

Regulations and other Acts

M.O., 2013-12

Order number D-9.2-2013-12 of the Minister of Finance and the Economy dated 9 July 2013

An Act respecting the distribution of financial products and services
(chapter D-9.2)

CONCERNING Regulation to amend the Regulation respecting the pursuit of activities as a representative and Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships

WHEREAS section 202, 211, 213 and paragraphs 6, 8, 11 and 13.1 of section 223 of the Act respecting the distribution of financial products and services (chapter D-9.2) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs or sections;

WHEREAS that the first and the third paragraphs of section 217 of such Act provide, in particular, that a regulation made by the *Autorité des marchés financiers* under this Act must be submitted to the Minister of Finance for approval with or without amendment and that a draft of a regulation referred to in the first paragraph may not be submitted for approval and the regulation may not be made before 30 days have elapsed since the publication of the draft, that the regulation comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation and that sections 4, 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to the regulation;

WHEREAS the following regulations have been approved by the Government:

— Regulation respecting the pursuit of activities as a representative approved under Order-in-Council no. 830-99 dated July 7, 1999;

— Regulation respecting firms, independent representatives and independent partnerships approved under Order-in-Council no. 832-99 dated July 7, 1999;

WHEREAS there is cause to amend those regulations;

WHEREAS the following draft regulations were published in the *Bulletin de l'Autorité des marchés financiers*, volume 8, no. 35 of September 2, 2011:

— Regulation to amend the Regulation respecting the pursuit of activities as a representative;

— Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships;

WHEREAS the *Autorité des marchés financiers* made Regulation to amend the Regulation respecting the pursuit of activities as a representative by the decision no. 2013-PDG-0101 dated June 19, 2013, replacing the decision no. 2013-PDG-0010 dated January 29, 2013, and made Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships by the decision no. 2013-PDG-0102 dated June 19, 2013, replacing the decision no. 2013-PDG-0011 dated January 28, 2013;

WHEREAS there is cause to approve those regulations without amendment;

CONSEQUENTLY, the Minister of Finance and the Economy approves without amendment the following regulations appended hereto:

— Regulation to amend the Regulation respecting the pursuit of activities as a representative;

— Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships.

July 9, 2013

NICOLAS MARCEAU,
Minister of Finance and the Economy,

Regulation to amend the Regulation respecting the pursuit of activities as a representative

An Act respecting the distribution of financial products and services
(chapter D-9.2, ss. 202, 211 and 213)

1. Section 2 of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10) is amended:

(1) by inserting the following after subparagraph 2:

“(2.1) performing the duties of a minister of religion;

“(2.2) performing the duties of a funeral director or any other similar duties in the funeral services industry;”;

(2) by replacing the words “carrying on the profession of” in subparagraph 3 with the words “pursuing activities as a”;

(3) by replacing the words “the profession of chartered accountant, certified management accountant, certified general accountant, or chartered administrator” in subparagraph 6 with the words “the professional activity of public accountancy”;

(4) by replacing the words “occupation of real estate broker or real estate agent” in subparagraph 7 with the words “activities of a real estate broker”.

2. Section 3 of the Regulation is amended:

(1) by replacing the words “incompatible avec l’exercice des activités d’agent”, in the introductory portion of section 3 of the French version with the words “incompatibles avec l’exercice des activités d’agent en assurance de dommages”;

(2) by replacing the words “la profession” in paragraph 1 of the French version with the words “l’exercice des activités”;

(3) by replacing paragraph 2 with the following:

“(2) vendor, lessor or repairer of movable property;”;

(4) by replacing the words “la profession” in paragraphs 3 and 4 of the French version with the words “l’exercice des activités”.

3. Section 4 of the Regulation is amended:

(1) by replacing paragraph 1 with the following:

“(1) he must demonstrate availability and diligence;”;

(2) by replacing the words “held by him” in paragraph 2 with the words “held by him as an independent representative”.

4. Section 5 of the Regulation is amended:

(1) by deleting the words “non-pecuniary” and “, with the exception of benefits or property of low value” in the first paragraph;

(2) by deleting the third paragraph.

5. Section 6 of the Regulation is replaced by the following:

“**6.** A representative in insurance of persons must, before completing an insurance proposal or offering an insurance of persons product containing an investment component, including an individual variable insurance contract, analyze the needs of the purchaser, or those of the insured, with the purchaser.

Therefore, depending on the product, the representative in insurance of persons must analyze with the purchaser, in particular, the policies or contracts in effect held by such purchaser or the insured, as the case may be, the features thereof, the name of the issuing insurers, the purchaser’s investment objectives, risk tolerance and financial knowledge, and all other necessary elements such as the income, financial situation, number of dependants, and personal and family obligations of the purchaser.

The representative in insurance of persons must record the information gathered for such analysis in a dated document. A copy of the document must be given to the purchaser no later than on the date the policy is delivered.”.

6. Section 7 of the Regulation is repealed.

7. Section 8 of the Regulation is amended:

(1) by replacing subparagraph 2 with the following:

“(2) an estimate of the number of hours required to complete the mandate;”;

(2) by deleting the words “offered by the financial planner” in the second paragraph;

(3) by inserting the following after the second paragraph:

“This mandate must be dated and signed by the financial planner and given to the client.”.

8. The Regulation is amended by inserting the following after section 8:

“**8.1.** No representative in group insurance may render services or offer products in such capacity directly to the policyholder unless he enters into a written agreement with the client which, as a minimum, specifies the following:

(1) the identification of the policyholder and the person designated as the policyholder's contact person;

(2) the nature and scope of the mandate specifying, as a minimum, the following:

(a) the needs analysis;

(b) in the case of calls for tenders pertaining to one or more insurance products, a comparison of guarantees, including costs and any differences noted;

(c) where an insurance contract is renewed, the description of the existing plan and an analysis of group experience.

No agreement entered into may oblige the policyholder to purchase a financial product or service.

This mandate must be dated and signed by the representative. The representative must always give a copy of the mandate to the policyholder or the person designated as his contact person."

9. Section 9 of the Regulation is amended by adding the word "financière" after the word "planification" in the French version.

10. The Regulation is amended by inserting the following after section 9:

"**9.1.** A representative in group insurance must, when rendering services or offering products in such capacity, give a written report of his recommendations to the person designated as the policyholder's contact person."

11. Section 10 of the Regulation is replaced by the following:

"**10.** Upon first meeting a client, a representative must give the client a document, such as a business card, which indicates the following:

(1) the representative's name;

(2) the representative's main business address, business telephone number and electronic mail address, if any;

(3) the name of the firm or independent partnership on whose behalf the representative is acting or the description "independent representative", as the case may be;

(4) the titles under An Act respecting the distribution of financial products and services which the representative is authorized to use in respect of the firm or independent

partnership on whose behalf he is acting or the titles under such Act which he is authorized to use as an independent representative, as the case may be."

12. Section 11 of the Regulation is amended:

(1) by replacing, in the introductory portion of section 11, the words "may also include the following" with the words "or any other written representation may contain other information, provided such information is not likely to cause confusion, is related to the pursuit of activities as a representative and is not incompatible with those activities, including the following";

(2) by deleting paragraphs 1 and 2;

(3) by replacing paragraph 3 with the following:

"(3) the representative's education and qualifications as well as the titles he holds based on such education and qualifications;"

13. Section 12 of the Regulation is amended by replacing the first paragraph with the following:

"Where the representative deals with the client from a distance, he must communicate to the client the items referred to in paragraphs 1, 3 and 4 of section 10."

14. Section 14 of the Regulation is amended by adding, in the introductory portion of section 14 after the words "or representation that", the words "may cause confusion or that".

15. Section 16 of the Regulation is amended:

(1) by replacing the words "including an endowment contract, the representative must give to the client a document, printed in at least 10-point Bookman Old Style font or its equivalent," in the introductory portion of section 16 with the words "the representative must give to the client, no later than on the date the policy is delivered, a legible document";

(2) by deleting paragraph 6.

16. Section 18 of the Regulation is amended by deleting the words "including serious or critical-illness insurance contracts" in the first paragraph.

17. Section 22 of the Regulation is amended:

(1) by deleting paragraph 1;

(2) by replacing paragraph 2 with the following:

“(2) complete, prior to or at the same time as the insurance proposal, the form set out in Schedule I if it is in the interests of the policyholder or the insured to replace one contract with another;”;

(3) by replacing the words “give the form, once completed, to the insured or the policyholder and explain the form to such insured or policyholder” in paragraph 3 with the words “explain the content of the form to the policyholder”;

(4) by inserting the following after paragraph 3:

“(3.1) give to the policyholder a copy of the form completed and signed by the representative within 5 working days of the signing of the proposal;”;

(5) by replacing the words “completed form” in paragraph 4 with the words “form completed and signed by the representative”.

18. Section 23 of the Regulation is repealed.

19. Section 28 of the Regulation is replaced by the following:

“**28.** A damage insurance broker or agent is authorized to act, exceptionally, as a claims adjuster pursuant to section 46 of An Act respecting the distribution of financial products and services under the following conditions and circumstances:

(1) his pursuit of activities as a claims adjuster must be incidental to the pursuit of activities as a damage insurance broker or agent;

(2) he must comply with the rules governing the activities of a claims adjuster, with the necessary modifications;

(3) he must disclose, in writing, to each client with whom he transacts business the type of remuneration he receives for services rendered as a claims adjuster.”.

20. Schedule I of the Regulation is replaced by the following:

“SCHEDULE I
(section 22)

Notice No.: _____
The Notice number is the same as the proposal
number.

Notice of Replacement of Insurance of Persons Contract

IMPORTANT MESSAGE FOR CONSUMERS

Read the following before you terminate your insurance contract.

1. Read the needs analysis prepared by your representative.

Among other things, it outlines your current and future needs, your objectives and your ability to pay the insurance premium.

Verify that your representative has taken the necessary steps to retain or modify your existing contract.

2. Read this replacement notice prepared by your representative. After reading the notice and your representative's explanations, determine whether or not you still wish to replace your existing insurance contract with the proposed contract.

If you decide to replace your contract, instruct your representative to proceed with the replacement. Your representative will give you a copy of the notice, signed by him, and will forward a copy to any insurer concerned within 5 days of the signing of the proposal. **This notice is not a contract and does not terminate your insurance.**

You must sign the notice and initial each page of the document no later than on the date the new policy is delivered. Before signing, make sure that the information contained in the document is the same as that on the copy your representative has already given you.

3. Read the insurance proposal prepared by your representative. The signed copy sent to the insurer is confirmation of your application to purchase insurance. On receipt, the insurer will determine whether or not to insure you.

4. Read the insurance contract you receive from the insurer that has accepted your insurance proposal. If you are satisfied, you can terminate your former contract, since your new contract will be in effect.

Termination of contract

You may terminate the purchase of your new insurance contract at any time before it is issued. In addition, most insurers allow clients 10 days in which to terminate the contract at no charge. Ask your representative if you are eligible to do so.

To contact the AMF Information Centre:

www.lautorite.qc.ca

Telephone:

Québec City: 418-525-0337

Montréal: 514-395-0337

Toll-free: 1-877-525-0337

Important documents to read

To replace an insurance contract, your representative must complete several documents and explain them to you:

- Needs analysis
- Notice of replacement of insurance contract
- Insurance proposal

You will subsequently receive your insurance contract, as applicable.

Date:

Client's initials: _____

Notice No.: _____

IMPORTANT MESSAGE FOR INSURANCE OF PERSONS REPRESENTATIVES

You must encourage the client to maintain an insurance contract in effect, unless it is in the interests of the policyholder or the insured to replace the contract.

This replacement notice helps your client make an informed decision by allowing him to compare the advantages and disadvantages of replacing the contract.

Nonetheless, you are responsible for providing your client, fully and objectively, with the explanations he needs to make an informed decision.

You must complete this notice if you are proposing that a client replace his insurance contract.¹

Here is some useful information regarding this notice:

- You must explain each point to your client.
- Your client must sign the notice no later than on the date the policy is delivered.
- The notice number and insurance proposal number must be the same. It must appear at the top of each page of this notice.
- If the proposed insurance contract is replacing more than one contract, a replacement notice must be completed for each replaced contract. The number on each replacement notice must correspond to the number on the insurance proposal, followed by a figure (e.g., proposal number 1, proposal number 2).
- You must give a copy of this replacement notice to the policyholder.
- You must send a copy of this notice to the insurer whose contract is being replaced, within 5 working days of the signing of the insurance proposal.
- You must keep a copy of this notice signed by your client.

1. Division VII of the *Regulation respecting the pursuit of activities as a representative (R.R.Q., c. D-9.2, r. 10)* - *An Act respecting the distribution of financial products and services*.

Important documents to explain to the client

To replace an insurance contract, you must complete several documents and explain them to the client:

- Needs analysis
- Notice of replacement of insurance contract
- Insurance proposal

The client must subsequently receive his insurance contract, as applicable.

To contact the AMF Information Centre:

www.lautorite.qc.ca

Telephone:

Québec City: 418-525-0337

Montréal: 514-395-0337

Toll-free: 1-877-525-0337

Notice No.: _____

Notice of replacement of insurance of persons contract	
<i>If you need extra space, add pages, clearly indicating the Part number and the notice number. Both you and your client must initial each page.</i>	
PART 1 – General information	
Policyholder Person purchasing the contract.	_____ Date of birth: _____ Last name and first name Day Month Year
	_____ Date of birth: _____ Last name and first name Day Month Year
	_____ Date of birth: _____ Last name and first name Day Month Year
Insured (if different from Policyholder)	_____ Date of birth: _____ Last name and first name Day Month Year
Other insureds Other persons covered by the replaced contract who will also be covered under the proposed contract.	_____ Last name and first name
	_____ Last name and first name
	_____ Last name and first name
Cancelled insureds Other persons covered by the replaced contract who will not be covered under the proposed contract and who will therefore no longer be insured.	_____ Last name and first name Type of coverage: _____ Amount: _____
	_____ Last name and first name Type of coverage: _____ Amount: _____
Additional insureds Other persons who are not insured under the replaced contract but who will be covered under the proposed contract.	_____ Last name and first name Type of coverage: _____ Amount: _____
	_____ Last name and first name Type of coverage: _____ Amount: _____

Client's initials: _____

Notice No.: _____

PART 1 – General information (cont.)		
Indicate all insurance contracts replaced by the proposed contract	Policy No.	Date in effect
	_____	_____
		Day Month Year
	_____	_____
	Day Month Year	Day Month Year
	Day Month Year	Day Month Year
Insurance contract	Existing	Proposed
Name of insurer		
Nature of insurance Life, critical illness, disability, etc. (specify type: term, permanent, universal life, etc.)		
If joint insurance, payable on	1st death <input type="checkbox"/> 2nd death <input type="checkbox"/>	1st death <input type="checkbox"/> 2nd death <input type="checkbox"/>
Date in effect		Not applicable
Benefit amount Amount paid on occurrence of covered risk		
• List amount(s).		
Amount of annual premium		
Indemnity period / Waiting period		
Comments Use this section for any additional information, such as whether or not the benefits and premiums indicated above are fixed or guaranteed, the premiums payable in 10 years, at a specific age, etc.		

Notice No.: _____

IMPORTANT MESSAGE FOR CONSUMERS	
Incontestable clause	
<p>When death occurs within two years of the date on which the contract comes into effect, the insurer may refuse to pay the death benefit if information regarding the insured's health or lifestyle was incomplete, inaccurate or omitted. An insurer may refuse to pay the death benefit if it can prove that the insured intended to commit fraud.</p> <p>The two-year incontestable clause may not generally be transferred from one contract to another. Therefore, the validity of a new contract may sometimes be contested, whereas the former contract may have been incontestable.</p> <p>By replacing an insurance contract, you may lose this advantage, since the two-year incontestable period begins on the day on which the proposed contract comes into effect.</p> <p>In disability insurance, this clause does not apply if the disability occurs within two years of the date the proposed contract comes into effect.</p> <p>Expiry date of incontestable clause</p> <p>Proposed contract: <input type="text"/> year(s) after the contract comes into effect</p> <p>_____</p> <p style="text-align: center;">Day Month Year</p> <p>Replaced contract: _____</p> <p style="text-align: center;">Day Month Year</p> <p>Read and signed by policyholder: _____ Date: _____</p> <p style="text-align: right;">Day Month Year</p>	<p><input type="checkbox"/> Not applicable</p> <p>Representative's initials:</p> <p>_____</p>
Suicide clause	
<p>When death is by suicide and occurs within two years of the date on which the contract comes into effect, the insurer will not usually pay the death benefit. Generally, the validity of a clause providing for payment of the death benefit despite suicide may not be transferred from one contract to another.</p> <p>By replacing an insurance contract, you may lose this advantage, since the two-year suicide period begins on the day on which the proposed contract comes into effect.</p> <p>Expiry date of suicide clause</p> <p>Proposed contract: <input type="text"/> year(s) after the contract comes into effect</p> <p>_____</p> <p style="text-align: center;">Day Month Year</p> <p>Replaced contract: _____</p> <p style="text-align: center;">Day Month Year</p> <p>Read and signed by policyholder: _____ Date: _____</p> <p style="text-align: right;">Day Month Year</p>	<p><input type="checkbox"/> Not applicable</p> <p>Representative's initials:</p> <p>_____</p>

Notice No.: _____

PART 2 – Reasons for replacement

2.1 Explain why the existing insurance contract does not meet your client's needs.

2.2 Explain how the proposed contract better meets your client's needs.

2.3 Explain the disadvantages for your client of replacing his contract (additional exclusions, higher premium, extra premium, etc.).

2.4 Explain why you are not modifying your client's existing contract.

Notice No.: _____

PART 2 – Reasons for replacement (cont.)

2.5 Explain the financial impact of the replacement (e.g., redemption fees, cash surrender value [guaranteed or non-guaranteed], cancellation fees, premiums, tax considerations, policyholder dividends, registration as an RRSP, forthcoming dividend payment).

2.6 Explain the differences between complementary or optional guarantees under the existing contract and the proposed contract (waiver of premiums, guarantee of insurability, other endorsements, additional or fewer guarantees, variations in equivalent or similar guarantees, etc.).

Comments

Autorité des marchés financiers – Notice of replacement of insurance of persons contract

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Client's initials: _____

Notice No.: _____

PART 3 – Signature of policyholder

Having read and understood the notice,

I, _____, the undersigned,

Policyholder's first and last name

wish to replace my existing insurance contract no. _____

and subscribe to the following new insurance contract _____

(Name of policy)

Date: _____

Signature of policyholder(s)

Day Month Year

PART 4 – Signature of representative			
I have explained to my client, fully and objectively, the type of insurance, as well as the advantages and disadvantages of replacing his existing insurance contract. A copy of this notice will be sent to the insurer of the replaced insurance contract.			
Representative			
_____	_____	_____	_____
Representative's last name and first name	Certificate No.	Telephone	Signature
Representative			
_____	_____	_____	_____
Representative's last name and first name	Certificate No.	Telephone	Signature
Supervisor			
_____	_____	_____	_____
Supervisor's last name and first name	Certificate No.	Telephone	Signature
Trainee			
_____	_____	_____	_____
Trainee's last name and first name	Certificate No.	Telephone	Signature

Autorité des marchés financiers – Notice of replacement of insurance of persons contract

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Client's initials:

_____”

21. Schedule II of the Regulation is repealed.

22. The forms sold by the Authority for purposes of paragraph 2 of section 22 as it read on the date of the coming into force of this Regulation may be used until 22 October 2014 to replace an insurance of persons contract, in accordance with Division VII of the Regulation respecting the pursuit of activities as a representative (R.R.Q., c. D-9.2, r. 10).

23. This Regulation comes into force on 22 October 2013.

Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships

An Act respecting the distribution of financial products and services (chapter D-9.2, s. 223, pars. (6), (8), (11) and (13.1))

1. The Regulation respecting firms, independent representatives and independent partnerships (chapter D-9.2, r. 2) is amended by inserting the following after section 11:

“**11.1.** The firm or independent partnership may not introduce any incentives that could have an influence on the performance of the obligations of a representative to the detriment of his client.

A contest or promotion to sell specific products is deemed to have such influence.

The firm or independent partnership may however provide non-pecuniary benefits that are of a promotional nature and of low value where such benefits are not sufficiently material, in value or frequency, to have an influence on the performance of the obligations of a representative to the detriment of his client.”

2. Section 17 of the Regulation is amended:

(1) by deleting the words “or real estate brokerage” and “, where necessary” in the introductory portion of section 17;

(2) by replacing subparagraph 2 with the following:

“(2) the client’s address, telephone number, and facsimile number or electronic mail address, if any;”;

(3) by replacing the word “prévus” in subparagraph 8 of the French version with the word “prévues”;

(4) by replacing subparagraph 9 with the following:

“(9) a copy of the form completed and signed, at the time of replacement of an insurance policy, where applicable, as prescribed in Division VII of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10);”;

(5) by inserting the following after subparagraph 9:

“(10) a copy of the documents prescribed in sections 8, 9 and 16 of the Regulation respecting the pursuit of activities as a representative.”

3. Section 20 of the Regulation is amended:

(1) by deleting the words “, where necessary” in the introductory portion of section 20;

(2) by inserting the following after paragraph 3:

“(4) a copy of the mandate and report prescribed in sections 8.1 and 9.1 of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10).”

4. Section 21 of the Regulation is amended by deleting the words “, where necessary” in the introductory portion of section 21.

5. The Regulation is amended by inserting the following after section 28:

“§7. *Register of incentives*

“**28.1.** A firm or independent partnership must keep a register of the incentives that it introduces.

The firm or independent partnership must provide in such register a description of the terms and conditions of each incentive introduced, including its duration, related benefits, applicable products or services, a description of the group of representatives concerned and the names of the winners.”

6. This Regulation comes into force on 22 October 2013.

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