



# CAYMAN ISLANDS MONETARY AUTHORITY

**May 2018**

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## **Rule** **Market Conduct – Insurers, Agents and Brokers**

### **1. Statement of Objectives**

- 1.1. To set out the Cayman Islands Monetary Authority's (the "Authority") Rule on Market Conduct – Insurance (the "Rule"), issued pursuant to the Monetary Authority Law ("MAL"), as amended from time to time.

### **2. Statutory Authority**

- 2.1. Section 34(1)(a) of the Monetary Authority Law (2016 Revision) (as amended) ("MAL") states that –

After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*

...

- 2.2. This Rule on Market Conduct - Insurers, Agents and Brokers must be read in conjunction with the following Statements of Guidance as relevant: (a) Market Conduct - Insurers, Agents and Brokers and (b) Internal Controls Insurance.

### **3. Scope of Application**

- 3.1. This Rule applies to all Class A Insurers and Insurance Intermediaries licensed under the Insurance Law ("IL") by the Authority to carry on domestic insurance business. This Rule also applies to Class A Insurers' overseas operations under its Cayman Islands licence.
- 3.2. This Rule applies to Class B insurers in the conduct of their business to third party retail policyholders. The Rule also applies to Class B Insurers' insurance products that are sold by Insurance Intermediaries and insurance business conducted through digital and non-digital means.
- 3.3. This Rule does not apply to reinsurance business.
- 3.4. The Authority will assess regulated entities' compliance with this Rule in a proportionate manner relative to their nature, scale, and complexity. The Authority appreciates that regulated entities have varying risk profiles arising from the nature, scale, and complexity of their business, and that the insurers and



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intermediaries with higher risk profiles may require more comprehensive and dynamic application to conduct their business in a sound and prudent manner.

## **4. Definition**

4.1. For the purpose of this Rule, the following definitions are provided:

4.2 **"Customer"** – Includes any policyholder, prospective policyholder, or applicant for a contract of insurance including plan participants of a trust where the trust is used to hold an insurance contract.

4.2. **"Insurance Intermediary"** – As per Insurance Law, 2010 intermediaries fall into two categories in the Cayman Islands.

i. **"Insurance Agent"**

Insurance agent per IL, 2010 means a holder of a valid insurance agent licence for the soliciting of domestic business on behalf of not more than one general insurer and one long term insurer.

In this Rule, "Agent" includes a natural and a corporate person.

ii. **"Insurance Broker"**

Insurance broker per IL, 2010 means a holder of a valid insurance broker licence for arranging or procuring, directly or through representatives, insurance or reinsurance contracts or the continuance of such contracts on behalf of existing or prospective policyholders.

For the purposes of this Rule the term "intermediary" refers to a range of intermediaries from individuals to large international firms. Intermediaries can operate as enterprises or divisions of insurers or other financial institutions including banks, or as part of non-financial organisations.

4.3. **"Policy Servicing"** – involves servicing policies appropriately through to the point at which all obligations under the policy have been satisfied; disclosing to the policyholder information on any contractual changes during the life of the contract; and disclosing to the policyholder further relevant information depending on the type of insurance product.

4.4. **"Advice"** – includes the provision of product information and relates specifically to the provision of a personalised recommendation on a product in relation to the disclosed needs of the customer.

## **5. Rules**

### **5.1. Market Conduct and Internal Controls**



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- 5.1.1 Insurers and intermediaries must have internal controls and/or adequate protection in place to safeguard customer's assets, including money, when responsible for them.
- 5.1.2 Intermediaries must only act within the limits of professional training and any limits of authorisation.
- 5.1.3 All persons that deal, or may deal with clients directly, including sales personnel, claims handlers and compliance or complaints officers must be trained and achieve a suitable level of competence in:
  - a. The licensee's policies and procedures addressing this guidance; and
  - b. The technical and legal aspects and effects of the products sold.

## **5.2. Insurers' Responsibility for Intermediaries**

- 5.2.1 Insurers must conduct due diligence that provides satisfactory evidence that the intermediaries that distribute their products maintain appropriate levels of professional knowledge and experience, integrity and competence to advise and inform customers on the features and characteristics of the products they offer.
- 5.2.2 Insurers must have a framework, including practices, policies and procedures to manage compliance or conduct issues with any intermediaries employed.
- 5.2.3 Insurers must ensure that their contractual provisions with an intermediary allow the fulfilment of their legal and regulatory obligations.
- 5.2.4 The written agreement between an insurer and an intermediary must, at minimum include the following:
  - a. The rights and obligations of both parties;
  - b. For each party, a commitment to comply with all applicable legal and regulatory requirements;
  - c. The insurer's reasonable right to terminate the arrangement with the intermediary with reasonable period of notice for failure by the intermediary to discharge obligations under the agreement;
  - d. Where the intermediary acts in the capacity of an agent of the insurer, the insurer's right to information about the intermediary's performance and activities in respect of the business of the insurer as well as a right to issue general guidelines and specific instructions as to what is to be taken into account when performing its functions or activities.



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- e. The intermediary's obligation to protect any confidential information relating to the Insurer and its customers; and
- f. The Insurer's reasonable right to terminate the arrangement with the intermediary with reasonable period of notice for failure by the intermediary to discharge obligations under the agreement;

5.2.5 Insurers must ensure that the information they provide to an intermediary about their products is clear, accurate and not misleading. This product information must be sufficient to enable those who sell the product to understand it so as to be able to determine whether it is suitable for a customer.

5.2.6 Insurers must act appropriately to deal with potential and confirmed instances of mis-selling, inappropriate policy replacement or sales to customers for which a product is clearly unsuitable.

5.2.7 Insurers must act upon and inform the appropriate regulatory authorities where there is on-going concern that an intermediary may be acting contrary to relevant regulation in any jurisdiction.

## **5.3. Fair Treatment of Customers**

5.3.1 Insurers and intermediaries must act with due skill, care and diligence when dealing with customers.

5.3.2 Insurers and intermediaries must ensure that their sales representatives are trained and equipped to adequately advise customers on the features and characteristics of the products they sell or introduce or provide information about.

5.3.3 In cases where advice would normally be expected, such as complex or insurance-based investment products, and the customer chooses not to receive advice, the insurer or intermediary must retain an acknowledgement by the customer to this effect.

5.3.4 Insurers and intermediaries must establish and implement policies and procedures on the fair treatment of customers that are an integral part of their business practices.

5.3.5 Insurers must have policies and procedures in place for dealing with intermediaries so as to ensure fair treatment of customers.

5.3.6 Insurers and intermediaries must not seek to exclude or restrict any duty or liability to a customer that they have under Cayman legislation and/or this Rule, or other voluntary code of conduct to which the insurer or



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intermediary has subscribed and declared.

## **5.4. Protection of Information**

- 5.4.1 Insurers and intermediaries must have policies and procedures for the protection of private information on customers. These policies and procedures should prevent the use of customer information collected and held in a manner that results in unfair treatment.
- 5.4.2 Insurers and intermediaries must inform customers about which personal information might be disclosed and to whom. Insurers and intermediaries are also required to ensure that customers are aware of their right to access and, if needed, to correct personal information collected and used by them.
- 5.4.3 Insurers and intermediaries must adhere to relevant data protection and provisions in any jurisdiction in which they operate.

## **5.5. Disclosure of Information to Customers**

- 5.5.1 Insurers and intermediaries must provide information before and at the point of sale that will enable customers to make an informed decision before entering into a contract.
- 5.5.2 Insurers and Intermediaries must provide pre-contractual and contractual information in a timely manner
- 5.5.3 Insurers and intermediaries must provide customers with sufficient information to enable them to understand the characteristics of the product, whether and for what reasons it meets their requirements. The insurer or intermediary must retain sufficient documentation to demonstrate that the advice provided was appropriate; taking into account the customer's disclosed circumstances.
- 5.5.4 Insurers and intermediaries must provide information to customers in plain language that is fair, clear and not misleading.
- 5.5.5 Where insurers use intermediaries for the distribution of insurance, either physically or via digital means, the insurer must be satisfied that the intermediaries involved are providing timely, clear and adequate pre-contractual and contractual information to customers.
- 5.5.6 With respect to insurance-based investment, i.e. products having an investment component, insurers and intermediaries must inform customers of:
  - a. Limits on upside or downside potential;
  - b. The effect of charges, fees and commissions on a net basis;



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- c. Any lock-in period and penalties for early withdrawal/surrenders; and
  - d. A prominent warning that past performance is not a reliable indicator of future performance.
- 5.5.7 Insurers must disclose any commission payable to an intermediary and intermediaries must disclose any commission receivable when creating a quotation for the sale of investment-linked life insurance products.
- 5.5.8 Insurers and intermediaries must ensure that they inform the customer of any potential conflicts of interest and ensure that any conflicts are properly managed. Where conflicts of interest cannot be managed satisfactorily, this should result in the insurer or intermediary declining to act.
- 5.5.9 Before or at the time of concluding the contract, the customer must be given written information about:
  - a. In the case of intermediaries, its status i.e. whether it acts on behalf of an insurer on behalf of the customer, and the basis for its remuneration for life insurance products;
  - b. the address of the insurer's head office and contact details, its home jurisdiction and the body responsible for its regulation;
  - c. The product including price (including any charges additional to the premium), cover, conditions, aims of product, risk factors, guarantees, special exclusions, etc.
  - d. Prominent disclosure of any onerous/special terms including pro rata conditions of average and basis of contract clauses to be included in the policy;
  - e. Estimated returns (if applicable);
  - f. The claims procedure;
  - g. The procedure for making complaints; and
  - h. The name and contact details of the person responsible for complaints handling.
- 5.5.10 Insurers and intermediaries must inform customers about their duty of disclosure and the implications of a failure to disclose material information.
- 5.5.11 Insurers and intermediaries operating in a host country must inform the customer of:
  - a. Details of the home authority responsible for the supervision of the insurer, and
  - b. The jurisdiction in which the insurer's head office is located, before any commitment is entered into.
- 5.5.12 Insurers and intermediaries must be able to demonstrate to the Authority that customers have received information necessary to understand the product and their obligations as a customer, before and at the point of sale.
- 5.5.13 Insurers and intermediaries must inform customers, on an ongoing basis, of



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any changes to the features, costs, or returns associated with the product offered.

## **5.6. Advice to Customers**

- 5.6.1 Insurers and intermediaries must ensure that, when advice is provided, all advice is communicated in a clear and accurate manner that the customer can easily understand.
- 5.6.2 Insurers and intermediaries must ensure that any financial or product advice given to a customer is appropriate; taking into account the customer's disclosed and specific needs, risk tolerance levels and ability to absorb loss.
- 5.6.3 Insurers and intermediaries must inform customers of the true cost of any advice given and its effects on any financial pay-outs or returns.

## **5.7. Product Design and Development**

- 5.7.1 When developing a new product or revising an existing product, insurers must identify:
  - a. The target market for their products,
  - b. The nature and extent of the risks inherent in the product, and
  - c. The level, nature, extent and limitations of any guarantee attaching to the product.
- 5.7.2 On a periodic basis, insurers must review their products to determine whether they are continuing to meet the general needs of the target market for which they were designed. Where an insurer determines a product no longer meets the general needs of the target market, the insurer must:
  - a. Reassess the product to identify the consumer type for which it is suitable; and
  - b. Update in a timely manner the information it provides about the product.
- 5.7.3 Insurers must ensure product features respect and adhere to applicable requirements, including laws, rules, statement of guidance and regulatory procedures in the jurisdiction in which a product is sold.
- 5.7.4 Insurers must ensure that the name of the product is not misleading in terms of the nature of the benefit that the product can deliver.
- 5.7.5 Insurers must have clearly documented processes for product approval and review that are incorporated in their overall framework for governance and oversight.



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## **5.8. Distribution**

- 5.8.1 An insurer must notify the Authority, in advance, of the launch of any new product that may have a material impact on its risk profile or the launch into a new territory.
- 5.8.2 Insurers and intermediaries must assess the customer's individual requirements to determine which insurance products are appropriate. Insurers must also document and keep record of the results of the assessment.
- 5.8.3 A fair assessment of the customer's requirements must at minimum include an evaluation of:
  - a. The customer's desired outcomes,
  - b. The customer's risk appetite,
  - c. The customer's ability to absorb loss, and
  - d. How these factors may change over time.
- 5.8.4 Insurers and intermediaries must ensure that they comply with all applicable sales and remuneration rules and legislation in force in the jurisdiction where products are sold.

## **5.9. Policy Servicing**

- 5.9.1 Insurers and intermediaries must service policies appropriately through to the point at which all obligations under the policy have been satisfied.
- 5.9.2 Insurers and intermediaries must have sufficient safeguards in place to ensure that obligations under a policy are satisfied in an appropriate manner.
- 5.9.3 Insurers and intermediaries must disclose to the customer information on any contractual changes during the life of the contract.
- 5.9.4 Insurers and intermediaries must disclose to the policyholder further relevant information depending on the type of insurance product.

## **5.10. Advertising and Financial Promotions**

- 5.10.1 Insurers and intermediaries must have policies and procedures in place to review and approve financial promotions prior to their use.
- 5.10.2 The policies and procedures should provide for an independent review, within the organisation of promotional material, intended for customers, other than by the individual or organization that prepared or designed it.





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5.10.3 Insurers and intermediaries must advertise, market and promote their products in a manner that is accurate and not misleading to the customer.

5.10.4 Insurers and intermediaries must withdraw any advertisement, marketing or promotional material if it they become aware that the information contained within is not accurate, clear or is misleading.

5.10.5 Insurers and intermediaries must inform the insurer or intermediary responsible for that material and notify any person known to be relying on the information as soon as possible.

### 5.11. **Complaints Handling**

5.11.1 Insurers and intermediaries must establish written policies and procedures to deal in a fair manner with complaints which they receive.

5.11.2 Insurers and intermediaries must respond to complaints without unnecessary delay.

5.11.3 Insurers and intermediaries must maintain a log of all complaints.

### 5.12. **Claims Handling**

5.12.1 Insurers and intermediaries must have written procedures in place for the effective handling of claims in a timely and fair manner.

5.12.2 Insurers and Intermediaries must maintain written documentation on their claims handling procedures, which include all steps from the claim being raised to its settlement.

5.12.3 Insurers and intermediaries must inform customers about procedures, formalities and common timeframes for claims settlement.

5.12.4 Insurers and intermediaries must provide information to claimants about the status of their claim in a timely and fair manner.

5.12.5 Insurers must have appropriate internal controls in place for reviewing declined claims.

5.12.6 Insurers and intermediaries must provide reasons in writing for denying a claim.

5.12.7 Insurers and intermediaries must keep the record for all claims after settlement or rejection in accordance with the Authority's Statement of Guidance on Retention of Records.



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## **6. Enforcement**

- 6.1. Whenever there has been a breach of the Rules, the Authority's regulatory policies and procedures as contained in its Enforcement Manual will apply, in addition to any other powers provided in the Insurance Law and the MAL.