct or indirect relationships that are relevant to the transaction should also be disclosed by the intermediary. In cases where this information has not been disclosed because the intermediary is unaware of it, it is expected that he or she will have first made a reasonable effort at due diligence. The intermediary must also disclose all fees payable by the client, the method of the intermediary's remuneration (disclosure of specific amount is not required, but disclosure of the type of compensation is, i.e. fixed and percentage commission, salary, or other) and must disclose the existence of any other benefits from sales incentive programs related to the transaction (note: as with compensation, this disclosure only applies to the type of compensation the intermediary receives, not the specific amount).

   Example: B.C. has an express disclosure requirement. Ontario requires a life agent to disclose all insurers and also all other providers of financial products and services. As for remuneration, it is appropriate that the intermediary disclose the method of remuneration. It is impractical to list other benefits that may result from the sale as they may not be known at the time of the transaction (e.g. volume bonuses).

8. Client Redress

The intermediary must deal directly with all formal and informal complaints or disputes, or refer them to the appropriate person or process, in a timely and forthright manner.

The intermediary must be fully aware of all applicable processes for dealing with complaints and must disclose to all clients the channels available for pursuing different types of complaints (e.g., regarding conduct, service, or product performance). In the case of an individual authorized to do business in more than one sector, it is particularly important that the client be made aware of the different lines of accountability for complaint handling that are associated with each transaction. In situations where a dispute cannot be resolved intermediaries should provide to clients, preferably in writing, the redress mechanisms that can be pursued, depending on the product and type of complaint involved.

Example: Insurance companies have established complaint management systems; each company has an appointed "ombudsman" through which consumer complaints can be channelled. In addition, the industry has a Consumer Assistance Centre which handles general queries, and an Ombudservice to assist consumers in resolving complaints. An agent who is insured under a policy of professional liability (E&O) insurance must report any actual or potential claim to the designated claims administrator.

9. Compliance

If a financial industry association purports to set standards for its members, it is expected that such standards would be set out in a code of conduct which would incorporate the principles and practices set out in this document. The association is also expected to have a system to promote compliance and develop systems to resolve complaints against their members. Intermediaries who are not members of an association are expected to follow the principles and practices on the basis of adhering to industry best practices.

10. Definitions

"Client" means any customer or potential customer with whom an intermediary interacts in the course of his or her business.

"Intermediary" means a participant in the financial services industry who markets products or provides financial advice or services to clients. In a particular instance this could be a person, firm and/or a financial institution.

"Personal Information" means information that the client would expect to remain confidential because it was conveyed for the purpose of the financial transaction.