



## **GUIDELINE NO. 3**

### **GUIDELINE ON MARKET CONDUCT**

**(This guideline is issued pursuant to section 53 of the Financial Services Commission Act, and comes into effect on March 1, 2013.)**

#### **MARKET CONDUCT FOR DOMESTIC INSURANCE BUSINESS – INSURERS AND INTERMEDIARIES**

##### **1.0 INTRODUCTION**

- 1.1 Requirements for the conduct of insurance business help to strengthen consumer confidence in the insurance market. The Financial Services Commission (Commission) expects insurers and intermediaries, who write, advise or are otherwise involved in the placement of domestic insurance business in Barbados to uphold themselves to a certain level of conduct. This note sets out the guideline for market conduct for writers of domestic insurance business.
- 1.2 The Commission recognizes the need for clarity as to the scope and implementation of the provisions of the Act if the regulatory system is to command the confidence of insurers and policyholders. It seeks, therefore, to ensure that those operating in Barbados have a good understanding of the nature of the requirements and of the Commission's approach in implementing the Act, the regulations, and the guidelines which are associated.
- 1.3 The Commission's guideline is of general application. There is likely to be a need for the guideline to be revised and developed over time. Material changes in the guideline will be published, generally through the issue of a revised version and communicated to the industry accordingly.

1.4 The guideline is not intended to be exhaustive. Any guideline provided is intended to be reflective of minimum standards that should be observed in all cases. In any areas where the guideline is not specific, insurers and intermediaries should be guided by the guideline's underlying spirit. Insurers must take the appropriate steps to become compliant with the guideline.

## **2.0 DEFINITIONS**

2.1 ***Domestic insurance policy*** under the Insurance Act Cap 310 means “a policy issued in Barbados and includes an ordinary life insurance policy issued outside Barbados and subsequently made payable in Barbados at the request of the policy-holder which the policy-holder has agreed in writing shall be treated as a local policy for the purposes of this Act; but does not include an ordinary life insurance policy made payable outside Barbados at the request of the policy-holder which the policy-holder has agreed in writing shall not be treated as a local policy for the purposes of this Act.

2.1.1 ***Customer*** is a person to whom a good or service is provided by an insurer or intermediary, and includes policyholders.

2.1.2 ***Insurer*** has the meaning under the Act and means “a company carrying on insurance business and, except where otherwise stated, includes all the members of an association of underwriters that is registered as an insurer.”

2.1.3 ***Intermediary*** means any broker, salesman, agent, sub-agent, adjuster, loss assessor or insurance surveyor.

## **3.0 TO WHOM DOES THIS GUIDELINE APPLY**

3.1 This guideline applies to all insurers licensed to write domestic insurance policies in Barbados and to all intermediaries who advise or place domestic insurance business. For clarification, this Guideline does not apply to the insurance business written by those insurers who are classified as Exempt Insurance Companies. The policies only apply to Qualifying Insurance Companies for those policies sold in Barbados.

## **4.0 GENERAL PROVISIONS**

4.1 The objectives of this Guideline are to ensure that, with respect to domestic business, an insurer or intermediary:

4.1.1 Acts with high standards of integrity and fair dealing in the conduct of their business; and,

- 4.1.2 Acts with due skill, care and diligence in providing services, including any services which it has indicated a willingness to provide.
- 4.1.3 Settles all claims in accordance with the policy documents issued and in the spirit in which the policies were written and sold.

## **5.0 INTEGRITY AND FAIR BUSINESS PRACTICES OF INSURERS**

- 5.1 An insurer or intermediary shall observe high standards of integrity and fair dealing in the conduct of its business. An insurer or intermediary has an obligation to avoid misleading and deceptive acts or representations. It should not seek to exclude or restrict any duty or liability to a customer that it has under a policy contract of insurance/legislative framework and/or accepted practices. Additionally, it should not seek to rely **unreasonably** on any provision of a contract seeking to exclude or restrict any such duty or liability.
- 5.2 An insurer or intermediary should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules on confidentiality, declining to act, or otherwise as appropriate.
- 5.3 An insurer or intermediary should not unfairly place its interest above those of its customers and, where a properly informed customer would reasonably expect it would place the customer's interest above its own, the insurer or intermediary should live up to that expectation.
- 5.4 An insurer or intermediary should act with due skill, care, and diligence in the conduct of its business and in its dealings with customers or potential customers.
- 5.5 Where an insurer or intermediary is responsible for providing advice or exercising discretion for or in relation to customers, it must be able to demonstrate that the advice, or exercise of discretion, is appropriate for the customer.
- 5.6 An insurer or intermediary must transact its business (including the establishment, maintenance, transfer or closure of business relationships with its customers) in an expeditious manner.

## **6.0 INFORMATION ABOUT CUSTOMERS**

- 6.1 Where an insurer or intermediary is responsible for providing advice or exercising discretion for its customers, it must seek from them such information about their circumstances and objectives as may be appropriate with regard to the services requested. Documentary evidence must be maintained in this respect.

6.2 An insurer or intermediary may only exercise its power or its discretion for a proper purpose. Where information sharing is required between insurer and intermediary in the normal course of business this should be done in a confidential manner taking into account the nature of the business relationship. Information shared should not be used in a manner in which it is not intended and the rights of the party sharing the information should always be protected so that the information is not misused. This is particularly applicable in cases of information sharing for Anti Money Laundering purposes where both the insurer and the agent need to satisfy know your customer regulations, and information shared under this arrangement must not be used for any other purpose but to keep know your customer databases.

Information, which a customer might reasonably expect to be confidential, should be treated as such.

## **7.0 INFORMATION DISCLOSURE**

7.1 An insurer or intermediary should take reasonable steps to give a customer, in a comprehensible and timely way, information to assist the customer to make a balanced and informed decision and shall avoid misleading or deceptive representations or practices. This includes communicating:

7.1.1 Relevant and meaningful information in a timely and comprehensive manner to enable the customer to make a balanced and informed decision before entering into a contract;

7.1.2 The benefits and risks to the customer in a fair and balanced way; Intermediaries should pay close attention to the Insurance Act Section 91 (2).

7.1.3 The obligations of the parties involved, being the insurers, intermediaries and the customer, in a clear and understandable way, for the duration of the contract, including such matters as whether the intermediary is compensated by commission, or whether the intermediary is independent or associated with the particular insurance company;

7.1.4 Complaints handling and other contractual arrangements; and

7.1.5 The duty of customers to disclose material information.

7.2 Similarly, an insurer or intermediary should be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him. The frequency with which additional information is to be disclosed during the course of the contract depends on the type of contractual arrangement.

7.3 An insurer or intermediary should take reasonable care that the information disclosed by him is accurate in all material respects, not misleading, easily understandable, and available in writing or appropriate electronic means. It is the responsibility of the insurer or the intermediary to take reasonable care in explaining the workings of the insurance policy being sold to the customer who is purchasing the policy.

## **8.0 CUSTOMER ASSETS**

8.1 Where an insurer or intermediary has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

## **9.0 CLAIMS PROCEDURES**

9.1 An insurer or intermediary where applicable should make all efforts to settle legitimate claims within a reasonable time period so as not to run in conflict with Section 15 (2) (e).

9.2 Claim settlement procedures should be clearly identified and set out in the policy sold and this procedure should be appropriately communicated to the customer. Insurers must ensure to follow the terms and conditions of claims settlement contained in the policy document as well as those contained in the Road Traffic Act of Barbados.

9.3 The Commission will not accept unreasonable or unsubstantiated delays in determinations on claim settlements especially in instances where the unreasonable delay is to the detriment of the policy holder in cases where the delay cannot be attributed to the actions of the policy holder. The FSC will give consideration to circumstances where the delay is due to the actions of a third party which cannot be attributed to the licensee or the policy holder.

9.4 Claim settlement policies and procedures should be written in the spirit in which the policy document was written. Attempts to intentionally delay claim payment or to intentionally quantify claim settlement amounts without appropriate rationale will not be accepted as good market conduct. The reputation of the entire insurance industry is dependent on not only the ability of insurers to respond to claims but the fairness of procedures in claim settlement and this has to be preserved.

## **10.0 COMPLAINTS PROCEDURE**

10.1 An insurer or intermediary shall have procedures in place, as applicable, to deal with customer complaints effectively and fairly through a simple and equitable process. These procedures should be well disclosed and easily accessible. A record of the details of the

complaint, the insurer's or intermediary's response and any action taken as a result, shall also be maintained in an accessible manner.

## **11.0 ADVERTISEMENTS**

11.1 An insurers or intermediary should ensure that advertisements:

- 11.1.1 Do not contain a statement, promise or forecast which is untrue or misleading;
- 11.1.2 Are not designed in such a way as to distort or conceal any relevant subject material;
- 11.1.3 Are clearly recognizable as advertisements;
- 11.1.4 Where appropriate, state that the investment value is not guaranteed or that the value may fluctuate;
- 11.1.5 Do not contain a statement relating to past performance unless:
  - i) The basis on which such performance is measured is clearly stated and the presentation is fair;
  - ii) It is accompanied by a warning that past performance is not necessarily a guide to future performance; and

11.2 In the case of long-term business, each insurer or intermediary in its promotional material should endeavour to impress on clients that a whole life or endowment policy is intended to be a long-term contract and that surrender values, especially in early years, are frequently less than the total amount of premiums paid.

Intermediaries should pay particular attention to Section 93 of the Insurance Act.

## **12.0 AUTHORIZED AGENTS**

12.1 Insurers are required to take responsibility for the appointment and activities of authorized agents. In this respect, insurers shall:

- 12.1.1 Ensure all authorized agents are registered with the Commission in accordance with Section 80 (1) of the Insurance Act and agents should confirm the status of insurance companies in accordance with Section 82 (2) of the Insurance Act;
- 12.1.2 Ensure that all authorized agents provide prospective customers with the name of the insurer represented by the authorized agent and the types of product(s) the authorized agent is authorized to sell and/or advise on behalf of the insurer; and,

12.2 When an insurer, subject to this Guideline, grants terms of business to an authorized agent, that insurer shall:

12.2.1 Have a terms of business agreement completed and signed by the authorized agent to require the agent to warrant that the agreement does not breach any legal obligations and that the authorized agent will clearly explain the risks inherent in the product to the client; and

12.2.2 Take measures to monitor the performance of the authorized agent, including complaints made against the authorized agent with respect to advice or sales made by the authorized agent on behalf of the insurer.

### **13.0 INTERMEDIARY DISCLOSURE**

13.1 An intermediary is required to give customers information on its status, specifically whether it is independent or associated with particular insurance companies, and whether it is authorized to conclude insurance contracts on behalf of an insurer or not.

### **14.0 COMPLIANCE**

14.1 An insurer or intermediary shall establish and maintain systems and controls to enable on-going monitoring of compliance with this Guideline and ensure controls and procedures are properly documented.

14.2 Compliance with this Guideline will be checked by the Commission when it performs on-site inspections of domestic insurers and also when it investigates complaints sent to the Commission. During the on-site inspection, the Commission may include in its review, among other matters the following:

14.2.1 Reviewing the insurer's policy for compliance with this Guideline and any related training;

14.2.2 Checking the sufficiency and adequacy of the information given to consumers;

14.2.3 Reviewing record of complaints, including the frequency and nature, and the timing and resolution of the matters raised in the complaints;

14.2.4 Reviewing the accounts of the intermediary to ensure that they are paying over premiums collected from clients on behalf of insurers in accordance

with Section 94 of the Insurance Act or in accordance with any agreement made with the insurer;

14.2.5 Intermediaries are not rebating on premiums which is prohibited under Section 96 (1) of the Act;

14.2.6 Reviewing the frequency and nature of any litigation arising from market conduct matters; and

14.2.7 Generally assessing observance of the market conduct standards and consumer regulations.

14.3 The Commission will monitor closely the insurers and intermediaries and their compliance with this guideline. During the course of an on-site inspection, it is the intent of the Commission to review documentation associated with these market conduct practices. There will also be on-going monitoring of these practices especially through complaints received by the Commission. Good market conduct is essential to mitigating reputational risk in the industry and as such the Commission expects that all insurers and intermediaries will comply fully with the contents of this guideline. We do not believe that transitional arrangements will be required on an industry-wide basis as the expected impact from the guideline on the operations of the company should be minimal.