

## Center for Economic Justice Comments on Draft Revisions to ICPs 18 and 19

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### ICP 18 Intermediaries

General Comment

Specific Comments

ICP 18

The ICP identifies “professional and transparent” as objectives of the supervision of intermediaries, but fails to mention fair treatment of consumers, which is the overriding goal. We note that ensuring consumer protection is mentioned in 18.0.1, but not in 18.1. Further, it is unclear what “professional” conduct means because the term “professional” is used several times in the ICP, sometimes meaning connected to a profession and sometimes meaning sufficiently qualified. We suggest replacing “professional” with “qualified” when the term is used for that purpose. “Conducting business in a transparent manner” is also a bit vague. We note that the term “transparent” is never defined in the ICP. If transparency is a core objective of supervision of intermediaries, it would be useful to define the term to ensure common understanding of the objective. We suggest the following edits to the standard

The supervisor sets and enforces requirements for the conduct of insurance intermediaries to ensure fair treatment of consumers, that intermediaries are sufficiently qualified to conduct business and do so in a transparent manner.

18.0.1

The last sentence should clarify that an insurer’s direct sales staff are required to be licensed if they sell insurance.

18.0.4

We disagree with the first sentence of this guidance and offer a general caution on this guidance. Referring customers to an insurer is a core function of an intermediary and of intermediation. Consequently, it is unclear why an individual or firm referring customers to an intermediary or insurer would not be engaged in insurance intermediation. Any exclusion from supervision as an intermediary should be limited to referrals for which the individual or firm providing the referral does not receive any compensation – directly or indirectly – from the insurer or intermediary. As worded, this guidance could, for example, inappropriately exclude web aggregators from supervisory oversight. We suggest the following critical changes.

Individuals or firms which only refer (or introduce) potential customers to an insurer or insurance intermediary without compensation or consideration by the insurer or intermediary, are excluded from the scope of this ICP.

Also excluded from the scope are persons, such as tax advisers or accountants, who in conducting another professional activity provide, without compensation or consideration by an intermediary or insurer:

As a general caution, supervisors should have authority to address false information or fake news in an era of social media and internet publication. For example, if a social media campaign was false accusing an insurer or not paying claims or not being able to pay claims, the supervisor should have the authority and resources to address such a campaign to promote stable insurance markets – a supervisory objective set out in ICP 1.2.

#### 18.0.6

The first two sentences of this guidance discuss the relationship between insurers/intermediaries and customers. The next two sentences discuss supervision of intermediaries that are part of a group. It is unclear how the first two sentences relate to next two sentences. We suggest some clarification to either explain the purpose of the first two sentences as separate guidance from the last two sentences or the addition of a transition sentence to better link the first two sentences with the last two sentences.

#### 18.0.10

We ask that this guidance be clarified or elaborated to better explain the linkage between market diversity, focus on activities and regulatory arbitrage. Is the intent of this guidance that similar activities face similar licensing and supervisory requirements? As with many of the guidance sections, it is important to distinguish between supervisory authority for proportional supervision and legislative requirements of the supervisor. While a supervisor should not use discretionary authority to favor one type of intermediary over another, the supervisor should not ignore a legislative mandate. This guidance might be combined with guidance 18.0.13 for clarity of both.

#### 18.0.11

The need for a supervisory to routinely evaluate its authority and the effectiveness of supervisory requirements is addressed in ICP 1.4 and, consequently, this guidance is not needed. In addition, this guidance is problematic for at least three reasons. First, it suggests a bias towards unreasonable supervisory requirements. If retained, we suggest rephrasing for a more neutral approach. Second, the guidance suggests that supervisors have the discretion to modify licensing and supervisory requirements when it is most likely that such requirements are established by the legislature. The guidance should be clear – or at least not suggest – that supervisors do not have discretion to selectively enforce supervisory requirements. Third, the guidance suggests that consumer protection and innovation are at odds. We disagree.

#### 18.0.13

This guidance might be combined with the guidance 18.0.10 for clarity of both.

#### 18.0.15

The first sentence introduces the concept of distribution channels. The second sentence explains who the distribution channels are and what functions they perform for insurers. As described in the second sentence, all of the activities of the distribution channels constitute intermediation. The last sentence should be modified to reflect this. If there are specific distribution channel activities that are not insurance intermediation, those activities should be identified since they are likely to be exceptions to the general proposition that activities of distribution channels are insurance intermediation.

These activities of these distribution channels constitute intermediation.

#### 18.0.16

The term “professional competence” is used. It is unclear what “professional” adds to “competence.” Stated differently, why is “Their good conduct and competence” insufficient? It would be useful to use more descriptive wording than “professional competence.” For example, if the addition of “professional” refers, for example to a fiduciary standard of care, it would be clearer to replace “professional competence” with “adherence to the consumer’s best interest standard of care.”

#### 18.0.19

We generally agree with this guidance, but suggest improved phrasing. Information asymmetry is not “at the heart of” consumer protection, but a core reason for certain consumer protections. We suggest:

Intermediaries can promote consumer protection by assisting consumers to make better informed decisions about the products that they buy and thereby addressing a core consumer protection concern – asymmetries of information between financial services product providers and the public to whom the products are sold. The adoption of good conduct of business practices by insurers and insurance intermediaries should, among other consumer protection goals, help ensure that customers are sufficiently informed on the insurance products they are considering buying, before concluding a contract.

#### 18.0.20

The term “financial awareness” or “enhancing financial awareness” is used in the heading before 18.0.19 and in several guidance sections, including 18.0.20. Yet this term is generic and undefined. In any event, “financial awareness” is a much broader term than the issues of information asymmetry or consumer understanding of insurance products discussed in 18.0.19. Consequently, the purpose of 18.0.20 is unclear. We suggest:

To better empower consumers to make informed purchase decisions for insurance products that meet their needs, consumer information, education and disclosure is essential to help ensure that consumers are aware of the products available to them and understand their purpose, how they work and their key features, including cost. Insurers and intermediaries can contribute, beyond product and company advertising, to formal education initiatives and targeted awareness campaigns, particularly in collaboration with supervisors, consumer organizations and academic institutions..

These edits provide for a smooth transition to 18.0.22

#### 18.0.21

We disagree with this guidance for several reasons and suggest its deletion. “Financial awareness” is a generic, undefined term and, consequently, has little meaning in the context of this guidance. Consumer financial information, education and disclosures should help empower consumers in any jurisdiction regardless of the level of financial literacy or the degree of consumer protection standards. Further, a general statement about financial awareness is misplaced in the ICP on intermediaries. “Financial awareness” – whatever meaning is intended – is not more important for “complex financial products” – whatever meaning is intended – than for “non-complex” financial products. A consumer purchasing a “simple” insurance product in a developing economy has as great or greater need to understand that product as a consumer purchasing a “complex” insurance product in a developed economy.

#### 18.0.22

Address the vagueness of “financial awareness,” we suggest

Insurance intermediaries are not the only stakeholders in improving consumer financial education and consumer understanding of the role of insurance products for financial and economic security, resiliency and sustainability. Governments, supervisors, consumer organisations, academic institutions and insurers have a significant role to play in such efforts.. Intermediaries’ face-to-face dealings with their customers and marketing of products to consumers place them in an important position to contribute to strengthening consumer and general public understanding of the critical role of insurance for individual and community economic development, resilience and sustainability Supervisors may therefore wish to encourage insurance intermediaries to participate in insurance information and education campaigns beyond individual company or product advertising.

#### 18.0.23

The vagueness of the term “financial awareness” is reflected in 18.0.23. In prior guidance sections, “financial awareness” seems to refer to general, broader financial literacy. But, in section 18.0.23, “financial awareness” refers primarily to specific insurance product information. We suggest the following edits clarify the intent. Since this guidance addressed education, information and disclosures by the intermediary, we suggest deleting the last bullet as this concept – engaging in broader, non-product specific education and information efforts – is addressed in 18.0.20 and 18.0.22.

A variety of means for consumer information, education and disclosure may be used by insurance intermediaries to promote consumer understanding of insurance products to better empower consumers to make informed purchase and use of insurance products, such as:

- explaining critical features of products which a consumer is most likely to be unaware of or have difficulty understanding, such as claim settlement provisions for non-life insurance products or guaranteed versus non-guaranteed elements in long-term investment type products.;
- providing references to specific websites or other reference material which gives relevant information, or publishing such material themselves;

- making available, or suggesting other sources of, financial tools such as on-line calculators which estimate premiums or coverage levels; or
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#### 18.0.24

We note with our support the use of the term “financial education” as opposed to “financial awareness” in this guidance. “Financial education” is far more meaningful here – and in other guidance – than “financial awareness.”

#### 18.0.25

We strongly support this guidance. We suggest it may be better placed directly before 18.0.23 as a logical lead-in to that guidance.

#### 18.0.26

Consistent with prior comments, we suggest the following, with the caveat that the ICP should be consistent when discussing broader financial education versus product-specific education, information and disclosures. In that spirit, this guidance may be better placed after 18.0.22.

Intermediaries’ initiatives to improve consumer financial education and consumer understanding of the role of insurance products for financial and economic security, resiliency and sustainability, where conducted with professionalism, may help to enhance both their own reputation and that of the insurance sector.

#### 18.1

The standard is that intermediaries be licensed. It would be useful to clarify either as part of 18.1.1 or in a new guidance following directly after 18.1.1: “Licensing refers to both initial authorization and to ongoing requirements for maintaining authorization to act as an intermediary.

#### 18.1.8

This guidance should be clarified to avoid the suggestion that supervisors have discretion in the application of requirements established by the legislature.

Pursuant to specific authority granted by the legislature, in specific, limited, objectively defined and consistently-applied circumstances, the supervisor may make exceptions to certain licensing requirements. The supervisor should ensure that any such exceptions do not encourage regulatory arbitrage, create unfair competition or increase the risk to consumers.

#### 18.1.10

This guidance seems to more appropriately placed under standard 18.2, perhaps following 18.2.1

#### 18.2.2

This guidance refers to a “risk-based approach” in reviewing on a targeted basis when licensees continue to meet licensing requirements. We find the term and the criteria in the second sentence to be vague. Further, what is the alternative supervisory approach to the “risk-based” approach and under what circumstances is one approach preferable to another. If the intermediary has an ongoing obligation to maintain the qualifications for the initial license, routine reporting, documentation and certification of the qualifications by the intermediary seems like a reasonable approach in an era of electronic reporting.

#### 18.2.5

See our comment on 18.2.9. The list of documents utilized for off-site monitoring can and should include documents related to the issues identified in 18.2.9.

#### 18.2.6

As phrase, this guidance suggests unauthorized discretion by the supervisor. We suggest:

If the intermediary is an employee of an insurer and the information provided by the insurer as part of the insurer’s regular reporting responsibilities meets all of the reporting requirements for the intermediary, separate reporting by the intermediary is not necessary.

#### 18.2.7

We strongly support this guidance.

#### 18.2.9

The list of on-site inspection considerations includes items for which documents can be provided to the supervisor and review can be performed off-site. We suggest this guidance better describe specific activities that can only be performed on-site, such as personnel interviews to confirm policies and procedures are being followed and to verify the accuracy of documents and data provided by the intermediary.

#### 18.2.10

It would be useful to clarify if the analysis of complaints cited in this guidance refers to complaints received by the supervisor, directly by the intermediary, and/or directly by insurers. In addition, this guidance seems better placed earlier – just before or just after 18.2.5 guidance on off-site reviews. It would also be useful to identify complaints received the insurers regarding the intermediary because the supervisor will need to obtain this information from the insurers who have appointed the intermediary.

#### 18.2.11

We suggest the following edits:

The supervisor may take a risk-based approach, where greater attention is focused on intermediaries selling products with greater likelihood of, or greater consumer harm resulting from, inappropriate sales practices. Examples include where:

- intermediation includes the provision of advice;
- the nature of the business intermediated is more complex;
- customers are less sophisticated;
- there is an increased likelihood of conflicts of interest and
- \* captive or add-on product markets.

#### 18.2.12

Is the intent of this guidance regarding “indirect supervision” that, in some jurisdictions, insurers are responsible for the actions of their intermediaries? 18.2.14 suggests such an interpretation. We believe the guidance on indirect supervision needs elaboration. For example, would indirect supervision apply to agency licensing whereby the supervisor relies upon an insurer to license an intermediary? Further, if an insurer is responsible for the actions of its intermediaries – for example, regarding sales of investment type life insurance and annuities performed with a standard of care that places the best interests of the consumer over the interests of the intermediary or insurer – examining the insurer to confirm appropriate sales practices of its intermediaries is not actually indirect supervision of the intermediary, but direct supervision of the insurer.

It may also be that in some jurisdictions, the supervisor does not license or directly supervise intermediaries. Consequently, indirect supervision is necessary. But the guidance in this section does not specify such a situation. Rather, the guidance from 18.2.13 through 18.2.16 suggests a discretionary approach by the supervisor.

For these reasons, we ask for clarification of the intent of these guidance sections.

#### 18.2.16

We ask for clarification in the guidance on self-regulatory organizations (SRO). In some instances a SRO is officially recognized by legislation or regulation to have specific responsibilities and authorities. One example is FINRA in the United States, which has been granted regulatory authority for broker-dealers selling securities. However, in other instances, a SRO is simply a trade association that has no regulatory authority, but otherwise attempts to improve the compliance performance of its members. Consequently, we ask for clarification of the phrase “that has the power to” in 18.2.16. Does power refer to regulatory authority from the legislature or simply SRO members’ agreement to adhere to the requirements of the SRO?

#### 18.2.7

We repeat our request for clarification set out in 18.2.16. Absent legislative authority, we do not believe a supervisor can delegate supervisory responsibilities to a non-governmental organization. In addition, the list of standards required before placing reliance on SRO functions should include a demonstration beyond the existence of policies and procedures intended to produce sound conduct of business and good consumer outcomes, but that those policies and procedures actually do produce the intended outcomes.

- has demonstrated that its policies, procedures and enforcement produce sound conduct of business and fair treatment of consumers.

#### 18.3.1

As discussed above, we suggest elaboration of “professional knowledge.” Individual carrying out the activity insurance intermediation are intermediaries.

It is essential that individual intermediaries have adequate professional knowledge of products and obligations to ensure fair treatment of consumers.

#### 18.3.8

We suggest that the list of pre-employment checks include actions by supervisory agencies or SROs.

#### 18.5.2

We suggest an additional consideration:

- the avoidance of unfair competition among intermediaries and among products arising from different disclosure requirements

#### 18.5.9

We strongly agree with this guidance.

#### 18.5.10

Numerous disclosures to a consumer may be confusing. The intermediary’s status is integral to the terms of business agreement, so it is unclear why separate disclosures should be suggested or permitted.

#### 18.5.14

We note that, as with information on intermediary status, the guidance on information to consumers on charging structures offers the option of integrated disclosure as part of the terms of business agreement or separately. In addition to the problem of multiple disclosures, the issue of timing of disclosures arises whereby the terms of business agreement might be provided at one point in time, the status information at another and the charging structure information as yet another time. In addition, the guidance does not specify that the disclosures be provided prior to the purchase decision or in a time frame that allows the consumer to utilize the information in the purchase decision.

For disclosure to be effective – meaning providing information in a format and at a time to empower the consumer – guidance must be more directed than simply provide a consumer with information. Poor disclosures – content or timing – can do more harm than simply fail to empower the consumer, but may serve as a liability shield for the intermediary or insurer against accountability to the consumer for unfair sales practices. We object to the provision of important information – like charging structures – in product documentation, which is likely to be understood as inclusion in the policy form or contract provided to the consumer following the purchase decision.



#### 18.5.15

The ability of the consumer to obtain information on intermediary compensation is important and a disclosure of this opportunity should be included in the terms of business agreement.

#### 18.5.16

We strongly support this guidance. However, to make this guidance meaningful – to allow a consumer to sufficiently understand the intermediary’s compensation to evaluate whether a conflict of interest may be skewing the product recommendation – the guidance in 18.5.15 should specify disclosure of intermediary compensation in sufficient detail to enable the consumer to compare intermediary compensation across different products and otherwise empower the consumer to evaluate potential conflicts of interest.

#### 18.5.17

We strongly support this guidance identify and avoid, or manage, conflicts of interest and deliver outcomes aligned with customers’ best interests. However, it is critical to state that the nature of the conflict of interest will largely dictate the appropriate action. The current guidance states that conflict of interest may be managed, for example through appropriate disclosure and informed consent from customers. For certain types of conflicts of interest, no disclosure is sufficient to allow informed consent or, more importantly, to meaningfully prevent the conflict of interest from causing consumer harm.

The supervisor should be satisfied that the intermediary has robust procedures in place to identify and avoid, or manage, conflicts of interest, and deliver outcomes aligned with customers’ best interests. Where they cannot be avoided, or managed satisfactorily, this would result in the intermediary declining to act. The ability for an intermediary to manage a conflict of interest will depend on the nature and severity of the conflict of interest. For minor conflicts of interest, appropriate disclosure and informed consent from customers may be sufficient. More severe conflicts of interest may require greater supervisory intervention. Examples include:

#### 18.7.2

We are concerned about “the exercise of judgment and discretion” and suggest the following:

The supervisory framework should allow for the exercise of judgement and discretion subject to legislative authority, and provide flexibility, subject to objective standards, in the use of preventive measures, corrective measure and sanctions. Such discretion should be utilized in an objective and consistent fashion to avoid unequal and unfair supervisory treatment across intermediaries and to ensure similar behavior by intermediaries receives similar supervisory treatment.

## **ICP 19 Conduct of Business**

### General Comment

We note that the terms “consumer” and “customer” are used throughout the ICP. We ask if a distinction is intended and, if so, what the intended distinction is.

#### 19.0.1

We suggest replacing “promote fair consumer outcomes” with “ensure fair consumer outcomes” and place this as the first bullet point.

We also suggest rephrasing the third bullet point to emphasize the operative role of the supervisor – creating a level playing field:

- create a level playing field for insurers and intermediaries, which supports a sound and resilient insurance sector where fair business practices vis à vis customers prevail.

#### 19.0.2

The first bullet refers to “interests of consumers.” We believe this phrase is vague and suggest the addition of “best” before interests to tie this bullet to the opening sentence of the guidance for fair treatment of consumers.

#### 19.0.3

We suggest replacing, in the last sentence, “acting in good faith” with “acting in the best interests of consumers.” We also suggest replacing “regulatory” approaches in the second sentence with “supervisory” approaches.

#### 19.0.4

We suggest adding the following at the beginning of the guidance.

The objectives of fair treatment of consumers do not vary across consumers. However, the requirements for the conduct of insurance business to achieve such fair treatment may differ depending on the nature of the customer with whom an insurer or intermediary interacts and the type of insurance provided. The scope of requirements – as opposed to reliance on market forces – for conduct of insurance business should reflect the risk of unfair treatment of customers, taking into account the nature of the customer and the type of insurance provided.

#### 19.0.6

We strongly support this guidance.

#### 19.10

The second sentence provides guidance to insurers and to supervisors. We suggest limiting the guidance to supervisors as follows:

Insurers sometimes outsource specific processes, such as claims handling, to third parties (including intermediaries). Where an insurer outsources processes, the insurer retains responsibility for those functions and the outcomes produced by the third-party service provider. The supervisor should ensure that insurers' policies and procedures in place for effective third-party service provider oversight.

#### 19.0.12

We generally disagree with this guidance, which reflects a perspective of prudential regulation instead of market regulation. Effective assessment of the quality of the conduct of insurance businesses requires collection and analysis of data on actual consumer outcomes in insurance markets. There is no guaranty – or evidence to support the proposition – that good strategies, policies, processes, procedures and controls – putting aside the problem of defining generic best practices – produce good consumer outcomes. There is no need to rely on process and procedure review as a proxy for consumer outcomes for market regulation – unlike the situation with prudential supervision – because there are billions of actual consumer market outcomes and transactions that can be collected and analyzed more efficiently and effectively than a process and procedure review.

On the basis of these comments, we suggest deleting 19.0.2 since the group consideration is adequately addressed in 19.0.13

#### 19.2.1

Following on our comment for 19.0.12, we suggest the following:

Supervisors should require insurers and intermediaries to have policies and procedures in place to achieve the fair treatment of customers and should monitor whether such policies and procedures are adhered to and that the policies and procedures result in fair treatment of consumers.

#### 19.2.2

It is unclear why retail customers are singled out in this guidance. We suggest replacing the current language with:

Supervisors should pay particular attention to policies, procedures and consumer outcomes for sales and claim settlement practices for personal insurance products because of, among other reasons, the asymmetry of information between the insurer or intermediary and the consumer.

#### 19.2.3

We support this guidance, but suggest that definitions of risk-based and rules-based approaches are necessary to make the guidance more meaningful. Also helpful would be an example of a risk-based approach and a rules-based approach to address a particular situation/problem. For example, what is a risk-based approach to preventing unsuitable sales of annuities? We note that this is the approach taken in 19.4.1

#### 19.2.4

This section appears to be guidance for insurers and intermediaries as opposed to guidance for supervisors. We have concern that this guidance imposes a supervisor's judgement for that of the Board and management of the insurer and involves the supervisor unnecessarily in the corporate governance of the insurer. While such requirements may be necessary and reasonable for prudential supervision (for which the number of empirical outcomes – insurer financial distress – are limited), process and procedure review and supervisor involvement in corporate should be driven by empirical analysis of actual consumer market outcomes and not sit as a default supervisory activity. Stated differently, if a review of actual insurer consumer market outcomes demonstrates good consumer outcomes, why is it necessary for the supervisory to examine and prescribe policies and processes for that insurer?

#### 19.2.5

Notwithstanding our comment on 19.2.4, we support 19.2.5. We suggest replacing “encourage insurers and intermediaries to” with “ensure that insurers and intermediaries.” Public availability of such information is essential for consumers to compare insurers on factors other than price. We also suggest that the policies and procedures referenced include “collection, protection and sharing of personal consumer information.”

#### 19.3.2

We find this guidance too limited.

Supervisory measures to prevent or respond to a breach of regulatory requirements by an intermediary may include action against insurers

- in the case of direct sales;
- where an insurer knowingly cooperates with an intermediary that is in breach of its regulatory requirements;
- when the insurer has failed to provide adequate oversight over the practices of the intermediary; or
- other situations for which the insurer has explicit responsibility for the actions of the intermediary.

#### 19.4.3

We disagree that consumer protection and innovation are at odds or mutually exclusive. We also suggest that supervisors' discretion is based on legislative authority.

If the supervisor has the responsibility to approve contract conditions or pricing and legislative authority for discretion in utilizing this approval authority, the supervisor should utilize such discretion based on:

- objective analysis of market power of consumers vis a vis insurers or intermediaries
- the extent of information asymmetry between consumers and insurers or intermediaries, and
- the potential for consumer harm measured both in terms of harm per consumer and the number of consumers harmed.

For example, supervisory approval of contract conditions or pricing is likely to be more appropriate in certain circumstances, such as where the insurer is dealing with less financially-capable or vulnerable customers, where products are new to the market or complex, or insurance contracts that are required by law such as automobile liability insurance or health insurance.

#### 19.4.4

We ask for clarification of “In such situations.” Are these situations in which in the supervisor is approving contract conditions or pricing? If so, it would be clear to state that since this guidance may be interpreted as situations in which consumer protection should be balanced against innovation (see our prior comment.)

#### 19.5

Standard 19.5 requires promotional materials be clear, accurate and not misleading. The guidance in 19.5.2 calls for an independent review of promotional materials to ensure these standards are met. Yet, the suggested independent review is for an insurer to review an intermediary’s promotional material or vice versa.

19.5.4 states that an insurer or intermediary should withdraw the promotional material if the insurer or intermediary becomes aware that the information fails to meet the required standards

19.5.5 states that promotional information is easily understandable, consistent with the result expected to be achieved by the customers of that product and not hide, diminish or obscure important statements or warnings.

We suggest the guidance of 19.5.5 be moved to follow directly after 19.5.1 since 19.5.5 because both provide guidance on the content of the material. 19.5.2 calls for the independent review. As part of 19.5.2, or in a separate paragraph, we suggest guidance for consumer testing to ensure the standards are met. For example:

The insurer or intermediary should utilize consumer testing to verify the promotional material meet the standards and outcomes set out in paragraphs 19.5.1 and (the relocated 19.5.5).

#### 19.6.2

We support this guidance. The key phrase in this guidance is “where insurers use intermediaries for the distribution of insurance policies.” When an insurer uses an intermediary to distribute the insurer’s products, it is reasonable and necessary for the insurer to ensure that the intermediary is providing clear and adequate pre-contractual and contractual information to customers. This is true regardless of the type of intermediary. This guidance is particularly important to prevent regulatory arbitrage in which an insurer uses a particular type of intermediary to avoid responsibility for the intermediary’s action on behalf of the insurer. Just as with any third-party service provider, an insurer retains responsibility for the function that the insurer is outsourcing.

## 19.6

The guidance for this standard includes a number of principles for consumer information and disclosure, including:

- fair
- clear
- simple
- not misleading
- durable
- accessible
- plain language
- standardized format
- sufficient to enable consumer understanding
- level of information varies based on consumer and product characteristics
- minimum content of the disclosure
- product information sheet

We suggest the addition of guidance for consumer testing of the pre-contractual and contractual information to consumers to verify that the information provided is meeting principles and standards for this information. In the absence of consumer testing prior to use, there will be an assumption that the information provided to the consumer does meet the principles and standards – unless the assumption is disproved when consumers find they did not understand key product features following the purchase. In many instances, when the consumer discovers she has not understood key features, it will be far too late to remedy the situation because of the delay between purchase and use (e.g., claim or benefit distribution) of the product. Consequently, we suggest that consumer testing by the insurer or intermediary is an essential guidance for several reasons – to ensure consumer understanding and protection, for the insurer to verify the information meets the principles and to provide the insurer with evidence to present to the supervisor that information and disclosure principles have been met.

### 19.6.3

Given the common problems associated with point-of-sale transactions for add-on insurance products (like consumer credit insurance or payment protection insurance) and the ability of consumers to understand and process information about complex investment-type insurance products, we suggest some additional guidance is useful.

In determining the timing of provision of information to consumers, the insurer or intermediary should consider whether the consumer may feel pressured to make a purchase and the amount of time needed for the consumer to comprehend the information.

### 19.6.4

Paragraphs 19.6.4 through 19.6.9 come under the heading “clear delivery of information to customers.” Yet, paragraphs 19.6.4, 19.6.6, 19.6.7 and 19.6.8 provide guidance on the content of the disclosure – just as paragraphs 19.6.10 through 19.6.17. Paragraph 19.5 alone describes the method of providing the information, which is also the topic of paragraphs 19.6.18 through 19.6.22.

Consequently, it is not clear how the heading for the guidance in paragraphs 19.6.5 through 19.6.9 relates to the actual guidance or why some of the guidance in these paragraphs is not included in other sub-heading groups.

#### 19.6.11

This paragraph states that the level of information will vary according to a variety of product, consumer and sales characteristics. It is important that, regardless of these factors or characteristics, the consumer outcome is the same – she receives information necessary for an informed purchase in a manner and content which empowers the consumer to make such an informed purchase. We suggest deleting “the level” as this suggests some lesser information is suitable for some products when in fact, the level of information required is the same – information sufficient to meet the guidance of 19.6.10. We also suggest adding guidance for consumer testing to ensure that the guidance of 19.6.10 is met.

#### 19.6.12

The introductory phrase does not make sense and should be deleted because this guidance describes minimum product feature disclosure. In addition, the sub-heading “disclosure of product features” suggests pre-purchase disclosure while the information described would typically be provided in the insurance policy or contract.

Disclosure of key product features should include, at a minimum:

#### 19.7.2

We suggest the following addition to make clear that the goal is to provide advice in the consumer’s best interest not simply to obtain information about the consumer.

Insurers and intermediaries should seek the information from their customers that is sufficient and appropriate for assessing their insurance demands, needs and best interest, before giving advice.

#### 19.7.4

We support the guidance in this paragraph that even if no advice is given, the supervisor may require the insurer or intermediary to take into account the nature of the product and the customer’s circumstances and needs. An example of this type of situation is the sale of consumer credit insurance – a product for which advice is not given, but for which the common occurrence of unfair and abusive sales makes this guidance relevant and necessary.

#### 19.7.8

We suggest the following:

There should be a responsibility on the insurer and the intermediary to promote quality advice in the best interest of the consumer.

## 19.8

We strongly support the standard and associated guidance. Although all the guidance is important, we want to highlight the guidance describing the limitations of disclosure / “informed consent” as a means of managing a conflict of interest. While certain types of conflicts of interest can be managed through disclosure because, in these situations, disclosure will empower a consumer, there are other, more severe conflicts of interests for which disclosure cannot empower a consumer to informed consent. These more severe conflicts of interest include compensation arrangements too complex for a consumer to understand from simple disclosure or captive markets for add-on insurance for which sales pressures can overwhelm “informed consent.”

We note that in draft comments on this ICP, the NAIC proposed comments in these and other key sections of 19.8. We strongly disagreed with the draft NAIC comments and submitted the attached comments to the NAIC which we include for consideration by the Market Conduct Working Group. We particularly disagree with NAIC comments to replace “best interests” of the consumers with simply “interests” of the consumers and with the NAIC comments on inducements. Please see our attached comments to the NAIC.

## 19.10

We strongly support this standard and guidance, but suggest additional guidance is needed to ensure transparency and accountability.

In an era of Big Data, fair and transparent claims handling and claims dispute resolution procedures require insurer disclosure of relevant information to the consumer. For example, if the insurer collects information from a consumer’s vehicle, property, mobile phone or wearable device and the insurer may utilize that information in assessing a claim, the consumer should also have access to the information to avoid asymmetric use of such data by the insurer.

We also suggest that in an era of Big Data, for non-life insurance, insurers have the ability to utilize price optimization techniques to settle claims on bases other than the objective value of the claim, including, for example, a consumer’s willingness to accept a settlement amount at a particular point in time.

Consequently, we suggest additional guidance:

Insurers should provide claimants with the information and methodology used to develop the claim settlement proposed by the insurer. Insurers should not withhold information from claimants that would prevent the claimant from exercising his or her contractual or legal rights.

### 19.10.1

We support the reference to avoid conflicts of interest in 19.10.1. Such conflicts can occur, for example, when the intermediary (e.g. a lender or managing general agent) is involved with or manages the claims handling for the insurer and the intermediary has a profit-sharing arrangement with the insurer.



#### 19.11.1

We suggest the following to distinguish between a consumer complaint to an insurer or intermediary and, say, a tweet with a complaint.

A complaint can be defined as an expression of dissatisfaction by a consumer or the supervisor to an insurer or intermediary about the service or product provided by an insurer or intermediary.

#### 19.12

We strongly support this standard and guidance. We suggest that additional guidance be included to address to two key data protection aspects:

- Prior to collecting any information about a consumer as part of the sales transaction, the insurer should disclose to the consumer prior to collecting information about the consumer, the specific types of information the insurer will obtain about the consumer from the consumer and from third parties.
- The insurer should disclose to the consumer upon request by the consumer and on a routine basis not less than annually, the specific types of personal consumer information the insurer and its third party service providers have collected and maintain about the consumer.
- The insurer should have policies and procedures in place in the event that the personal consumer information used or maintained by the insurer is lost or stolen to provide prompt notification to the consumer following the data breach and to provide assistance to the consumer to remediate the effects of the data breach.

#### 19.13

We suggest the addition of the following guidance, which supplements the guidance of 19.13.5.

The supervisor should collect and publish information about insurer market performance and consumer outcomes to enable consumers to compare the performance of insurers on features other than price for features of a product. Insurer-specific consumer outcome information should include complaints, claim settlement outcomes and sales outcomes. The publication of anonymized consumer outcome data may be used by individual consumers or by third-party innovators developing consumer shopping tools with the goal and effect of empowering consumers.