Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

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

Companion Piece - Examples for Property & Casualty 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.

Examples: The interests of the client would not be taken under consideration if an agent, knowing that he could provide coverage asked for by a client, chose to use an inferior policy from an insurer that did not meet the client's needs. The reason for selecting the particular policy was to satisfy the volume requirements of the insurer.

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.

Commentary: 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.

Examples: The type of information that an insurance agent should obtain and or convey to the client includes:

- Insurance needs of client (seasonal homes, watercraft other special risks etc)
- High personal value items (jewelry, furs antiques etc)

- Value of property and co-insurance implications if client wants to under insure
- Location of property to be insured
- Special risks client may be exposed to (environmental risks)
- Exclusions to property covered
- Limitations on policy (replacement value vs. actual cash value coverage)

This information must be kept up-to-date so that the agent will know whether the current insurance is meeting the client's needs.

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.

Commentary: 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.

   Examples: Agents must be knowledgeable about all of the products they sell, as well as current insurance regulations. This requires ongoing training. Agencies should provide adequate training to sales persons regarding new product information, legislative changes, office procedures and provide the opportunity to attend courses and professional conferences. All agents are required, pursuant to Section 16 of the General Insurance Council of Saskatchewan (GICS) Bylaws to attain a minimum number of continuing education hours each year.

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.

   Examples: Salespersons must carry on business only in the name of the agency they represent and may offer only the class of insurance product they are licensed to sell.

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: Agents are prohibited pursuant to Section 27 of the GICS Bylaws from engaging in any misleading activity, rebating of commissions, inducements to insure or activity that brings discredit on the industry.

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

   Example: There are no specific guidelines on the form this must take but agencies and salespersons are expected to maintain records of client contact/activity for both the agencies protection and the clients.

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: Section 27 of the GICS bylaws prohibits the use of coercion or undue influence in the securing of insurance business, using incomplete comparisons, omitting of essential information needed by either a client or an insurer. Section 445 (c) of the Sask. Insurance act prohibits coercive or undue influence practices.

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: All agencies must have adequate insurance, as dictated by rules, to cover loss due to any dishonest or fraudulent act of any of its employees or agents, and due to errors or omissions of the agency or any of it's salespersons or employees.

Commentary: 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.

Commentary: 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: There are specific rules that govern agencies. These rules dictate that information relating to a client, or the business and affairs of a client, must be maintained in confidence. Agencies must have specific written authority from the client before releasing any client information unless required to do so by law or in the normal course of procuring insurance for the client.

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.

Commentary: 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: Conflict situations are not common in the property and casualty insurance market place since compensation margins do not typically differ between policies.

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: Information that should be disclosed includes limitations or exclusions under the policy, and conditions that may void a policy.

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: This section does not readily apply to property and casualty business since agencies in Saskatchewan are not restricted to specific insurance companies although some agencies may have contractual obligations with specific companies that would be disclosed to consumers.

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: There is no formal complaint handling procedure beyond the expectation that client's complaints are handled fairly and expeditiously.

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.