NEEDS-BASED SALES PRACTICES

There are three principles for managing conflicts of interest that might arise in the sale of life and health insurance products. These are:

- The interests of the consumer must be placed ahead of those of the advisor;
- Actual and potential conflicts of interest must be disclosed; and
- The recommended product must be suitable to the needs of the consumer.

The general principle is that the recommended product or service must be appropriate for the needs of the client as determined by a needs-based assessment done by the advisor and/or as identified by the client.

General Background About The Approach

The Approach is an industry-developed description of sales practices that address one of the principles for managing conflicts of interests. By an advisor demonstrating that they are following ***The Approach***, they can show that their sales practices are consistent with the regulators' principle that the recommended product fits the client's needs.

The Approach describes sales practices that are commonly used through the life and health insurance industry. One thing that might change is record-keeping. If an advisor is not already carefully documenting their client meetings, they should begin maintaining client files so it is clear how their recommendations link to the client's circumstances.

Many advisors find the effort of documenting how they reached their recommendation pays off in assisting them in providing better service to their clients and this can lead to increased sales. If manufacturers received a complaint from a client, they will ask to see this documentation. As well, the regulators have indicated they intend to monitor compliance with their principles. If the regulators are investigating a complaint from a client, they will look for evidence that an advisor followed this approach. More generally, if an advisor is ever involved in a client dispute, such documentation can be most helpful in defending themselves.

Sales practices will vary from transaction to transaction depending on a number of factors. In other words, they are "scalable." Some of the relevant factors are whether the client wants advice or is simply asking an advisor to complete an order for a specific product, the complexity of the products and services being recommended and how much information about potential needs that the client is willing to provide to an advisor. In many cases, specific practices associated with each of the elements are required by regulation in some provinces.

If a client or a beneficiary has a complaint about the products an advisor recommended, the advisor will need to show how the information the client provided linked to the advisor’s needs assessment and advice. In investigating complaints, evidence that an advisor followed the elements in ***The Approach*** will help the advisor explain and defend their practices.

Advisors need to be able to describe the process they follow in establishing a relationship with the client, obtaining information and making a recommendation. Advisors also need to have notes to explain the depth of their analysis. All of this should be recorded so it can be recovered if the advisor needs it.

The practices that are described in ***The Approach*** are all recognized as sound sales practices within the life insurance industry. As such, if there is a complaint from a client, there are a number of parties that might want proof that the advisor followed these practices. They include insurance regulators, the insurance company that provided the product in question, the advisor's E&O carrier, the Canadian Life and Health Insurance OmbudService (CLHIO) and the courts if there is a lawsuit.

Supporting Elements in The Approach

The Advisor Disclosure practices that were introduced in 2005 include the information that is described in the Disclosure to Client element of ***The Approach***. The idea is that clarifying which companies an advisor represent and the types of products they can sell provides a context for the advice they give and the recommendations they make.

A standardized fact-find is not necessary. The elements in ***The Approach*** are "scalable" so the extent of fact finding will vary depending on a number of circumstances including the client's expectations about the service the advisor will be providing and the complexity of the client's needs and the products the advisor recommends.

The regulators established the principle that products recommended be appropriate to the needs of the client. ***The Approach*** that the industry has developed to address this principle is intended to be flexible. If the regulators find evidence that advisors are not following ***The Approach***, they may mandate forms or other practices, but at this time the regulators have not mandated a form that all advisors must use in all situations.

If the client has already identified his or her needs and is coming to an advisor to buy a specific product, the fact finding has, in effect, been done. There is no need to repeat it. In this situation, if an advisor has documented the client expectations and needs, the advisor can generally proceed with the transaction. **NOTE:** A special situation may arise in Quebec where some have interpreted provincial regulation there as requiring a needs analysis as a condition of proceeding with the sale.

In many transactions, fact-finding and needs assessment are two elements in a single process. Fact-finding is the collection of factual information about the client while needs assessment is the evaluative part of the process. Documentation should show the linkage between facts about the client's circumstances and assessed needs. It should also show what options were considered. In some cases, the documentation for both will be combined.

If an advisor keeps appropriate records that document how the facts relate to needs, this is probably sufficient.

There are a number of situations in which the fact-finding and needs assessment are already done. A client may have had a financial plan done by someone else or may have identified a need on their own. In situations like these, an advisor does not need to go through the steps with the client, but a note in the client file should document these circumstances, so it is clear why an advisor sold a particular product to this client.

Documentation about an advisors recommendations and advice should describe the linkage between fact-finding, needs assessment and advice. The record should have enough information so someone with similar knowledge of the products and services could understand why the recommendation was made -- in law this is the "reasonable person" test.

There are usually a number of ways to address a client's needs. The key is to be able to explain how the recommended product or service does this. As well, an advisor may need to take into account needs that are only partially or not immediately being addressed.

A brochure may be easier to understand than a detailed illustration so it is important to consider how the documents are being used and the client's circumstances. An advisor should also bear in mind any conditions specific insurers may place on the use of illustrations.

Principle of The Approach

SUPPORTING ELEMENTS	COMMENTARY
Disclosure to Client The consumer should be provided with information about the range of products and services the advisor can sell.	• understanding the companies the advisor represents and range of products he/she can sell helps the client in assessing if the advisor is likely to offer objective recommendations • how much information is provided may vary by transaction, e.g., when a client calls a call centre to place an order vs when an advisor representing a number of companies and products sits down with a potential client • broader disclosure provided by advisor disclosure protocol introduced in 2005, including how advisors are compensated, potential conflicts of interest, and consumer's right to additional information

	• for more information on advisor disclosure requirements, see Advisor Disclosure Reference Document
Client Expectations The advisor and the client should have a common understanding about the services that the client expects the advisor will provide in the immediate transaction and ongoing relationship. The advisor should inform the client about any changes that may affect this relationship.	• important to clarify upfront the client's expectations about the nature of the services the advisor can/will provide, e.g., does client want to purchase predetermined products or does client want professional advice and/or product recommendations? • any advisory fees should be disclosed • what level of ongoing service will be provided? • if there's been an express discussion of expectations and the nature of the client/advisor relationship, it is often useful to document this more fully • sometimes expectations will be implicit in the nature of the transaction, e.g., when a client places an order through a call centre
Fact Finding Where product recommendations or professional advice are sought by the client, the advisor should obtain such information about the client as is reasonable in the circumstances.	• the type and amount of information gathered, the means of gathering this information and the level of documentation will vary and depend on a number of factors including: o nature of the services to be provided; o complexity of client's circumstances and/or objectives; and o willingness of client to make accurate and full disclosure. • it's a good idea to note requests for information that was not supplied by the client -- the advisor may wish to inform the client about the impact that working with limited information has on the services provided (if any)
Needs Assessment Based on the facts and information obtained from the client, advisors should identify the client's life insurance need. The extent of the	• the advisor should assess needs based on information gathered through the fact finding process • the needs assessment will vary in complexity based on client's circumstance and/or the

assessment will vary according to product and circumstance.	nature of services being provided by the advisor • the advisor should maintain records that show the scope and nature of the needs assessed
Recommendations and Advice Insurance product recommendations and professional advice should address a client need given the circumstances at the time of the sale.	• recommendations and any professional insurance or financial advice needs to be appropriate to the client's assessed needs • a general rule of thumb to consider: Would the product recommendations and professional advice be reasonably expected to address the client's need given the circumstances at the time of the sale? • the advisor should maintain records that demonstrate the rationale of the recommendations that were made or the advice that was given
Product Information The client should be informed about options available through the advisor and provided with information about the products that the advisor recommends.	• advisors should be familiar with product information provided by companies and able to relate this information to the needs of their clients • specific measures to inform the client about products will vary with channels and circumstances • general educational consumer information available through CLHIA or government websites or brochures