



IRISH FINANCIAL SERVICES  
REGULATORY AUTHORITY

# Consumer Protection Code

February 2005

CONSULTATION PAPER CP10

## Reason for this consultation

In March 2004 the Financial Regulator published Consultation Paper CP2 entitled "Review of Conduct of Business Rules for Financial Services Providers". This paper sought the views of the financial services industry, its customers and consumer representative groups on codes of practice that would help protect consumers in their dealings with financial services providers. The paper concentrated on the structure, application and general content of future consumer protection codes rather than on the detail of the individual rules. We received 42 submissions on that paper - 18 from regulated entities, 13 from trade representative bodies and 5 from consumer groups. Six individuals also made submissions.

We have now developed the detailed content of what we call the "Consumer Protection Code" (Code), which is set out in draft form in this consultation paper. It is a single Code covering all financial services providers. It comprises a set of general principles and some rules that are common to all regulated entities. It then covers different types of financial services such as banking, lending, insurance and investments. Rules relating to the advertising of financial services are also included.

# This Paper

Our mission is to help consumers make informed choices in a safe and fair market. We do this by helping consumers to make informed choices through the provision of information to educate them and through developing and enforcing codes of practice which seek to ensure that financial services providers act in a fair and transparent way.

This paper has two parts. Part 1 considers some of the issues raised in the earlier consultation and highlights some of the new initiatives set out in the Code.

Part 2 contains the proposed Code. We are seeking your views on its content and whether you think it will enhance protection for customers of financial services providers. We want your views as to whether it meets our aims, which are:

- to ensure a consumer focussed standard of protection for buyers of financial products and services;
- to ensure the same level of protection for consumers regardless of the type of financial services provider they choose;
- to facilitate competition by ensuring a level playing field.

# PART 1

## ***Key Influences***

We, the Financial Regulator, are a principles based regulator and the Code is drafted to reflect that position. We believe that rules alone will not help consumers in their dealings with financial services providers. By setting out principles we are stating our broad expectations as to how financial services providers should interact with their customers. These principles should be reflected in all aspects of the financial services provider's business dealings with customers. The Code comprises general principles and more detailed rules designed to enhance understanding of and compliance with those general principles. In all circumstances the overriding obligation of regulated entities is to adhere to the letter and spirit of the general principles.

In creating the Code we have tried to take account of the different legal frameworks, both European and domestic, that the various regulated entities operate under and the evolving nature of those legal frameworks. In addition, we need to ensure that the Code fosters competition by creating a level playing field and does not discourage new players from entering the different markets. The overall purpose of the Code is to ensure that regulated entities treat their customers fairly.

We have also been guided, in drawing up the Code, by the Government's six core principles for better regulation, i.e. necessity, effectiveness, proportionality, transparency, accountability and consistency.

## ***Enforcement and Compliance***

A code can only be effective when it is properly enforced and compliance with it is monitored regularly. The Code will require all regulated entities to have adequate systems and controls in place to ensure compliance with the Code and other applicable consumer protection legislation. Responsibility for compliance will rest with the board and management of a regulated entity. The Financial Regulator monitors compliance by means of a consumer focussed inspection programme, through information brought to its attention by customers and by ensuring that directors and managers are fully responsible for compliance with the Code. A consultation on the responsibilities of directors and those charged with corporate governance to prepare compliance statements will take place later this year.

Failure to comply with the provisions of the Code and other applicable consumer protection laws will be subject to possible sanction under the administrative sanctions programme currently being developed. We are currently engaged in a consultation process on the administrative sanctions programme. This consultation paper is available at [http://www.ifsra.ie/data/CP\\_Files/Consultation\\_paper.pdf](http://www.ifsra.ie/data/CP_Files/Consultation_paper.pdf) and the closing date for submissions is 28 February 2005.

## ***Scope of Code***

The Code is a consumer protection code only. It does not contain, as the existing codes do, any prudential rules relating to issues such as the authorisation, solvency or reporting requirements of financial services providers. This is a deliberate decision to ensure that the Code is accessible to consumers and that they can easily understand the protections and remedies available to them. The Code will not restate, unless absolutely necessary, any provisions provided for in consumer protection legislation except where we feel that a statutory requirement that applies to one sector can be usefully extended to another sector in the interests of creating a level playing field and further protections for consumers.

The Code is set out to apply to regulated entities who provide services to all classes of customer apart from the exceptions discussed below. This means that the Code will protect not just individuals but businesses and companies. For this reason we have used the term “customer” in the Code rather than “consumer” because current definitions of consumer tend to refer to “natural persons”.

## ***Private customers***

We recognise that not all **customers** have the same level of knowledge and experience of financial services and products. These range from those with little or no experience of buying a financial service or product to others, such as large corporate entities, who are in a position to analyse and understand the risks that they are likely to incur. For this reason we are proposing that the Code should apply to financial services providers only when they provide services to, what we call, “private customers”. We consider a private customer to be a person who needs some form of assistance or advice to understand fully the risks involved when they seek to buy a financial product or service. We have defined a private customer as a customer who does not meet the definition of a professional customer as defined in EU law while ensuring that certain smaller organisations such as credit unions can avail of the protections afforded by the Code.

***Q Do you agree with this approach?***

***Q If not, please indicate the parts of the Code that should apply to professional customers.***

## ***To whom should the Code apply?***

The Code will apply to all financial services providers when operating in the State. In line with the structure of the European single market in financial services these firms fall into three main groups:

- those authorised by us, the Financial Regulator;
- those authorised in another European Union (EU) or European Economic Area (EEA) country that have at least one branch in Ireland ('establishment firms');
- those authorised in another EU or EEA country that provide services into Ireland without setting up a physical presence in the country ('passporting firms').

The types of financial services providers to whom the Code will apply are:

- Credit Institutions (Banks and Building Societies)
- Insurance Companies
- Stockbroking Firms (see below)
- Investment Business Firms
- Insurance Intermediaries
- Moneylenders (see below)
- Mortgage Intermediaries
- Credit Unions (see below)

## ***Moneylenders***

Moneylenders are subject to detailed statutory obligations set out in the Consumer Credit Act, 1995 covering the content of moneylending agreements and the information to be provided to customers. These requirements give certain protections to customers of moneylenders and the Code contains some provisions intended to enhance those protections. The number of customer complaints is very low. We are conscious that loan amounts provided by moneylenders are generally small and that regulation can have a disproportionate impact on the cost to moneylenders of providing services. We accept that not all of the common rules should apply to moneylenders.

***Q. We would ask you to consider which rules, if any, should apply to moneylenders having regard to their customer base which does not always have access to the same services from other financial services providers.***

## ***Credit Unions***

In addition to their savings and loans services, credit unions are permitted by law to provide certain other financial and non-financial services to members. When providing these additional services, credit unions must comply with the legislation applicable to the provision of that service and so the existing codes apply to credit unions when providing non-core financial services such as acting as an insurance intermediary. They do not apply where a credit union provides its core savings and loan services to members. It is our view that the Code should apply to all services provided by regulated entities, including credit unions, because credit union members are entitled to the same protections afforded customers of other financial services providers. The Financial Regulator has a detailed programme of enhancements to the supervision of credit unions planned for the coming year and we intend to concentrate on implementing that programme as our first priority. We therefore propose that the Code will apply to credit unions when providing non-core services only, while also advising that we intend to commence discussions with the credit union movement as to how to apply the Code to other areas of credit union business. For this reason, the Code will not apply to the core services of credit unions in 2005 but discussions would commence with a view to applying the Code in 2006.

***Q Please let us know the extent to which you think the Code should apply to credit unions and how soon it should apply.***

## ***Stockbroking firms***

Supervision of compliance with the conduct of business rules for stockbrokers, other than advertising rules, is currently undertaken by the Irish Stock Exchange as provided for by the Stock Exchange Act, 1995. The rules are subject to the approval of the Financial Regulator. The advertising section of this Code is the only part that will apply to stockbrokers.

The Irish Stock Exchange is aware that the review of codes by the Financial Regulator is underway and that the outcome of the review and public consultation may have implications for the provisions set out in its rules. This matter will be discussed with the Irish Stock Exchange during the forthcoming consultation with a view to ensuring an approach and level of protection for investors consistent with this Code.

## ***Previous Consultation***

In the previous consultation paper we asked for your views on a number of general issues and some more specific issues. The consultation paper asked two key questions:

- 1. should the Code be principles based or rules based?***
- 2. should the Code be structured by reference to products or regulated entities?***

## ***Principles or Rules?***

There was an almost unanimous preference for a principles based approach but most respondents felt that the principles should be supplemented with more detailed rules that would more clearly facilitate an understanding of the Code by both the practitioners and customers. Some industry respondents felt that with the development of the administrative sanctions programme it was important that the Code be drafted in such a way to enable them to develop compliance systems would withstand regulatory scrutiny. The Code sets out both general principles and some detailed rules which are an elaboration of those general principles. Each rule is linked to one or more general principles to facilitate a principles driven form of compliance.

## ***Products or Regulated Entities***

Most respondents favoured a Code structured under various product types rather than by regulated entity type. The key arguments in favour of this approach were:

- a) there has been a blurring of the distinction between providers of financial services,
- b) our stated aim to provide the same level of protection for customers regardless of the type of financial services provider they choose and
- c) customers are interested in the service provided rather than the legal classification of the provider or seller.



Bearing this in mind, the Code comprises general principles and a series of more detailed rules which are an elaboration of those general principles. There is a chapter of common rules that apply to all regulated entities and then a series of chapters covering products and services under broad headings such as banking, lending, insurance and investments. The structure of the Code means that where a specific rule applies it applies to all providers of that product or service irrespective of the legislative basis under which that regulated entity operates. However, in certain cases some rules apply only to certain classes of regulated entity.

***Q Do you agree with the structure and chapter headings of the Code?***

***Q If not, how should the Code be amended?***

## ***Other Matters***

The Consultation Paper CP2 also suggested a number of other matters that could be considered.

### ***unsolicited contact ('cold-calling')***

It was generally accepted that, in the interests of the prevention of pressure selling to customers, there is a need for some restrictions on cold-calling although there is a counter argument that it can restrict competition and be a barrier to entry. There was a concern to ensure that some providers do not gain an unfair advantage over others on the basis of size or the range of services they provide. The existing rules permit unsolicited contact where "the regulated entity has within the previous twelve months, provided advice or a financial service to the customer". It has been suggested that this permits a firm to contact a person to offer a product totally unrelated to the existing service and favours the larger firms. The Code attempts to address this issue by requiring that the previous service must be "similar to the proposed purpose of the cold-call".

***Q Do you agree that the current rules favour the larger providers?***

***Q If you agree, do you think the proposed change can resolve the difficulty?***

***Q If not, what rules would you like to see included in the Code?***

### ***handling complaints***

It was generally felt that the issues raised in the Consultation Paper CP2 were essential components of any complaints procedure and the important thing is that customers know where, how and who they can complain to. General principle 8 requires firms to handle complaints speedily and efficiently and common rules 47-50 specify minimum timeframes within which complaints must be considered. Since we commenced this review the Financial Services Ombudsman Council has been established and we will work with the Council and the Ombudsman, when appointed, to establish a fair and equitable complaints handling regime.

***Q Are the complaints handling procedures sufficiently comprehensive to ensure that customers will be treated fairly?***

### ***advertising rules***

There were differing views on the value of the regulatory disclosure statement. Industry representatives, who responded to this question, felt that, while the statement would not create the impression that the Financial Regulator endorses the product or entity being advertised, the current disclosure statement, particularly for intermediaries, took up too much time in radio advertisements, and that time could be better used to give more detail on the product or service. The Code simplifies the disclosure for intermediaries by requiring that the disclosure take the following form for all regulated entities, other than tied agents:

***“Legal name of firm, trading as (if applicable) is regulated by the Financial Regulator”.*** Tied agents will be required to disclose the name of the entity to which it is tied.

Chapter 7 of the Code sets out advertising requirements that apply to all regulated entities. This chapter is structured along similar lines to the full Code in that it comprises some general principles and requirements specific to different sectors.

### ***certifying information***

There was a view that requiring a firm to obtain certification from customers that the information they provide is accurate may protect the regulated entity more than it protects the customer. However, we are strongly of the view that a customer must provide correct information and be in a position to confirm that the information supplied is correct. Only when the information provided is accurate can a regulated entity recommend a product that suits a persons needs. The provision of a suitable product is critical to consumer protection and for that measure to be extended fully it is imperative that the information is accurate and can be trusted. This is particularly the case in respect of a mortgage which is the largest single financial decision most customers will make. It is our view that the regulated entity should endeavour to have the customer confirm that the information supplied is accurate. We believe that this will raise the customer's awareness of the importance of supplying correct information.

***Q Do you think that certifying the accuracy of the information supplied will benefit customers?***

### ***financial access***

The issues raised under this heading related to the elderly, those without access to or familiarity with technology and the specific forms of identity required by financial institutions to open accounts. The Code seeks to address these issues through General Principle 11 and common rules 1 and 2. They require regulated entities to broaden the types of identification documentation acceptable for opening an account by using all forms of documentation referred to in the Prevention of Money Laundering Guidelines and also require that the use of technology should not be used as a barrier to access. Warnings suggested by the Law Reform Commission in respect of equity release schemes are also included.

***Q Do you believe that the relevant provisions of the Code will give vulnerable persons easier access to financial services and a better understanding of any risks they might incur?***

***Q Can a code be developed that would prevent the use of technology from acting as a barrier to access while still facilitating and encouraging the use of different delivery channels? Could such rules prevent firms from delivering their services solely via the Internet?***

### ***voluntary codes***

Many respondents felt that voluntary codes have a role in a regulatory framework by complementing the statutory codes. There are concerns however, about the effectiveness of their enforcement.

The Financial Regulator welcomes the launch by the members of the Irish Bankers Federation of a voluntary switching code that became operational on 31 January 2005. We believe that this promotes healthy competition and represents a significant consumer protection measure. We will monitor the operation of the switching code, and in order to keep informed of the progress of its implementation and effectiveness will attend, in an observer capacity, meetings of the IBF sub-committee on switching. We also intend to publish information on the effectiveness of the switching code, and on the performance of the individual banks in this regard, in the report of the Consumer Director that will be contained in the Annual Report of the Financial Regulator for the year ended 31 December 2005.

In the context of the Code, the Financial Regulator believes that the issue of effective enforcement would be facilitated by making failure to comply with the switching code subject to the administrative sanctions regime. This may be best accomplished by incorporating the switching code as it now exists into the Code. We consider that any additional costs which compliance with a statutory code would impose on firms, over and above the costs which compliance with a voluntary code would carry, should be negligible. This consultation process invites your views on whether it is preferable that the issue of switching should be incorporated into the Code.

***Q How do you think compliance with the voluntary code could be enforced?***

***Q Do you think that the switching code should be incorporated into the Code at this time?***

### **New Measures**

The Code contains a number of enhancements that we believe will benefit consumers and contribute to a more open financial services sector. Some of the new items are:

1. For the first time the Code includes requirements in relation to banking services and mortgages; (Chapters 3 & 4)

***Q Are there any additional requirements that could be included that would improve the delivery of banking services to customers?***

2. The requirement to prepare a written factfind and provide a statement of suitability ('reason why') will apply to all regulated entities, including lenders, and not only to insurance and investment intermediaries; (Common Rule 18 and 25)

**Q** *Do you believe that the obligation to explain the recommendation in writing will improve the quality of advice given to customers?*

**Q** *Do you think that this requirement should apply to all products and services or are there some services for which it would be unnecessary or disproportionate?*

3. Provisions in relation to the handling of insurance claims have been included; (Chapter 5)

**Q** *Do you think that these rules will facilitate customers in having insurance claims considered more efficiently?*

4. Standardised complaints procedures for all types of regulated entities will keep customers informed of the status and progress of a complaint; (Chapter 2 Rules 47-50)

**Q** *Are the time frames set out in the complaints procedures appropriate and achievable?*

5. Provisions in relation to personal lending will include:

- a prohibition on unsolicited pre-approved credit; (Chapter 4, Rule 1)
- a requirement that payment protection insurance be quoted separately from loan repayments and not as a single price; (Chapter 4, Rule 6)
- a requirement that, when providing a consolidated loan, a **customer** must be advised of the total cost of credit of both the new single loan and the cost of continuing to service the existing debts that are subject to consolidation. (Chapter 4, Rule 11)

**Q** *Do you think that the provision of unsolicited credit is a cause for concern? Are people borrowing money on the basis of an unsolicited approval that they may not otherwise have borrowed and may have difficulty in repaying?*

**Q** *Are customers aware of the cost of payment protection insurance and the possibility that they are borrowing the premium in addition to the loan amount?*

***Q Do you think that customers understand the full cost of consolidating loans into a single loan, usually a mortgage? Is there other information that could be provided to them such as advising that they may be deciding to repay a loan over a longer period of time?***

6. Renewal notices currently required for motor insurance to be issued for other forms of non-life insurance at least 15 days before renewal date; (Chapter 5, Rules 11-17)

***Q Would this measure encourage people to shop around for other forms of insurance such as home insurance if they receive a renewal notice advising of the cost of renewal terms?***

## Future Developments

During 2004, we carried out a consultation process in relation to the marketing and sale of tracker bonds (CP4). The rules we propose to introduce for tracker bonds have been incorporated into this Code as many of the provisions applying to trackers also apply to other forms of investment products. We are currently engaged also in public consultation on a "Review of Remuneration Structures and Transparency" (<http://www.ifsra.ie/>). Issues of transparency relevant to the Code may arise from this consultation process and may have implications for the content of the Code.

### **Key Features**

Arising out of the consultation on tracker bonds, we have developed a key features document to explain to customers, in a clear and upfront way, the principle features of the particular tracker product (Appendix 4 of the Code). We believe that this initiative could be usefully extended to other financial products and services. Following the implementation of the Code we will work on developing measures to highlight for customers the key features of particular financial products. We would welcome views on the usefulness of a key features document for other services. Please indicate the features that you think might usefully be included in any key features document and the types of products that may be best suited to this approach. The principal advantage of a key features document is that it would give a customer clear and succinct information on the nature of the product and the risks and benefits associated with it. The major downside could be information overload, i.e. the amount of information that is required to be given to a customer may deter the customer from reading it.

### ***Categories of Intermediaries***

Many respondents who commented felt that the classifications of insurance intermediaries into Multi-Agency Intermediaries and Authorised Advisors was confusing and did not provide clarity for customers. These categories were introduced in 2001 following detailed discussions with the insurance sector. We are very well disposed towards the simplification of the terminology used to classify intermediaries provided it would facilitate customers in understanding more clearly the range of services that the different types of intermediary can provide. The issue is not addressed as part of this consultation on the Code. Changes to the categories are likely to require some legislative change, particularly if the term 'broker' is used. We will consider this matter further during 2005 particularly in the context of the recently introduced Insurance Mediation Directive Regulations.

### ***Developing and Managing the Code***

In our Strategy For 2005, we indicated that we will publish the Code in September 2005. However, we do not believe that our work will be finished then. It will be important to ensure that the Code remains relevant and effective. We will monitor the impact of the Code on an ongoing basis to ensure that we can react to developments in financial markets and consumer protection mechanisms. Before the final version of the Code is published we will consult with the National Adult Literacy Agency to ensure that it is written in plain English.

## Making your Submissions

The closing date for submissions is 15 April 2005. We welcome submissions from all interested parties. You can comment on the entire Code or on specific sections of it in which you have an interest or suggest items for inclusion that are not included in the Code. Please make your submissions in writing and, if possible, by e-mail or on disk.

When addressing any requirement in the Code please indicate the specific requirement you are referring to. If you are raising an issue not included in the Code please indicate this in your submission.

We place a high value on the openness of the consultation process. We intend to make all submissions available on our website after the deadline for receiving submissions has passed. For this reason we would ask you not to include commercially or personally sensitive material in your submission. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions. In some cases it may not be possible to publish the submission at all. Despite the approach outlined above, we make no guarantee not to publish any information that you deem confidential. So be aware that, unless you clearly identify any commercially or personally sensitive information, you are making a submission on the basis that you consent to it being published in full. We will not publish any material that we deem potentially libellous.

Please clearly mark your submission 'Consumer Protection Code' and send it to:

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# PART 2 Consumer Protection Code

## SCOPE

The Consumer Protection Code ('Code'), is issued in accordance with Section 33 (S)(6) of the Central Bank Act, 1942 (as amended) and applies to entities regulated by the Irish Financial Services Regulatory Authority by virtue of powers derived from the following pieces of legislation:

- Central Bank Acts 1942 – 1997
- Investment Intermediaries Act 1995
- Consumer Credit Act 1995
- Stock Exchange Act, 1995
- Insurance Acts 1909 – 2000
- Relevant Statutory Instruments

The Code applies to the activities of all financial services providers operating in the State including any financial services provider authorised in another EU or EEA Member State and providing services into this State on a branch or cross-border basis. The types of entities that the Code cover include:

- Credit Institutions (Banks and Building Societies),
- insurance undertakings,
- Stockbroking Firms<sup>1</sup>,
- Investment Business Firms,
- Insurance Intermediaries,
- Moneylenders,
- Mortgage Intermediaries and
- Credit Unions when providing additional financial services (i.e. other than savings and loan services).

The consumer protection framework for regulated entities comprises this Code and any other legislation applicable to the products or services they provide.

The provisions of this Code come into effect in full on 1 October 2005. The Financial Regulator acknowledges that regulated entities will need some time to amend systems and procedures and to train staff. In any event they must be fully compliant by 31 March 2006. However, regulated entities are expected to be compliant with all regulatory requirements previously contained in a Code of Conduct or Handbook issued by the Central Bank or Financial Regulator and which have been incorporated into this Code, during the interim period.

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<sup>1</sup> Only the Advertising Requirements of this Code apply to stockbroking firms as the conduct of business rules for stockbrokers are issued by the Irish Stock Exchange.

The provisions of this Code apply to regulated entities only when providing services to ***private customers***.

Regulated entities should also be aware that this Code does not take away from their other statutory obligations pertaining to their business activities as contained in other legislation.

Where a requirement of this Code conflicts with a requirement of any voluntary code to which the regulated entity has subscribed, the requirement of this Code must apply.

All references to the Financial Regulator in this Code means the Irish Financial Services Regulatory Authority.

All references to services throughout the text include the provision of advice where appropriate.

The Financial Regulator has the power to administer sanctions for a contravention of this Code, as described in Part IIIC of the Central Bank Act, 1942.

Please refer to the Definitions section for any term shown in bold and italics throughout this text.

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# CHAPTER 1

## GENERAL PRINCIPLES

A regulated entity shall ensure that in all its **regulated business activities** it:

- 1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;
- 2 acts with due skill, care and diligence in the best interests of its **customers**;
- 3 does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service provided;
- 4 has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code and other applicable consumer protection legislation;
- 5 seeks from its **customers** information relevant to the service requested;
- 6 makes full disclosure, in a way that seeks to inform the **customer**, of all relevant material information to the **customer**, including all fees, **charges** and commissions, before acting on behalf of a **customer**;
- 7 seeks to avoid conflicts of interest and, when they cannot be avoided, fully discloses the potential conflict and ensures that **customers** are treated fairly;
- 8 corrects errors and handles **complaints** speedily and efficiently;
- 9 does not exert undue pressure or undue influence on a **customer**;
- 10 retains full responsibility for any **outsourced activity** and ensures that the providers of such outsourcing are able to perform these functions reliably, professionally and in the best interests of its **customers**;
- 11 does not, through its policies, procedures, or working practices, create a barrier of access to financial services;
- 12 complies with the letter and spirit of all regulatory requirements applicable to the conduct of its business activities.

# CHAPTER 2

## COMMON RULES FOR ALL REGULATED ENTITIES

### ACCESS

- 1 A regulated entity should not deny a **person** access to financial services solely on the grounds that they do not possess a particular type of specified identification documentation. (GP 11)
- 2 A regulated entity must ensure that its use of technology does not, inadvertently or otherwise, result in a barrier of access to financial services for those without access to computers. (GP11)

### CLIENT'S BEST ADVANTAGE

- 3 In entering into a transaction with or on behalf of a **customer**, a regulated entity must ensure that it acts to the **best advantage** of the **customer**. (GP 1 & 2)

### INFORMATION TO BE PROVIDED TO CUSTOMERS

- 4 A regulated entity shall draw up its **terms of business** and shall give each **customer** a copy prior to providing the first service to that **customer**. The **terms of business** shall set out the basis on which the regulated entity provides its services and shall include at least the following:
  - a) the legal name, trading name (if any), address, and contact details of the regulated entity,
  - b) the identity of the financial **group** to which the regulated entity belongs if any,
  - c) confirmation that the regulated entity is authorised and the name of the **competent authority** that has authorised it,
  - d) a description of the services that the regulated entity provides,
  - e) a statement setting out the **charges** imposed by the regulated entity, if any,
  - f) the regulated entity's policies in relation to conflicts of interest where they cannot be avoided,
  - g) an outline of the action and remedies which the regulated entity or the relevant **product producer** may take in the event of default by the **customer**,
  - h) a summary of the **complaints** procedure operated by the regulated entity,
  - i) if the regulated entity is a member of a compensation scheme, the name of the scheme and the nature and level of protection available from the scheme. (GP 1 & 6)

- 5 A regulated entity must give its terms of business to the **customer** separately from any other documentation. (GP 2 & 6)
- 6 Where a regulated entity changes its **terms of business**, it shall advise each **customer** of the change before providing that **customer** with the next service. (GP 2 & 6)
- 7 A regulated entity must ensure that all information provided to **customers** is clear and comprehensible, and that key items are given due prominence. The method of presentation of the information must not disguise, diminish or obscure important warnings or statements. (GP 1, 3 & 6)
- 8 In supplying information on a timely basis a regulated entity must take into consideration:
  - a) the urgency of the situation,
  - b) the time necessary for a **customer** to absorb and react to the information provided. (GP 1, 3 & 6)
- 9 Where a regulated entity accepts an instruction from a **customer** that is subject to any condition imposed by the **customer**, it shall maintain a written record of the condition to which the instruction is subject. (GP 1, 2 & 4)
- 10 Where a regulated entity proposes to withdraw or amend its services it must give adequate written notice to affected **customers** to enable them to make alternative arrangements and must ensure that any outstanding business is properly completed. (GP 1 & 6)
- 11 A regulated entity must ensure that, where applicable, documents conferring ownership rights e.g., share certificates etc. are given to **customers** in a timely manner or are held for safekeeping under an agreement with the **customer**. (GP 2 & 4)
- 12 Where a regulated entity intends to record a telephone conversation with a **customer**, it must advise the **customer**, at the outset of the conversation, that it is being recorded. (GP 1, 2 & 6)
- 13 A regulated entity shall provide a **customer** with an appropriate receipt for each negotiable or non-negotiable instrument presented by the **customer**. (GP 4)
- 14 A regulated entity must issue a written acknowledgement to the **customer** for each direct debit or payroll deduction mandate received. (GP1 & 4)
- 15 Where a regulated entity communicates with a **customer** using electronic media, it shall have in place appropriate arrangements to ensure the secure transmission and receipt of the communication. (GP 1 & 4)

## PRESERVATION OF CUSTOMER'S RIGHTS

- 16 A regulated entity must not, in any communication or agreement, except where permitted by applicable legislation, seek to exclude or restrict any legal liability or duty of care to a **customer**, which it has under applicable law or under this Code. (GP 1, 2 & 12)
- 17 A regulated entity must not, in any written communication or agreement, seek to exclude or restrict -
- (a) any other duty to act with skill, care and diligence which is owed to a **customer** in connection with the provision to that **customer** of financial services; or
  - (b) any liability owed to a **customer** for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service. (GP 1, 2 & 12)

## KNOWING THE CUSTOMER

- 18 Before entering into a relationship with a **customer**, a regulated entity must complete a written **factfind** which details the **customer's** objectives, financial knowledge, investment experience and any other facts about the **customer's** financial position which the regulated entity reasonably believes it needs to know, and ought reasonably to be expected to attempt to find out. This requirement does not apply where:
- a) the **customer** is an **execution-only customer**, or
  - b) the service is in respect of **protection policies** only and the **customer** has completed a proposal form, or
  - c) the service is a bureau de change transaction. (GP 5 & 12)
- 19 In the case of a Standard **PRSA**, where an employer has chosen a provider, and the provider/intermediary makes a presentation to **employees**, the minimum relevant information required by the provider/intermediary in order to complete the **factfind**, is to establish that the **customer** is an **employee** of the firm, has no other form of pension provision and intends to select the Default Investment Strategy of the provider. (GP 5)
- 20 A regulated entity must document any material changes to a **customer's** circumstances before providing additional services subsequent to the provision of the first service. (GP 2 & 5)
- 21 Where a **customer** refuses to provide information, a regulated entity must note this fact on the **customer's** file. If the information is considered necessary to the provision of a recommendation, the **customer** must be advised that the regulated entity is not in a position to provide the appropriate service until the required information has been provided. (GP 1 & 2)

- 22 A regulated entity must inform a **customer** that it is entitled to rely on the information provided by the **customer**, unless it is manifestly inaccurate or incomplete or the regulated entity is aware that the information is inaccurate or incomplete. (GP 6)
- 23 A regulated entity shall maintain an up-to-date list of all **customers**. (GP 1 & 4)

#### SUITABILITY

- 24 A regulated entity must ensure that any advice it gives to a **customer** is suitable to the **customer** having regard to the facts disclosed by the **customer** and other relevant facts about the **customer** of which the regulated entity is aware. (GP 2)
- 25 Before entering into each transaction with a **customer**, a regulated entity must:
- a) prepare a written statement of the reasons why the recommended product or service is considered to be in the best interest of the **customer** at the time it is given;
  - b) give a copy of this statement to the **customer** and retain a copy on the **customer's** file; and
  - c) endeavour to have the **customer** sign this statement. (GP 2, 5, 6 & 12)

#### UNSOLICITED CONTACT (COLDCALLING)

- 26 personal visit or oral communication may only be made to an existing **customer**, who is an individual:
- a) where the regulated entity has within the previous twelve months, provided advice or a financial service, similar to the proposed purpose of the cold-call to the **customer**; or
  - b) the individual holds a financial **instrument**, which requires the regulated entity to maintain contact with the **customer**; or
  - c) where the purpose of the contact is limited to offering protection policies only. (GP 2, 4 & 11)
- 27 A personal visit or oral communication may only be made to a potential **customer** who is an individual who:
- a) within the previous six months, has signed a statement giving the regulated entity permission to make personal visits or oral communications; or
  - b) has a listing in the Business Listing section of the current telephone directory, classified telephone directory or in trade/professional directories circulating in the State; or



- c) is a **director** of a company, or a **partner** in a firm with an entry in one of the directories listed in (b) above; or
  - d) is the subject of a referral, received from another entity within the same **group**, an entity regulated by the Financial Regulator, a solicitor, a **certified person** or an existing **customer** and conforms with the provisions of the Data Protection Act, 1988<sup>2</sup>, where applicable, or
  - e) where the purpose of the contact is limited to offering **protection policies**. (GP 2 , 4 & 12)
- 28 Where a regulated entity makes a personal visit or oral communication to an individual **customer** it must maintain a written record that illustrates the appropriateness of contacting the **customer**. (GP 2 & 4)
- 29 Where a regulated entity contacts an individual **customer** who has been referred by a third party, the regulated entity must obtain and retain on file, a signed acknowledgment from the referrer. In the exceptional circumstance that such an acknowledgment is not obtainable, a contemporaneous note of the referral must be prepared by the regulated entity and retained on file. (GP 2 & 4)

#### Contacts Permitted<sup>3</sup>

- 30 Permitted contacts may only be made between 9.00 a.m. and 9.00 p.m. Monday to Saturday (excluding Bank Holidays and public holidays) unless otherwise requested by the existing **customer**. (GP 2, 4 & 12)
- 31 The caller must immediately and in the following order:
- a) identify himself or herself by name, the name of the regulated entity on whose behalf he/she is calling and the commercial purpose of the call/visit.
  - b) advise the **customer** that the call is being recorded, if this is the case;
  - c) disclose to the **customer**, the source of the business lead or referral supporting the contact and
  - d) establish if the **customer** wishes the call to proceed; if not, the caller must end the contact immediately. (GP 2 & 6)
- 32 A regulated entity must abide by a request from a **customer** not to contact him/her again. (GP 2 & 4)
- 33 A regulated entity must not reach a binding agreement with a **customer** on the basis of an unsolicited contact alone. (GP 2 & 4)

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<sup>2</sup> This Act provides, inter-alia, that personal data must be fairly obtained, fairly processed and not used or disclosed to third parties in a manner incompatible with the purpose for which the data are held. In general, the consent or authorisation of individuals is required before personal data can be disclosed to third parties. Further information and advice can be obtained from the Office of the Data Protection Commissioner, telephone (01) 8748544 or website [www.dataprivacy.ie](http://www.dataprivacy.ie).

<sup>3</sup> It should be noted that all relevant advertising requirements apply to contacts permitted under these requirements.

- 34 A regulated entity shall not contact a **customer's** place of work for the purposes of validating his/her place of employment without the prior written consent of the **customer**. (GP 2 & 4)

#### DISCLOSURE REQUIREMENTS

- 35 A regulated entity who offers financial services under a number of business names and product images or through any direct outlets must disclose, in all communications with **customers**, the identity of the corporate **group** to which it belongs. (GP 6)

- 36 A regulated entity must disclose its regulatory status:
- a) on all of its business notepaper, letterheads etc,
  - b) in all **advertisements**, and
  - c) on all electronic communication with **customers** including on the home page of its website, if any. (GP 6)

- 37 The disclosure must take the following form:

"[Full legal name of regulated entity (and trading name, if applicable)] is regulated by the Financial Regulator. (GP 6)

- 38 Where the regulated entity is a **tied insurance agent**, the disclosure statement shall be as follows:

"Full Legal Name of Intermediary (trading as, if applicable) is a **Tied Insurance Agent** of (**Product Producer**) (for life products) and/or (**Product Producer**) (for non-life products) and is regulated by the Financial Regulator". (GP 6)

- 39 Where the regulated entity is a **deposit agent**, the disclosure statement shall be as follows:

"Full Legal Name of Intermediary (trading as, if applicable) is a **Deposit Agent** of (**Product Producer**) and is regulated by the Financial Regulator". (GP 6)

- 40 Where the regulated entity is a **tied mortgage agent**, the disclosure statement shall be as follows:

"Full Legal Name of Intermediary (trading as, if applicable) is a **Tied Mortgage Agent** of (**Product Producer**) and is regulated by the Financial Regulator". (GP 6)

- 41 A financial services provider operating in this State under freedom of services provisions or freedom of establishment must disclose the name of the **competent authority** from which it received its authorisation. (GP 6)

- 42 A copy of the regulated entity's Statement of Authorised Status (if any), licence or letter of authorisation issued by the Bank or Financial Regulator, must be displayed in the public area of each office from which the regulated entity operates. (GP 6)

#### CHARGES

- 43 A regulated entity must:
- a) give **customers** details of all **charges** and fees including third party **charges** which the regulated entity will pass on to the **customer**, prior to providing a service to the **customer**;
  - b) advise **customers** of **changes** in **charges** at least 30 days before the change takes effect;
  - c) advise **customers**, where fees and **charges** are accumulated and applied periodically to accounts/policies, at least 10 working days before deduction of fees and **charges** and give each **customer** a breakdown of such fees and **charges**.
  - d) detail all **charges** applied in all statements provided to the **customer**. (GP 2 & 6)

#### CHARGING / PRICING ERRORS

- 44 A regulated entity must notify the Financial Regulator in writing of any significant charging/pricing errors as soon as it becomes aware of them. (GP 1, 4, 8 & 12)
- 45 A regulated entity must notify all affected **customers**, both current and former, in writing, of any pricing or charging errors that impacted on the cost of the service provided or the value of the investment (either positively or negatively), in a timely manner. (GP 1, 4, 8 & 12)

#### TERMS AND CONDITIONS OF FINANCIAL PRODUCTS

- 46 A regulated entity shall ensure that:
- a) all **customers**, before acceptance of a product for the first time, are given the relevant terms and conditions of the product. Where a change in any of these terms and conditions is to a **customer's** disadvantage, the **customer** must be notified of the change at least 30 days before the relevant change is applied.
  - b) All terms and conditions must be of a print size that is clearly readable by **customers** and must be capable of being understood by people with a non-financial background. (GP 2 & 6)

#### HANDLING COMPLAINTS

- 47 A regulated entity should endeavour to resolve all **complaints** promptly and fairly. (GP 8)

- 48 A regulated entity must maintain an up-to-date a file of all **complaints** received in connection with any of its regulated activities. This file must contain the details of each **complaint**, a record of the regulated entity's response(s), any other pertinent correspondence or **records** and the action taken to resolve each **complaint**. (GP 4 & 8)
- 49 Where a regulated entity receives an oral **complaint**, it should make a contemporaneous note of the **complaint**, and from that point on, treat the **complaint** in the same manner as it would a written **complaint**. (GP 4 & 8)
- 50 A regulated entity must have in place a written procedure for the proper handling of **complaints**. At a minimum this procedure must provide that:
- a) all **complaints** received by the regulated entity must be acknowledged in writing by the regulated entity within 5 working days of the complaint being made;
  - b) the complainant must be provided with the name of an individual employed by the regulated entity who will be the **customer's** first point of contact in relation to his/her **complaint** until the **complaint** is resolved or cannot be processed any further;
  - c) any staff member appointed to deal with a **complaint** must be properly trained in the handling of **complaints**;
  - d) the regulated entity must provide the complainant with a regular written update on the progress of the investigation of his/her **complaint** at intervals of not greater than one month;
  - e) the regulated entity should attempt to investigate and resolve a **complaint** within 8 weeks of having received the **complaint**; where the 8 weeks have elapsed and the **complaint** is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the **complaint** and of his/her right to refer the matter to the Financial Services Ombudsman;
  - f) within 5 working days of the completion of the investigation of a **complaint**, the regulated entity must advise the complainant of the outcome of the **complaint** in writing and, if appropriate, explain the terms of any offer or settlement being made;

- g) where the complainant is not satisfied with the outcome of the investigation into the **complaint** or where the **complaint** is not resolved within the timeframe set out in the regulated entity's **complaints** procedure, the complainant should be notified immediately, in writing, of his/her right to refer the matter to the Financial Services Ombudsman. (GP 4 & 8)

#### CUSTOMER RECORDS

- 51 A regulated entity must maintain **customers records** for at least six years after the date of the last **transaction** entered into on behalf of that **customer**. (GP 1 & 4)
  
- 52 A regulated entity must maintain and keep up-to-date an individual file for each **customer** containing at least the following:
  - a) copies of all documents required for **customer** identification and profile;
  - b) the **customer's** contact details;
  - c) **factfind(s)**;
  - d) details of each **transaction** carried out on behalf of the **customer**;
  - e) a copy of the statement of suitability issued to the **customer**;
  - f) details of advice given and any acknowledgement by the **customer**;
  - g) a copy of any receipt or acknowledgement issued to the **customer**;
  - h) any other information provided to the **customer** in relation to the product or service;
  - i) any correspondence with the **customer**;
  - j) any document or application completed/signed by the **customer**;
  - k) copies of any original documentation submitted by the **customer** in support of the application for the provision of a financial service or product. (GP 1, 4 & 12)
  
- 53 Where a **customer** asks to see any record of his/her dealings with or on his/her file held by the regulated entity, the **customer** shall be promptly provided with a copy of such **records**, certified by the regulated entity as being a true and complete copy of the requested **records**. (GP 2 & 4)

#### TIMELY EXECUTION/ALLOCATION

- 54 Once a regulated entity has agreed or decided to effect a **transaction** for a **customer**, it must do so as soon as reasonably practicable. (GP 1 & 4)

- 55 A regulated entity must ensure that all instructions from or on behalf of a **customer** are processed properly and promptly. (GP 1, 2 & 4)
- 56 A regulated entity must record the date of both receipt and transmission of all **orders** for its **customers**, and retain this information in a readily accessible form. (GP 1 & 4)
- 57 Where applicable, a regulated entity must deal with **transactions** for its **customers**, **officers** and **employees** and **transactions** for its own account, fairly and in the sequence in which they arise. (GP 1, 4 & 7)

#### FEES, COMMISSIONS AND OTHER REWARDS

- 58 A regulated entity may only pay a fee, commission or other reward to a person that is:
- a regulated entity; or
  - a certified person**; or
  - an individual for whom a regulated entity has taken full and unconditional responsibility; or
  - an entity which is specifically exempt by law from requiring authorisation. (GP 1, 4 & 12)

#### CONFLICTS OF INTEREST

- 59 Where conflicts of interest cannot be reasonably avoided, a regulated entity may only undertake business with or on behalf of a **customer** where it has directly or indirectly a conflicting interest, where that **customer** has acknowledged, in writing, that they are aware of the conflict of interest and that they still want to proceed with the **transaction**. (GP 2, 4, 6 & 7)
- 60 A regulated entity shall not facilitate nor advise any **customer** to carry out a **transaction** or a series of **transactions**, with a frequency or in amounts to the extent that those transactions, when taken together, might be deemed to be excessive and/or detrimental to the **customer's** best interests. The onus of proof shall lie with the regulated entity to satisfy the Financial Regulator that such **transactions** were appropriate at the time they were entered into. (GP 2, 3 & 9)
- 61 **Transactions** carried out on behalf of a **customer** shall not be considered excessive if the regulated entity advises the **customer** in writing that in its opinion the **transactions** are excessive but is nevertheless instructed to carry them out. In such circumstances the

regulated entity shall maintain a written contemporaneous note of such instructions, which should be signed and dated by the **person** making the note and by a **director, partner** or principal of the regulated entity, as appropriate. (GP 2 & 4)

- 62 A regulated entity must take reasonable steps to ensure that neither it nor any of its **officers** nor **employees**: offers, gives, solicits or accepts, any **inducement** which is likely to conflict with any duties of the recipient or the recipient's employer. (GP 1 & 7)
- 63 A regulated entity may not enter into a **soft commissions agreement** unless such agreement is in writing. Any business transacted under a **soft commissions agreement** must not conflict with the best interest of its **customers**. Where a regulated entity considers that a **customer** may be affected by the soft commission agreement, a copy of the **soft commissions agreement** should be made available to the **customer** on request. (GP 1, 4 & 6)
- 64 Goods or services received by a regulated entity under a **soft commissions agreement** must be used to assist in the provision of services to **customers**. (GP 1 & 12)
- 65 A regulated entity must provide to any affected **customer**, details of any changes in its policy on soft commissions promptly after implementation of any such changes. (2, 4 & 6)

#### CHINESE WALLS

- 66 A regulated entity shall ensure that there are effective **Chinese Walls** in place between the different business areas of the regulated entity, and between the regulated entity and its **connected parties** in relation to information which could potentially give rise to a conflict of interest or be open to abuse. All procedures relating to the maintenance of **Chinese Walls** must be in writing and notified to all relevant **officers** and **employees** of the regulated entity. (GP 1, 4 & 12)

#### RELATIONSHIP WITH THE FINANCIAL REGULATOR

- 67 A regulated entity must respond to correspondence and to any requests for information from the Financial Regulator in a timely manner and within any period of time that may be specified by the Financial Regulator. All information supplied to the Financial Regulator whether supplied to the Financial Regulator pursuant to law or pursuant to a request from the Financial Regulator must be full, fair and accurate in all respects and not misleading. (GP 1 & 12)



- 68 A regulated entity is required to participate in such meetings, as the Financial Regulator considers necessary. (GP 1 & 12)
- 69 A regulated entity must inform the Financial Regulator of any material error or issue that impacts negatively on **customers** as soon as it becomes aware of any such error. If this notification is given verbally in the first instance, it must be provided to the Financial Regulator in writing on the **next business day**. (GP 1 & 12)
- 70 A regulated entity must inform the Financial Regulator, without delay, of breaches of this Code or any errors or possible breaches of any consumer protection law of the Financial Regulator should be made aware. (GP 1 8 & 12)

#### COMPLIANCE WITH THE CODE

- 71 A regulated entity must have adequate systems and controls in place to ensure compliance with the Code and other applicable consumer protection legislation. (GP 4)
- 72 A regulated entity must be able to demonstrate that its organisation, policies and procedures facilitate compliance with this Code. (GP 1, 4, 11 & 12)
- 73 The **person** responsible for the compliance function in the regulated entity, including compliance with this Code and any other consumer protection legislation must have the necessary expertise, resources, and authority and must have full access to all relevant information enabling them to perform their duties. They must perform their monitoring duties independently of all **persons** and activities subject to their monitoring. (GP 1 & 4)
- 74 The compliance function must regularly verify the adequacy of policies and procedures to ensure compliance with this Code and any other consumer protection legislation. (GP 1 & 4)
- 75 A regulated entity must keep **records** evidencing compliance with the Code, for a period of six years. Voice recordings of **orders** must be kept for a period of one year. (GP 1, 4 & 12)



# CHAPTER 3

## BANKING PRODUCTS & SERVICES

### CREDIT INSTITUTIONS

#### STATEMENTS

- 1 A **credit institution** must issue statements of transactions on all accounts held with it at least on an annual basis, unless otherwise agreed, in writing, with the **customer**. (GP 2 & 4)

#### BRANCH RESTRUCTURING/WITHDRAWAL OF SERVICES

- 2 Where a **credit institution** plans to close or move a branch, or to withdraw or curtail a service, it must inform affected **customers** in writing at least 3 months in advance. Any such decision must be advised to the Financial Regulator immediately. The wider local community should also be informed, in advance, through notification in the local press. (GP 1, 6 & 12)

#### CHANGES IN INTEREST RATES

- 3 A **credit institution** shall ensure that when it announces a reduction in interest rates, the reduction is implemented within 1 week of the rate change being first announced by the **credit institution**. (GP 2)
- 4 Where a **credit institution** changes the interest rate on accounts, it will update the information on information services, including telephone helplines and website as soon as the changes come into effect. (GP 2)

#### ACCOUNTS

- 5 A **credit institution** must, at least annually:
  - a) advise **customers** periodically of methods by which **charges** can be mitigated;
  - b) warn **customers**, before opening a joint account, of the consequences of operating a joint account including full access and use of funds in the account by both named parties;
  - c) establish from the principal donor, where relevant, the purpose for which the funds in a joint account are intended to be used and whether the other named **person** is to be the beneficiary of the funds. (GP 2, 5 & 6)

- 6 A **credit institution** must, at least once a year, advise existing deposit holding **customers**, of the different interest rates that are being applied to its deposit accounts, together with details of the rates applied to their savings account during the previous year. (GP 2 & 6)
- 7 Where a **customer** has a variable rate savings account and the **credit institution** has reduced interest rates, the **credit institution** must contact the **customer** within a reasonable period of time to:
  - (a) advise the **customer** of the change in the interest rate,
  - (b) inform the **customer** about other savings accounts operated by the **credit institution**, offering to help the **customer** switch to one of these accounts, if the **customer** so requires,
  - (c) inform the **customer** that he/she can withdraw all the **money** in their account. (GP 2 & 6)
- 8 A **credit institution** must ensure that it notifies **customers**, who hold an investment deposit account with a minimum duration term of one year, at least ten days before the scheduled maturity term of the account, of its impending maturity. (GP 2 & 6)

#### DEPOSIT AGENTS

- 9 A **deposit agent** must ensure that once it has processed a **transaction**, that **transaction** is immediately credited to the account of the **customer**. (GP 2 & 4)
- 10 A **deposit agent** shall not retain in its possession the account passbook(s) of any of its **customers**. (GP 2)
- 11 A **deposit agent** may not operate from the same premises as a deposit broker. (GP 1)
- 12 A **deposit agent** shall ensure that each **customer** is given a copy of the relevant **credit institution's terms of business** not later than the time of accepting the first deposit from that **customer**. Such **terms of business** shall set out the nature of the relationship between the **product producer** and the **deposit agent** and the basis on which the **deposit agent's** services are provided. (GP 2 & 6)
- 13 When a deposit agency is terminated by either party, the **deposit agent** must:
  - a) notify its **customers** of the termination,
  - b) properly complete any outstanding business and,
  - c) advise the **customer** of the options available. (GP 2, 4 & 6)

# CHAPTER 4

## LOANS

### UNSOLICITED CREDIT FACILITIES

- 1 A regulated entity must not offer unsolicited pre-approved credit facilities to **customers** either in writing by telephone or by electronic communication. (GP1 & 11)
- 2 A regulated entity must only increase a **customer's** credit card limit following a request from the **customer**. (GP 2)

### NON-MORTGAGE PERSONAL LENDING

- 3 Prior to a loan being approved, a regulated entity must explain clearly to a **customer** the effect of missing any of the scheduled repayments and this information must be highlighted in the loan approval document. (GP 2 & 6)
- 4 The **customer** must be made aware that the processing of his/her loan application is not conditional upon giving consent in respect of Section 46 of the Consumer Credit Act, 1995. (GP 2 & 6)
- 5 Where a regulated entity offers payment protection insurance in conjunction with a loan:
  - a) The initial repayment estimate of the loan advised to the **customer** must be exclusive of the payment protection premium;
  - b) if the **customer** decides to avail of the payment protection insurance, the regulated entity must endeavour to get the **customer** to sign a separate statement confirming that he/she is aware that the insurance is optional;
  - c) The payment protection proposal form must be separate to the loan application form. (GP 2 & 6)
- 6 A lending institution must advise a **person(s)** of the consequences of giving backing for or acting as guarantor for a loan. (GP 1 & 12)

## MORTGAGES

- 7 A **mortgage lender** must inform the **customer** of the different types of mortgage products appropriate to the **customer**. (GP 2)
- 8 A **mortgage intermediary** must inform the **customer** of the different types of mortgage products available from the **product producers** from whom it holds a written letter of appointment. (GP 2)
- 9 Where a mortgage or other form of personal loan is offered to a **customer** for the purpose of consolidating other loans or credit facilities the regulated entity must provide the **customer** with a table comparing the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer. (GP 1 & 12)
- 10 A regulated entity must have in place procedures for the handling of arrears cases. These procedures must seek to assist the **customer** in their particular circumstances. (GP 4)
- 11 Where the mortgage account is in arrears, the annual statement sent to the **customer** must include the following information in relation to arrears:
  - a) the date the mortgage fell into arrears,
  - b) the number and total of payments missed,
  - c) the amount of arrears interest charged to date,
  - d) the interest rate applicable to the arrears, and
  - e) details of other fees and **charges** used to calculate the arrears interest amount. (GP 2, 4 & 6)
- 12 A **credit institution** must maintain a publicly accessible register of all mortgage intermediaries to whom it has issued a current appointment. (GP 1)
- 13 A **mortgage lender** subject to this Code must notify the Financial Regulator in writing of the reason for the termination of the appointment of any **mortgage intermediary**. (GP 1 & 4)
- 14 When considering a mortgage application submitted by a **mortgage intermediary**, a **credit institution** must see original valuation reports and a statement from the **mortgage intermediary** confirming sight of the original supporting documentation. (GP 1 & 4)
- 15 A **mortgage intermediary** shall not submit an application for a mortgage to a mortgage provider unless he/she has had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the **customer's** identity and ability to repay. A **mortgage intermediary** must also have sight of an original **property** valuation. (GP 1)

## MORTGAGE RE-FINANCING / EQUITY RELEASE

- 16 A regulated entity must advise **customers** of the consequences of re-mortgaging or releasing equity including details of the total costs involved, including all interest **charges** and fees, the total cost of credit and the effect on the existing mortgage, if any. (GP 2 & 6)
- 17 A regulated entity must ensure that all **customers** are made aware of the importance of seeking independent legal advice and should only offer an equity release product where the **customer** has access to independent legal advice. (GP 2 & 4)
- 18 In addition to the warning required by Section 128 of the Consumer Credit Act, 1995, a regulated entity must include the following warning on any information document, application form or any other document given to the **customer** in connection with a mortgage re-financing or equity release loan:

***“Failure to keep up payments on this mortgage may put your ability to finance future needs at risk”***  
(GP 2 & 6)

## MONEYLENDING

- 19 A **moneylender**, who collects repayments by way of direct debit, must issue monthly statements to **customers** who pay weekly and quarterly statements to **customers** who pay monthly. (GP 2 & 6)
- 20 A **moneylender** must retain each original **moneylending agreement** for a period of not less than 5 years after the final repayment instalment under the agreement. (GP 1 & 4)
- 21 A **moneylender** must ensure that each **moneylending agreement** or **credit agreement** is signed by a representative of the **moneylender** and must endeavour to have the **customer** sign each agreement. (GP 1)
- 22 All notices served by a **moneylender** under Section 54 of the Consumer Credit Act, 1995 must either be sent by registered post or personally delivered by a representative of the **moneylender**. (GP 1)
- 23 A **moneylender** shall not contact a **customers’** place of work for the purposes of validating his/her place of employment without the prior written consent of the **customer**. (GP1)

# CHAPTER 5

## INSURANCE PRODUCTS & SERVICES

### COLLATERAL BUSINESS

- 1 An **insurance undertaking** shall not, in relation to personal lines insurances, require a **customer** to place collateral business with the **insurance undertaking** as a pre-condition to issuing a quotation for another class of insurance. (GP 1)

### QUOTATIONS AND PROPOSALS

- 2 At the proposal stage, all relevant information, which would have a bearing on whether or not the proposal may be accepted, must be obtained from the **customer**. (GP 5)
- 3 When providing a quote to a **customer** a regulated entity must inform the **customer** of the amount of the quotation and the length of time for which the quote will be valid, which must be at least 28 days from the date it was given to the **customer**. (GP 2 & 6)
- 4 After completing a proposal, which has been accepted by an **insurance undertaking**, an **insurance intermediary** must inform the **customer** of the name of the **insurance undertaking** which has provided the quotation. (GP 2 & 6)

### PREMIUM REBATES

- 5 An **insurance undertaking** must transfer a premium rebate to a **customer**, or the **customer's** representative, within 5 working days of the rebate becoming due. (GP 2 & 4)
- 6 An **insurance intermediary** may handle premium rebates due to **customers**, only where an express agreement exists between the **insurance intermediary** and the **insurance undertaking** under which the **insurance intermediary** acts as agent of the **insurance undertaking** in passing rebates to **customers** so that in handling the rebated premium the **insurance intermediary** does not become a debtor of the **customer**. (GP 1 & 4)
- 7 An **insurance intermediary** must transfer a premium rebate to a **customer** within 5 working days after receiving it from the **insurance undertaking**. (GP 2 & 4)

- 8 An **insurance intermediary** must transfer the rebate amount to the **customer** in full. Any fees that the **customer** may owe the intermediary shall not be recovered from the rebate amount due to the **customer** without the express written agreement of the **customer**. (GP 2)
- 9 Where a premium rebate has not been forwarded to the relevant **customer** within one week of the date on which it was received from the **insurance undertaking**, an **insurance intermediary** must immediately advise the **insurance undertaking** of the matter. (GP 1)
- 10 Where an **insurance intermediary** does not receive a payment from an **insurance undertaking** but the amount is netted off against amounts due to the **insurance undertaking**, the seven-day period begins when the **insurance intermediary** is notified that the rebate is due to the **customer**. (GP 2 & 4)

#### RENEWAL NOTICES

- 11 Where renewal notices are sent to an **insurance intermediary** acting on behalf of the **customer**, an **insurance undertaking** must ensure that the **insurance intermediary** receives the renewal notice in sufficient time for the intermediary to provide the information to the policyholder at least 15 working days in advance of the policy renewal date. (GP 1 & 4)
- 12 Where the insurance is arranged directly by the **customer** with an **insurance undertaking**, the insurance undertaking must issue renewal terms to the **customer** at least 15 working days in advance of the policy renewal date. (GP 1 & 4)
- 13 If any information is required by the **insurance undertaking** in order to calculate renewal terms, it must be sought from the **customer** at least 25 working days before the renewal date. (GP 1 & 4)
- 14 The **customer** must be provided with a copy of their renewal notice, at least 21 working days in advance of the renewal date for commercial lines insurance. (GP 2 & 6)

- 15 In the case of motor insurance, the renewal notice must contain the following itemised information:
- a) the name of the insured, and any named drivers, if applicable (for private motor);
  - b) the registration number of each commercial vehicle insured under the policy (for commercial lines);
  - c) the name of **persons** insured under the policy – if it is an “open driving” policy this must be specified;
  - d) the level of cover applicable to the policy i.e. comprehensive, third party, fire and theft or third party only;
  - e) the basic premium for the level of cover selected by the policyholder;
  - f) any loadings imposed by the underwriter in respect of claims or convictions, expressed in monetary terms;
  - g) any discounts offered by the **insurance undertaking** expressed in monetary terms and details of how they can be availed of;
  - h) the cost of any optional covers ancillary to the level of motor cover selected e.g. legal expenses insurance, personal accident benefits, etc.;
  - i) any general or administration charge(s);
  - j) any commission as a percentage of the total premium payable;
  - k) the cost of the previous year’s premium;
  - l) details of the **customer’s** no claims bonus record, if applicable, and
  - m) details of the various payment options available. (GP 6)
- 16 If the **customer** advises the **insurance undertaking** of any changes to any of the information contained in the renewal notice or which may have a bearing on the amount quoted, prior to the expiry date, a revised renewal notice should be issued to the **customer**. (GP 2 & 6)
- 17 **Insurance undertakings** may transmit the renewal notices to its **customers** directly or through its appointed insurance intermediaries. However, if an **insurance undertaking** chooses to transmit the renewal notices to its **customers** by way of its appointed insurance intermediaries, the responsibility to ensure the appropriate deadline is met remains with the **insurance undertaking**. (GP 4 & 10)

#### INSURANCE POLICIES

- 18 Policy documents must be issued to the **customer** within five working days of cover being provided. (GP 1 & 4)
- 19 The future effect of claims on the policy must be disclosed to the **customer**. (GP 2, 3 & 6)



## DISCLOSURE

- 20 An **insurance undertaking** must indicate the full legal name of the **insurance undertaking** authorised to underwrite the particular class of insurance on all written quotations and renewal notices issued to **customers**. (GP 6)
- 21 An **insurance intermediary** must, on request, submit to the Financial Regulator, a schedule of specified commission income received. (GP 12)
- 22 An **insurance undertaking** must maintain a current register of its **tiered insurance agents** which must be available for public inspection during normal business hours. (GP 1)
- 23 In the event of a **tiered insurance agent** retiring and the book of business being passed to another **tiered insurance agent**, all **customers** must be informed in writing of the option to decline to have their details transferred. (GP 2)

## PREMIUM HANDLING

- 24 An **insurance intermediary** shall ensure that the written contract with each **product producer** contains procedures to ensure the safety of **customer** premiums. (GP 1 & 4)
- 25 An **insurance intermediary** may only accept **money**, in respect of a premium, from **customers** in circumstances where Section 25G(1) of the Investment Intermediaries Act, 1995 (as amended) applies, i.e. where the **money** represents premiums in respect of either a renewal of a policy which has been invited by an **insurance undertaking**, or a proposal accepted by an **insurance undertaking**. (GP 1)
- 26 Where an **insurance intermediary** receives **money** in respect of a premium or a premium rebate it must lodge such **money** to a segregated bank account. Each such account should be designated "Client Premium Account". (GP 1 & 4)
- 27 An **insurance intermediary** must operate separate Client Premium Accounts in respect of life and non-life business. (GP 1 & 4)
- 28 All payment instruments used to make payments from a Client Premium Account must clearly state that the payment emanated from a Client Premium Account. (GP 1 & 4)
- 29 A Client Premium Account must not be overdrawn at any time. (GP 1)

30 The following are the only **transactions** that may be passed over a Client Premium Account:

Credits (money in)

- (a) **money** received from **customers** in respect of the renewal of a policy, which has been invited by an **insurance undertaking**, or a proposal for insurance accepted by an **insurance undertaking**;
- (b) **money** received from an **insurance undertaking** representing premium rebates for onward transmission to the **customer**;
- (c) transfers from another Client Premium Account operated by the **insurance intermediary**;
- (d) transfers from the **insurance intermediary's** office account to allow a 'buffer' amount to be maintained in the Client Premium Account; (any such transfers must be clearly identifiable)
- (e) proceeds received from an insurance undertaking in respect of the settlement of a claim onward transmission to the claimant and
- (f) bank interest, if appropriate.

Debits (money out)

- (a) **money** paid to a **product producer** on foot of renewal of a policy, which has been accepted by an **insurance undertaking**, or a proposal, accepted by an **insurance undertaking**;
- (b) **money** paid to a **customer** representing rebates of premiums received from **insurance undertakings**;
- (c) commissions and fees paid to the **insurance intermediary** for which there is documentary proof that the funds are properly due to the **insurance intermediary**;
- (d) transfers to another Client Premium Account operated by the firm;
- (e) payments of claims settlement amounts to a **customer**;
- (f) bank interest, if appropriate. (GP 1 & 4)

31 Where mixed remittances are received, the total amount must first be lodged to the **insurance intermediary's** Client Premium Account and the portion which does not relate to a premium payment should then be transferred out of the Client Premium Account, no later than the following **business day**. (GP 1 & 4)

32 An **insurance intermediary** must carry out, on a monthly basis, a detailed reconciliation of amounts due to **product producers** with the balance on each Client Premium Account it operates. (GP 1 & 4)

33 An **insurance intermediary** must retain a copy of each reconciliation carried out in accordance with Requirement 32 above. (GP 1 & 4)

34 An **insurance intermediary** is required to have its auditor prepare a report stating whether, in the auditor's opinion, the regulated entity has complied with the client premium requirements have been complied with. The regulated entity must submit this report to the Financial Regulator within six months of the **insurance intermediary's** financial year end, if, in the auditor's opinion, the **insurance intermediary** has not complied. (GP 1 & 4)

#### TIED INSURANCE AGENTS<sup>4</sup>

35 A **tiered insurance agent** must state in a prominent position in its **terms of business** that it is acting as a **tiered insurance agent** and provide the name of the **product producer** to whom it is tied, including details of any limitations on the range of advice that can be provided as a result of the tiered agency. (GP 2, 3 & 6)

36 A **tiered insurance agent** shall inform the Financial Regulator when it is no longer acting as a tiered agent. (GP 1 & 12)

#### LIFE ASSURANCE POLICIES

37 A regulated entity must explain to a **customer** the consequences of the failure to make full disclosure of their health on the proposal form. (GP 2 & 6)

38 A regulated entity advising on Permanent Health Insurance policies, must explain to the **customer** the definition of disability, the benefit available under the policy and the reductions applied to the benefit where there are disability payments from other sources. (GP 2 & 6)

39 A regulated entity providing Serious Illness protection policies, must explain to the **customer** the restrictions and conditions that attach to such policies. (GP 2 & 6)

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<sup>4</sup>These are tiered insurance agents for whom insurance undertaking has not taken full and unconditional responsibility.

## NON-LIFE INSURANCE

### MOTOR

- 40 The information provided to the **customer** with motor policy documents should include the details of the claims representatives that the **insurance undertaking** has appointed in each **Member State**, to enable the **customer** to contact such representative should he/she have a motor accident in another **Member State** which results in a claim. (GP 2 & 6)
- 41 Where an **insurance undertaking** refuses to quote for motor insurance, it must, on request from the **customer** or his/her agent, state its reasons in writing to the **customer** or his/her agent. The **insurance undertaking** must advise the **customer** immediately of his/her right to refer the matter to the Declined Cases Committee and the method of doing so. An **insurance undertaking** may transmit this information to the **customer** via an intermediary. However, the responsibility for ensuring that the **customer** receives the information rests with the **insurance undertaking**. (GP 2, 4 & 10)

### EMPLOYERS LIABILITY

- 42 An employer's liability policy must specify the rate applicable to each category of **employee** at the proposal stage, which will allow **customers** to project additional costs if extra **employees** are subsequently taken on. (GP 2 & 6)
- 43 Each employer's liability policy must provide a standard definition of 'wages'. This definition should make it clear whether employers in their calculations should include such items as bonus earnings, overtime, lunch vouchers etc. (GP 1)
- 44 Any warranties/endorsements must be clearly expressed in the proposal document and must not be ambiguous. These sections in the proposal document must not be detailed in smaller print than other information provided in the document. (GP 6)
- 45 Any discounts applying to the policy must be clearly identified. (GP 2 & 6)

## CLAIMS PROCESSING

(Other than claims submitted to the Personal Injuries Assessment Board)

- 46 An **insurance undertaking** must take reasonable steps to verify the validity of a claim, before deciding to repudiate a claim on an insurance policy. (GP 1 & 12)
- 47 Each **insurance undertaking** must have in place written procedure for the effective and proper handling of claims. At a minimum, the procedure must provide that:
- a) the **customer** is provided with information on how to make a claim and what his/her responsibilities are in relation to a claim;
  - b) a claim form is provided to a claimant immediately, or in any case within at least 2 working days, on receiving notice of a claim;
  - c) the **insurance undertaking** shall offer to assist the claimant in the completion of the claim form;
  - d) all claim forms must be acknowledged in writing within 2 working days of receipt;
  - e) details of all oral conversations with the claimant are recorded electronically or in writing;
  - f) the **insurance undertaking** must, while the investigation of a claim is ongoing, provide the claimant with a regular electronic or written updates on the progress of the investigation of the claim at intervals of not greater than 2 weeks. Where additional documentation or clarification is required from the claimant, the claimant must be advised of this at an early stage in writing. (GP 4)
- 48 Where there is a requirement to engage the services of a loss assessor and/or expert appraiser the **insurance undertaking** must notify the claimant in writing of the details of the loss assessor/expert appraiser it has chosen in its interest to assist in the processing of the claim. The **insurance undertaking** must also notify the claimant in writing that he/she may appoint a loss assessor at his/her own expense to act in his/her interest if they so wish. (GP 1 & 2)
- 49 The **insurance undertaking** must be available as and when necessary to confer with the **customer** in relation to the case and to discuss assessment of liability and damages. (GP 1)
- 50 The insurance undertaking must advise the **customer** in writing of the issue of proceedings and the name of the solicitor nominated to defend the case. (GP 6)

- 51 Within 5 working days of the making of a decision an **insurance undertaking** must advise the claimant (and the **policyholder** if not the claimant) in writing of the outcome of the investigation and explaining the terms of any offer of settlement. (GP 2)
- 52 Where the **customer** will not be the beneficiary of the settlement amount, the policyholder must be advised in writing of the outcome of the claim relating to the third party and details of the settlement amount paid to the third party. The **customer** must also be advised of the effect the settlement of the claim will have on future insurance contracts of that type that the **customer** may purchase. (GP 2)
- 53 An **insurance undertaking** must inform claimants in writing if their claim has been denied together with the reasons for the denial. (GP 2 & 6)
- 54 An **insurance undertaking** must also provide a claimant with written details of any appeals mechanism available to him/her. (GP 2 & 6)
- 55 Where the claimant makes it known to the **insurance undertaking** that he/she is not satisfied with the outcome of the **insurance undertaking's** settlement of the claim, the **insurance undertaking** must notify the claimant immediately in writing of his/her right to refer the matter to the Financial Services Ombudsman. (GP 2 & 6)
- 56 An **insurance undertaking** must pay the claim settlement amount directly to the claimant or where the claimant is acting through an **insurance intermediary**, the claim settlement can be paid to the **insurance intermediary** who must then transfer the amount to the claimant. (GP 2)
- 57 An **insurance undertaking** must maintain a file of all claims received. This file must include a record of the **insurance undertaking's** response(s) to the claimant, any other pertinent correspondence or **records** and the action taken to settle the claim. (GP 4)
- 58 An **insurance undertaking** must pay all claims within 10 working days once all of the following four conditions have been satisfied:
- a) the insured event has been proven;
  - b) all specified documentation has been received by the **insurance undertaking** from the claimant or his/her representatives;

- c) the entitlement of the claimant to receive payment under the policy has been established and;
  - d) the appropriate amount has been agreed with the claimant, subject to finalisation of legal costs, where applicable. (GP 1 & 2)
- 59 If the settlement amount has not been passed to the claimant within 10 working days of acceptance, the claimant or his legal representatives, will be entitled to receipt of interest on the settlement amount. (GP 2)
- 60 An **insurance intermediary** providing services to a **customer** in relation to a claim must:
- a) provide the claims form within 2 working days to the **customer** for completion and assist in such completion if so requested by the **customer**;
  - b) on receipt of the claims documentation the **insurance intermediary** must transmit such documentation to the **insurance undertaking** without delay; and obtain confirmation of receipt of documentation from the **insurance undertaking** and that the claims process has begun;
  - c) the **insurance intermediary** shall keep the claimant informed at regular intervals not greater than 2 weeks duration, of the progress of his/her claim;
  - d) ensure that the claim settlement amount is transferred to the **customer** in full not later than one week after receipt from the **insurance undertaking**. (GP 2)
- 61 Where an **insurance intermediary** has authority to settle a claim on behalf of an underwriter it may only settle the claim up to the threshold amount agreed with the **insurance undertaking**.

# CHAPTER 6

## INVESTMENTS

- 1 A regulated entity must issue statements of **transactions** for each policy/account held with it at least on an annual basis, unless otherwise agreed, in writing, with the **customer**. The statements should include, at a minimum, the opening balance/value, all additions or withdrawals in the previous 12 months, or where relevant, the total of all sums invested since account opening, and a closing balance or statement of the current value of the fund. (GP 2 & 6)
- 2 The statement must detail all **charges** and deductions affecting the policy/account since the last statement including all **charges** associated with the investment management, selling, setup and ongoing administration costs of the product. (GP 6)
- 3 A regulated entity must provide **customers** of investment and savings products with pre and post sale product information. This information must be **customer** specific and contain an estimation of the product's value after tax and **charges** at the end of 1, 2, 3, 4, 5, 10, 15 and 20 years assuming realistic growth rates which should not exceed 6% p.a. (GP 2 & 6)
- 4 The product disclosure documentation must include illustrations of future growth, which use realistic projected growth rates, based on the expected future performance of the underlying assets. (GP 6)
- 5 All **charges** associated with the product must be disclosed to the **customer**. (GP 2 & 6)
- 6 All illustrations must be shown pre and post any tax due on surrender or encashment of the product. (GP 2 & 6)
- 7 The following statement must accompany all illustrations:

***“Projected investment performance figures may not be a reliable indicator of future growth”.*** (GP 2 & 6)

- 8 Growth and inflation rates must be stated explicitly. (GP 6)



## COOLING-OFF PERIOD

- 9 Regulated entities, in relation to deposit based **tracker bonds** or **investment products** must provide a **customer** a right to cancel within thirty days from the date the it was taken out by the **customer** as is the case with life assurance products. (GP 2)

## INVESTMENT RISK

- 10 For investments in products that do not contain a 100% capital guarantee, a regulated entity must warn the **customer** that they risk getting back less than the sum invested. The regulated entity must endeavour to have the **customer** sign a declaration confirming that they are aware that they risk getting back less than they invested. The declaration must be separate to the application form, and should contain no other information apart from the declaration.

### **Investment Risk Declaration.**

***I am aware that I am investing in a product with investment risk in which all my capital is at risk or which only guarantees the return of x% (insert percentage) of my capital.*** (GP 2)

- 11 The following statement must be included in the product brochure and proposal form:

***If you invest in this product all your capital is at risk/it only guarantees the return of x% (insert percentage) of your capital.*** (GP 2)

- 12 If a product is only guaranteed on a particular date, this date must be made clear. (GP 6)
- 13 The regulated entity must endeavour to have the **customer** sign a declaration stating that they are aware that the guarantee is only applicable on a particular date and they risk getting back less than they invested if they encash before the date on which the guarantee is applicable.

### **Investment Risk Declaration**

***I am aware that I am investing in a product which only guarantees the return of my initial capital of €x,xxx (insert amount) on (insert date). If I encash before this date, I am aware that I risk losing all my capital.*** (GP 2 & 6)

- 14 The ultimate provider of any guarantee must be disclosed to the **customer** in the contract/policy document. (GP 2 & 6)

## POLICY/ACCOUNT ALTERATION BY THE REGULATED ENTITY

- 15 Where a regulated entity alters the value of a policy/account, the **customer** must be informed of the details of the alteration and the reason for the alteration in writing. (GP 2 & 6)
- 16 During the period for which the **customer** benefits from a right of withdrawal from the contract, a regulated entity shall not execute any **customer orders** in respect of financial instruments under the contract. (GP 1)
- 17 A regulated entity must declare to the **customer**, prior to the point of **transaction**, any principal or **connected party** deals if it is the regulated entity's intention to so transact at that point. If, in the course of completing a **transaction**, the regulated entity or a **connected party** subsequently acts as principal this must be confirmed to the **customer** before the **transaction** is completed. (GP 1 & 6)
- 18 In the case of a discretionary **customer**, the regulated entity must make every effort to ensure that an investment management agreement is signed by both parties and that one copy is given to the **customer** not later than the time of providing the first service to that **customer** after the coming into force of this Code. If, despite reasonable efforts by the regulated entity, the **customer** fails to sign the agreement, the regulated entity must send to the **customer** a letter enclosing its standard investment management agreement stating that this standard agreement will apply unless the regulated entity hears to the contrary. (GP 1)
- 19 The investment management agreement must set out the basis on which the regulated entities services are provided, and in addition to the information required in the terms of business must include at least the following, as applicable:
  - a) an outline of the regulated entity's understanding of the **customer's** investment objectives;
  - b) an outline of the **customer's** investment restrictions, if any;
  - c) an outline of the regulated entity's policies in relation to the taking of principal positions;
  - d) an outline of the action and remedies which the regulated entity may take in the event of default by the **customer** (for example, closing out **customer** positions);
  - e) details of the situations in which the regulated entity can close out a **customer's** outstanding positions, where applicable;
  - f) an outline of the remedies, if any, available to the **customer** in the event of default by the regulated entity;
  - g) a prominent statement, if this is the case, that the regulated entity may act as principal or that it uses a single member firm for the execution of transactions;

- h) details of the extent of the discretion to be exercised by the regulated entity;
- i) a statement that the regulated entity may enter into transactions for the **customer**, either generally or subject to specified limitations, under which the **customer** will incur obligations as an underwriter or sub-underwriter;
- j) a statement as to whether the regulated entity will undertake **transactions** with, or for, the **customer** in **investment instruments** which are not on exchange or which are not readily realisable investments;
- k) where the portfolio or account is not specifically established for the purpose of engaging in **margin**ed **transactions**, a statement, if relevant, that the regulated entity may enter into **transactions** which may result in the **customer** being entitled or obliged to deliver particular **investment instruments** in excess of the number of those **investment instruments** which that **customer** holds, or which under commitments at that time, the **customer** will or may become obliged or entitled to acquire;
- l) a statement of the basis on which the **customer** will incur any contingent liability, including **margin** requirements, such as rights to fund margin calls and the maximum limits placed on such funding;
- m) a statement of the basis by which the regulated entity may receive remuneration from another **person** in connection with **transactions** entered into for or on behalf of the **customer** and that a statement showing the amounts of any such remuneration will be available on request;
- n) where **margin**ed **transactions** are to be entered into, the maximum amount or percentage to be so invested;
- o) a statement that the regulated entity has authority to borrow or raise **money** on the **customer's** behalf, or to enter into **transactions** which will involve the **customer** having to borrow or raise **money** and the maximum that may be borrowed;
- p) a statement concerning any custodian responsibility related to investment business accepted by the regulated entity, including a statement that sub-custodians are connected with the regulated entity;
- q) a statement of the **valuation dates** on which valuations will be prepared;
- r) a statement giving details of interest that will or may be payable to the **customer** and details of any interest that may be payable by the **customer**;
- s) a statement specifying any connected party of the regulated entity to whom the regulated entity may contract any of the services provided under the investment management agreement. (GP 1, 2 & 6)

- 20 A regulated entity shall not be entitled to recommend to, or undertake any **margined transaction** unless the **customer** has previously signed a statement acknowledging that he/she has read and understood the contents of the Risk Disclosure Statement (see Appendix 1). (GP 2 & 9)
- 21 A regulated entity which is managing a portfolio for a **customer** on a discretionary basis must ensure that the portfolio remains suitable, having regard to the facts disclosed by the **customer** or other relevant facts about the **customer** of which the regulated entity is or ought reasonably to be aware. (GP 2, 3 & 5)
- 22 Regulated entities may aggregate a transaction for a **customer** with transactions for other **customers** or with own account **transactions** where it is unlikely that the aggregation will operate to the disadvantage of any of the **customers** whose **transactions** have been aggregated, provided that the regulated entity has disclosed in writing to the **customer** that his/her order may be aggregated and that the effect of the aggregation may operate on some occasions to his/her disadvantage. Such disclosure may be made in the **terms of business** or **investment management agreement**, provided it is disclosed in a prominent position. (GP 1 & 2)
- 23 Upon a default by a **customer**, a regulated entity must not realise other assets of that **customer** in satisfaction of the default unless it is legally or contractually entitled to do so. (GP 2)
- 24 Assets realised in accordance with Requirement 34 above may only be realised in accordance with the provisions of the firm's **terms of business** or relevant **investment management agreement**. (GP 1)
- 25 A regulated entity may not effect a **margined transaction** for a **customer** unless it has reasonable grounds to believe that the **customer** understands the circumstances, other than the failure to provide margin, which may lead to the **customer's** position being closed out without reference to him/her. (GP 2 & 3)

#### CONTRACT NOTES AND CONFIRMATION NOTES

- 26 A regulated entity shall issue a **contract note** in respect of every purchase or sale of an **investment instrument** or exchange **rollover** (or **confirmation note** in the case of the purchase or sale of a **derivative**) which is executed for a **customer**. (GP 1 & 4)
- 27 The Table at Appendix 2 sets out the details to be included in **contract and/or confirmation notes**: (GP 1 & 4)

- 28 A regulated entity is not required to issue **contract and/or confirmation notes** where the **customer** has advised the regulated entity in writing that he/she does not wish to receive **contract and/or confirmation notes**. **Contract and/or confirmation notes** need not be retained in hard copy format by the regulated entity provided they can be reproduced without delay in the event that they are required. (GP 4)
- 29 A regulated entity is not required to state any detail required by this Code relating to statements and **contract and/or confirmation notes** which is dependent upon information provided by other **persons**, if the information is not reasonably available to the regulated entity at the time when the note is prepared; but the fact that the information is not available must be stated and a supplementary note must be sent to the **customer** with due dispatch once the information is known by or available to the regulated entity. (GP 1 & 4)
- 30 Regulated entities shall ensure that **contract and/or confirmation notes** are issued to **customers** immediately, at the address notified, and in any case no later than, two **business days** following the date of execution of the **transaction**. (GP 2)

#### AVERAGING OF PRICES

- 31 A regulated entity may execute a series of **transactions** on behalf of a **customer** within the same trading day or within such other period as may be agreed in writing by the **customer** to achieve one investment decision or objective, or to meet **transactions** which it has aggregated. (GP 2 & 3)
- 32 If the regulated entity executes a series of **transactions** in accordance with requirement 31 above, it may determine a uniform price for the **transactions** executed during the period, calculated as the weighted average of the various prices of the **transactions** in the series. (GP 1 & 4)
- 33 In the circumstances in 31 above, the regulated entity must issue a **contract note** relating to those **transactions** immediately, but if this is not possible, no later than two **business days** following the last **transaction** within the relevant period of time. (GP 1 & 4)
- 34 In **transactions** in respect of which the regulated entity has calculated a weighted average price the regulated entity must, nonetheless, treat each of the underlying **transactions** as a separate **transaction** for the purposes of complying with rules relating to record keeping. (GP 1 & 4)

## ALLOCATION OF TRANSACTIONS

- 35 A regulated entity must ensure that once it has executed a **transaction**, that **transaction** is promptly allocated:
- (a) to the account of the **customer** or **employee** on whose instructions the **transaction** was executed; or
  - (b) to the account of a discretionary **customer** on whose behalf the **transaction** was executed; or
  - (c) in all other cases, to the account of the regulated entity. (GP 1, 2 & 4)

## DISCRETIONARY ACCOUNTS

- 36 Discretion to operate its account may only be granted by the **customer** to a regulated entity and not to a particular **employee** of that regulated entity. However, this does not preclude the **customer** from imposing a restriction on who may be responsible for the operation of the **discretionary account** within the regulated entity, provided that the agreement relating to the operation of the **discretionary account** is executed between the **customer** and the regulated entity. (GP 1)

## PERIODIC INFORMATION

- 37 A regulated entity which acts on a discretionary basis for a **customer** must send a statement to such **customer** in respect of periods which are not less frequent than six monthly in respect of **investment instruments** and/or cash balances as at the statement date. Such statements may be sent in any format acceptable to the **customer** for example by post, fax or e-mail. (GP 2)
- 38 A regulated entity which acts on a discretionary basis for a **customer** must send a statement to such **customers** in respect of periods which are not less frequent than monthly in respect of any **marginised transaction** or **margin-related** cash balances contained in the **customer's** account, as at the statement date, including any pooled account in which the **customer** has an interest. (GP 2)
- 39 The statements must be sent to the **customer** no later than 25 **business days** following the end of the period to which the statement relates. (GP 2 & 4)
- 40 The Table at Appendix 3 sets out the details to be included in statements sent to discretionary **customers**. (GP 1 & 4)

- 41 A regulated entity is not required to send a statement if a **customer** has advised the regulated entity in writing that he/she does not wish to receive such a statement or wishes to receive them less frequently. Such statements need not be retained by the regulated entity in hard copy format provided they can be reproduced without delay, if required. (GP 2 & 4)
- 42 Notwithstanding paragraph 41 above, a regulated entity must send a statement to each **customer** at least on an annual basis. (GP 2)
- 43 Where a prospectus represents or contains the terms of a contract between the regulated entity and one or more of its **customers**, this fact must be clearly stated in the prospectus. (GP 2 & 6)

#### CUSTOMER BORROWING

- 44 A regulated entity which does not normally engage in lending activities must not lend **money** or extend credit to a **customer**, except in the case where a regulated entity settles a securities **transaction** on a **regulated market** in the event of default or late payment by the **customer** or pays an amount to cover a **margin** call made on a **customer**. In such cases the regulated entity must close out, in accordance with its **terms of business** or relevant **investment management agreement**, the relevant position as soon as possible. (GP 1)
- 45 Such a measure must be of a temporary and exceptional nature and must be in accordance with the regulated entity's approved credit policy. (GP 1)
- 46 Before entering into a **margin**ed **transaction** on behalf of a **customer** the regulated entity is required to take account of the financial resources available to the **customer** and whether or not the **customer** would be in a position to meet **margin**ed calls and fund a loss on that **transaction**. (GP 1, 2 & 5)
- 47 Where an **officer** or **employee** of the regulated entity holds an outstanding position transacted by the regulated entity in relation to a **margin**ed **transaction** which shows a loss, the regulated entity must take immediate steps to have this loss repaid by the **officer** or **employee** concerned; any unpaid position must be immediately closed out by the regulated entity in accordance with the regulated entity's **terms of business**. (GP 1)



## TRACKER BONDS

- 48 Before a **customer** signs an application form for a tracker investment product or tracker bond, the **customer** must be provided with a Key Features Document, of a type referred to in Appendix 4 attached. (GP 2 & 6)
- 49 In the case of life assurance policies, this Key Features Document must be provided in addition to the disclosure information required under the Life Assurance (Provision of Information) Regulations, 2001. (GP 2 & 6)
- 50 A **customer** who has invested in a tracker bond must be provided by the relevant regulated entity with a confirmation letter or contract note, within 7 days of the date of investment, setting out:
- a) the name(s) and address of the **customer(s)**;
  - b) the date of investment;
  - c) the amount of the investment;
  - d) the date or dates on which the guaranteed minimum payment and cash bonus(es) are payable;
  - e) details of the 30-day cooling off period during which the **customer** can cancel the investment; and
  - f) disclosure of the make up of the investment, where the actual make up at the date of investment differs from that shown in the Information Document provided to the **customer** before the **customer** signed the relevant application form for this investment;
  - g) The date at which the investment matures. (GP 2 & 6)
- 51 A copy of the relevant Terms and Conditions or policy document must accompany the letter or **contract note**, as the case may be. (GP 2 & 6)
- 52 Any illustration provided to a **customer** of the projected cash bonus, whether shown separately or added to the guaranteed payment, may not exceed the open market value, at the date of investment (net of any commission or other payment for the benefit of the relevant parties), of the cash bonus promised to the **customer** accumulated at a rate of interest not exceeding 6% p.a. (GP 2 & 6)
- 53 Where an illustration is shown of the projected cash bonus, the value of that total return, net of any tax deductible from the return, must be expressed and shown prominently as the equivalent **Compound Annual Return** (CAR). (GP 2 & 6)



- 54 Where a **customer** is provided with an illustration of the projected cash bonus, whether shown separately or added to the guaranteed minimum return, the **customer** must also be shown, side-by-side, in the same document a similar illustration assuming a cash bonus of zero. The equivalent **Compound Annual Return** (CAR) of this possible outturn must also be shown prominently. (GP 2 & 6)
- 55 No illustration of an investment of a type referred to above may be provided to a **customer** where the illustration shows the return that investment could have provided over any prior investment period. (GP 2 & 6)
- 56 Where the provider also offers the **customer** the facility to borrow funds to invest in a tracker investment product the **customer** must receive an illustration showing:
- a) the year-by-year and total interest payments the **customer** is likely to have to pay in respect of the funds borrowed to invest in the relevant deposit or life assurance policy, until the date of the guaranteed payment under the relevant deposit or life assurance policy;
  - b) for this purpose the fixed interest rate offered by the lender for the period to the date of the guaranteed payment under the deposit or life assurance policy should only be used. Where the lender does not offer a fixed interest rate over this period, an equivalent open market fixed interest rate should be used for this purpose;
  - c) the projected cash bonus payable which must be assumed to be zero. The CAR equivalent of the guaranteed payment under the relevant deposit or life assurance policy must be shown prominently; and
  - d) the difference between the guaranteed payment under the deposit or life assurance policy and the total projected outgoings of the **customer** (i.e. interest payments related to the funds borrowed to invest, any capital repayments related to such borrowings and any capital investment by the **customer** other than the borrowed funds) over the period to the date of guaranteed payment under the relevant deposit or life assurance policy. (GP 2 & 6)

# CHAPTER 7

## ADVERTISING

### General Requirements

- 1 A regulated entity must ensure that all its **advertisements** are fair and not misleading. (GP1 & 3)
- 2 An **advertisement** should not seek to influence a **person's** attitude to the **advertised product or service** or the regulated entity either by inaccuracy, ambiguity, exaggeration or omission. (GP 1 & 3)
- 3 The name of the regulated entity publishing an **advertisement** must be clearly shown in all **advertisements**. (GP 1 & 6)
- 4 The nature or type of the **advertised product or service** must be clear and not disguised in any way. (GP 1 & 3)
- 5 An **advertisement** must be designed and presented so that any reasonable **person** knows immediately that it is an **advertisement**. (GP 1 & 3)
- 6 The name of the product must not be misleading in terms of the benefits that the product can deliver. (GP 1)
- 7 The design and presentation of an **advertisement** must allow it to be clearly understood. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible; where appropriate they should be linked to the relevant part of the main copy. (GP 6)
- 8 Warnings and product specific information must be displayed in the main body of the **advertisement** only and must not be obscured or disguised in any way by the content, design or format of the **advertisement**. (GP 6)
- 9 In circumstances where the **advertisement** is both audio and visual, any warning, disclosure or product specific details must be clear. (GP 1 & 3)
- 10 Any statement or promise must be true and not misleading and any forecast must be accurate and not misleading at the time they are made and any assumptions on which they are based must be stated clearly. (GP 1 & 3)

- 11 A different meaning cannot be applied to an everyday term for the purposes of an **advertisement**. (GP 1)
- 12 An **advertisement** must not be set out to deliberately mislead **customers** in relation to:
- a) the regulated entity's independence;
  - b) the regulated entity's ability to provide the **advertised product or service**;
  - c) the scale of the regulated entity's activities;
  - d) the extent of the resources of the regulated entity;
  - e) the nature of the regulated entity's or any other **person's** involvement in the **advertised product or service**;
  - f) the scarcity of the **advertised product or service**;
  - g) past performance or possible future performance of the product or service. (GP 3)
- 13 An **advertisement** must be transmitted via an appropriate medium to ensure that all advertising requirements are complied with. It is the regulated entity's responsibility to ensure that the **advertisement** remains compliant. (GP 1)
- 14 Any **advertisement** that compares two or more products must set out clearly the material differences between the products and must be based on verifiable facts or justifiable assumptions. (GP 3)
- 15 An **advertisement** that is set out to promote more than one product must set out clearly the different features of each product in such a way that any reasonable person could distinguish between the products. (GP 1 & 3)
- 16 **Advertisements** should be prepared with care and with the conscious aim of ensuring that **customers** fully grasp the nature of any commitment into which they may enter as a result of responding to an **advertisement**. (GP 1 & 6)
- 17 Any recommendations or commendations quoted must be complete or a fair representation, accurate and not misleading at the time of issue and relevant to the product or service advertised. (GP 1 & 3)
- 18 A recommendation/commendation may not be used without the consent of the author and, if that **person** is an **employee** of the regulated entity or of a firm within the same **group** as the regulated entity, the **advertisement** must state that fact. (GP 1)

- 19 Comparisons or contrasts must be based either on facts verified by the regulated entity, or on assumptions stated within the **advertisement** and must be presented in a fair and balanced way; and not omit anything material to the comparison or contrast. (GP 1 & 3)

#### LENDING

- 20 Where an interest rate is advertised, the **advertisement** must clearly state if the rate is fixed or variable. (GP 1 & 6)
- 21 In all **advertisements** for credit, the total cost of credit must be displayed as prominently as the APR. (GP 1 & 6)
- 22 **Advertisements** for a fixed rate loan must also, where applicable, state:

***“Penalties may apply upon early redemption of a fixed rate loan”*** (GP 1 & 6)

- 23 **Advertisements** for the consolidation of two or more loans must, where sample figures are offered in the **advertisement**, indicate the total cost of credit of the consolidated loan and the fragmented personal loans that are the subject of consolidation. (GP 1 & 6)
- 24 An **advertisement** for a Debt Consolidation Mortgage must carry the following warning:

***“Warning: This loan may lengthen the term of some of your existing outgoings and will cost you more over the long term. Your home is at risk if you do not keep up repayments on any loan secured on it.”*** (GP 1 & 6)

- 25 An **advertisement** for a credit card must clearly state the following:
- The APR on purchases;
  - The APR on cash advances;
  - The APR on credit card cheques;
  - The interest free period;
  - A statement of the other types of fees and **charges** that apply, if applicable;
  - Where promotional or introductory rates are used, the expiry date of that rate and the rate that will apply thereafter. (GP 1 & 6)
- 26 **Advertisements** that offer the sale of goods or services on credit shall display the total cost of credit clearly in the main body of the **advertisement**. (GP 1 & 6)

- 27 An **advertisement** that offers goods on hire purchase must contain in the main body of the **advertisement**, the following warning:

***“Warning: These goods remain the property of the lender until the final payment is received by the lender.”***  
(GP 1 & 6)

- 28 An **advertisement** for a current account shall state clearly that there are **charges** associated with the account, if this is the case. (GP 1 & 6)

- 29 Where a free banking period is advertised, the qualification criteria and the period for which the free banking applies should be clearly stated. (GP 1 & 6)

- 30 An **advertisement** for a variable rate residential mortgage shall contain the following warning:

***“Warning: The cost of your monthly repayments may increase – If you do not keep up your repayments you may lose your home”.*** (GP 1 & 6)

- 31 An **advertisement** that uses a promotional rate shall give an example, in monetary terms, of the likely monthly repayment that will apply at the end of the promotional period. (GP 1 & 3)

- 32 An **advertisement** for a fixed rate mortgage shall contain the following statement:

***“Penalties may be payable upon early redemption of this loan”*** (GP 1 & 6)

- 33 An **advertisement** for an Interest Only Mortgage shall state clearly the Interest Only period, and include a warning to the effect that the capital amount will still be outstanding at the end of this period and that it will not have been reduced. (GP 1 & 6)

## INVESTING

- 34 An **advertisement** for a Savings or Deposit Account must clearly state the following:
- Whether the rate quoted is variable or fixed, and if fixed, for what period;
  - The relevant interest rate for each term quoted together with the equivalent annual rate for each rate quoted, and each rate should be given equal prominence;

- c) The minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable;
  - d) If any tax is payable on the interest earned;
  - e) If a penalty is applied upon early withdrawal from the account;
  - f) If notice is required to make a withdrawal, the length of that minimum notice period; and
  - g) Where a promotional rate is used, the expiry date of that rate and the rate that will apply thereafter. (GP 1 & 6)
- 35 When an **advertisement** or information document includes an example of benefits it should be made clear where appropriate, that these benefits are not guaranteed. (GP 1 & 3)
- 36 Information about the past performance of the **advertised product or service** or of the regulated entity must:
- a) be based on a product similar to that being advertised;
  - b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised service;
  - c) state the source of the information;
  - d) be based on actual performance;
  - e) state clearly the period chosen, which must be related to the term of the product being advertised;
  - f) include the most recent period;
  - g) indicate, where they arise, details of **transaction** costs, interest and taxation that have been taken into account; and
  - h) state, where applicable, the basis upon which performance is quoted.(GP 1 & 3)
- 37 An **advertisement** which contains information on past performance must contain the following warning:

**“Past performance may not be a reliable guide to future performance”.** (GP 1 & 3)

- 38 Where the regulated entity has a position or holding in the **advertised product** or in a related product; or is providing or has provided within the previous 12 months **investment advice** or investment services in relation to the **advertised product** or a related product, it must include a statement to this effect in the **advertisement**. (GP 1 & 6)

- 39 Information about the simulated performance of the product or service or of a regulated entity must:
- state that the figures are based on a simulated performance that are relevant to the performance of the **advertised product or service** or of the advertiser;
  - not be selected so as to exaggerate the success or disguise the lack of success of the **advertised product or service** or of the advertiser;
  - state the source and method of calculation; and
  - indicate whether, and to what extent, **transaction** costs, interest and taxation have been taken into account. (GP 1 & 6)
- 40 An **advertisement** which contains information on simulated performance must also contain the following warning :

**“Simulated performance may not be a reliable guide to future performance”.** (GP 1, 3 & 6)

- 41 An **advertisement** must not describe a product or an investment as guaranteed or partially guaranteed unless:
- there is a legally enforceable agreement with a third party who undertakes to meet, to whatever extent is stated in the **advertisement**, the **customer's** claim under the guarantee;
  - the regulated entity has made, and can demonstrate that it has made, an assessment of the value of the guarantee;
  - the **advertisement** gives details about both the guarantor and guarantee sufficient for a **customer** to make a fair assessment about the value of the guarantee; and
  - where it is the case, the **advertisement** states that the guarantee is from a firm within the same **group** as the regulated entity. (GP 1, 3 & 6)
- 42 If an **advertisement** contains a reference to the impact of taxation, it must:
- state the assumed rate of taxation;
  - state, where applicable, that the tax reliefs are those currently applying, and state that the value of the tax reliefs referred to in the **advertisement** apply directly to the **customer**, to the provider of the **advertised product or service** or to the fund in which the **customer** participates, as appropriate;
  - state, where applicable, that the matters referred to are only relevant to a particular class or classes of **customer** with particular tax liabilities, identifying the class or classes of **customer** and the type of liabilities concerned;
  - state who has the responsibility for obtaining the tax benefits advertised;

- e) not describe the investment as being free from any liability to income tax unless equal prominence is given to a statement, where applicable, that the income is payable from a fund from which income tax has already been paid; and
- f) not describe the investment as being free from any liability to capital taxation unless equal prominence is given to a statement, where applicable, that the value of the investment is linked to a fund which is liable to capital taxation. (GP 1, 3 & 6)

43 Where the investment can fluctuate in price or value, an **advertisement** must contain the following warning:

***“Investments may fall as well as rise in value”.*** (GP 1 & 3)

44 Where the return on an investment is not set until a particular date, for example, the maturity date of the investment, this must be clearly stated. (GP 1 & 6)

45 Where an **advertisement** relates to a **high volatility product**, it must state prominently that the product may be subject to sudden and large falls in value, and, if it is the case, that the **customer** could lose the total value of his/her investment. (GP 1, 3 & 6)

46 Where an **advertised product** is described as being likely to yield income or as being suitable for a **customer** particularly seeking income from his/her investment, and where the income from the product can fluctuate, the **advertisement** must contain the following warning:

***“Income may fluctuate in accordance with market conditions and taxation arrangements.”*** (GP 1, 3 & 6)

47 Where an **advertised product** offers the facility of a planned withdrawal from capital as an income equivalent, a regulated entity must ensure that the effect of such a withdrawal upon the investment is clearly explained in the **advertisement**. (GP 1 & 6)

48 Where an **advertised product** is denominated in a foreign currency, or where the value of an investment may be directly affected by changes in foreign exchange rates, the **advertisement** must contain the following warning:

***“Changes in currency exchange rates may have an adverse effect on the value, price or income of the product.”*** (GP 1 & 6)



- 49 An **advertisement** for a product which is or which may be a not readily realisable investment must state that it may be difficult for **customers** to sell or realise the product and/or obtain reliable information about its value or the extent of the risks to which it is exposed. (GP 1 & 6)
- 50 An **advertisement** for a product that cannot be encashed prior to maturity or which incurs an early redemption penalty must clearly state that this is the case. (GP 1 & 6)
- 51 An **advertisement** for a fund which invests more than 20 per cent. of its assets in assets for which there is no ready market<sup>5</sup> or in property or which refers to the fact that a fund may be so invested, must state that the value of the assets is a matter for an independent expert's opinion and the assets may be difficult to sell even at that value. (GP 1 & 6)
- 52 An **advertisement** for a product subject to front-end loading must state that deductions for **charges** and expenses are not made uniformly throughout the life of the investment, but are loaded disproportionately onto the early years, and the **customer** must be warned that, if he/she withdraws from the investment in the early years, the practice of front-end loading will impact on the amount of money which he/she receives and that he/she may not get back the amount he/she has invested. (GP 1 & 6)
- 53 An **advertisement** for a product subject to redemption **charges** must state that deductions for **charges** and expenses will impact on the final amount paid to the **customer**. (GP 1 & 6)
- 54 Where an **advertisement** contains any forecast or projections, whether of a specific growth rate or of a specific return or rate of return, or some other factor, it should make clear the basis upon which that forecast or projection is made, explaining:
- a) whether reinvestment of income is assumed;
  - b) whether, and to what extent, account has been taken of the incidence of any taxes or duties and if so, how; and
  - c) whether the forecast or projected rate of return will be subject to any deduction upon premature realisation or otherwise. (GP 1 & 6)
- 55 Where cancellation rights apply:
- a) an **advertisement** must state that upon cancellation the **customer** may receive considerably less than originally invested, if this is the case; and
  - b) if an **advertisement** relates to a high volatility investment, the **advertisement** must state, if it is the case, that the shortfall in the amount recovered by the **customer** on cancellation may be sizeable relative to the amount invested. (GP 1 & 6)

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<sup>5</sup> For the purposes of requirement 51 "no ready market" means that the asset is not traded frequently in or under the rules of a recognised exchange or regulated market.

# CHAPTER 8

## DEFINITIONS

In this Consumer Protection Code:

**“advertisement”** means any communication (whether oral or in written or other visual form and whether produced by electronic or other means) which is intended to publicise or otherwise promote a financial service to an individual **customer** or group of **customers** including any brochure, catalogue, notice, circular, leaflet, poster, placard, photograph, illustration, display, stationery, directory entry, article or statement for general publication, any electronic address or any information provided by the financial service provider that is accessible electronically, any audio or video recording, or any presentation, lecture, seminar or interview, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospective Directive 2003/71/EC.

**“advertised product or service”** means the product or service that is the subject of an **advertisement**.

**Bank** refers to the Central Bank and Financial Services Authority of Ireland.

**“best advantage”** - In assessing whether or not a regulated entity has acted to the best advantage of the **customer**, the Financial Regulator will have regard to all the relevant circumstances of the **transaction** including, without limitation:

- a) the nature of the **transaction**;
- b) the price and availability of the investment instrument where appropriate, as well as the general condition of the market at the time;
- c) the services which the regulated entity holds itself out as providing;
- d) all **charges** which will be levied on the **investment instrument** concerned;
- e) the size of the **order**;
- f) the nature and extent of enquiries made by the regulated entity in the market place, including where relevant, market makers in that investment instrument;
- g) the terms of the **order** given by the client, including the date on which the order was placed and the time at which the **order** was recorded;
- h) where a regulated entity uses a **single product producer/member firm** for the execution of **transactions**, the criteria used in choosing that **product producer/member firm**.

**“books, records or other documents”** or references to any of them, shall be construed as including any document or information kept in a non-legible form (whether stored electronically or otherwise) which is capable of being reproduced in a legible form and all the electronic or other automatic means, if any, by which such document or information is so capable of being reproduced and to which the **person**, whose **books, records or other documents** (as so construed) are inspected, has access.

**“business day”** means any day except Saturday, Sunday, bank holidays and public holidays (not being bank holidays).

**“certified person”** has the meaning assigned to it by Section 55 of the Investment Intermediaries Act, 1995.

**“charges”** means any charge or fee which a **customer** must pay in connection with a product or service provided by a regulated entity.

**“Chinese Walls”** means an arrangement within the organisation of the regulated entity, or between the regulated entity and any associate of that regulated entity, which requires information obtained by the regulated entity, or as the case may be, associate, or a particular operating unit within the regulated entity or associate in the course of carrying on one part of its business of any kind to be withheld in certain circumstances from other operating units or from **persons** with whom it deals in the course of carrying on another part of its business of any kind.

**“collateral”** for the purposes of the Code means an **investment instrument** which has been paid for in full by the **customer** and which is held or controlled by the regulated entity, as security for amounts which may be due to it by a **customer**, other than by way of safe custody, under the terms of a deposit, pledge, charge or other security arrangement. It is not a requirement that **collateral** has a certificate evidencing title, title may be evidenced by other documents, including electronic media.

**“complaint”** refers to an expression of grievance or dissatisfaction by a **customer**, either orally or in writing, in connection with a product or service provided to him/her by a regulated entity.

**“Compound Annual Return”** illustrates what the gross interest would be if the interest was reinvested each year.

**“confirmation note”** means a formal memorandum from a regulated entity to a **customer** giving details of a **transaction** (other than a **transaction** in a **derivative**) executed on behalf of a **customer**.

**“connected party”** except where otherwise stated, shall be deemed to include a **partner, director**, controller, associated undertaking, **related undertaking** or subsidiary undertaking or **employee** of the regulated entity, including any associate or the **person** concerned.

**“contract note”** means a formal memorandum from a regulated entity to a **customer** giving details of a **transaction** (other than a **transaction** for a **derivative**) executed on behalf of the **customer**.

**“credit agreement”** has the meaning specified in Section 2 of the Consumer Credit Act, 1995.

**“credit institution”** means an undertaking, other than a credit union or friendly society, whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

**“customer”** means any or all of the following:

- (i) a **person** for whom a regulated entity has provided or intends to provide a product or service;
- (ii) a **person** to whom a regulated entity has offered to provide a product or service;
- (iii) a **person** who has sought the provision of a financial product or service from a regulated entity;
- (iv) a member of a credit union.

**“deposit agent”** has the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.

**“derivative”** shall have the meaning assigned to financial contracts in Section 1 of the Netting of Financial Contracts Act, 1995.

**“director”** has the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.

**“discretionary account”** means an account which is handled by a regulated entity for a **customer** on which dealings are carried out without prior reference to the **customer**, subject to the appropriate provisions of the Code and **“discretionary customer”** and **“discretionary portfolio”** shall be construed accordingly.

**“employee”** and cognate words shall be construed to include references to a **person** employed under a contract of service or for service and references to a **person** employed otherwise than under a contract of service or for service.

**“execution-only customer”** is a **customer** where the following applies:

- a) the **customer** specifies both the name of the product and the name of the **product producer** with whom the he/she wishes the regulated entity to transact the **order**; and
- b) the regulated entity may not prompt, lead or discuss the proposed **transaction** and may not give any **investment advice** to the **customer** in relation to the transaction; and
- c) the regulated entity has obtained confirmation from the **customer** that having been so warned, he/she still wishes to proceed with the **transaction** on an execution-only basis.

**“factfind”** is a written statement of a **customer’s** objectives, financial knowledge, investment experience and any other facts about the **customer’s** financial position which the regulated entity reasonably believes it needs to know and ought reasonably to be expected to attempt to find out.

**“futures”** means any rights under an exchange-traded contract for the sale of **investment instruments**, foreign currency or commodities under which delivery is to be made at a future date and at a price agreed upon when the contract is made.

**“group”** includes a company, its parent and its subsidiaries together with any associated undertaking or **related undertakings**.

**“high volatility product”** is an **investment instrument** whose price may fall or rise sharply in the short term, for example, exploration stocks, geared funds and funds investing primarily in emerging markets. In such cases, the regulated entity must advise the **customer** that a significant level of risk may apply to the product.

**“inducement”** means any gifts or rewards (monetary or otherwise) provided to a regulated entity but does not include –

- (a) disclosable commission; or
- (b) goods or services which can reasonably be expected to assist in the provision of investment services to **customers** and which are provided or are to be provided under a **soft commission agreement**.

**“insurance intermediary”** has the meaning specified in Section 2 of the Investment Intermediaries Act, 1995.

**“insurance undertaking”** has the same meaning as in the Insurance Act, 1989.

**“investment advice”** shall have the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.

**“investment instrument”** has the meaning specified in Section 2 of the Investment Intermediaries Act, 1995.

**“investment management agreement”** refers to the document in which the respective responsibilities of the regulated entity and its discretionary **customer** are set down.

“margin” is the amount of cash or collateral which a person is required to deposit at any time as security for an investment position.

**“margined transaction”** means a **transaction** effected by a regulated entity with or for a **customer** relating to an **investment instrument** as defined in Section 2 of the **Act** under the terms of which the **customer** will, or may, be liable to make a deposit in cash or **collateral**, either at the outset or subsequently, to secure performance of obligations which the **customer** may have to perform when the **transaction** falls to be completed or upon the earlier closing of his/her position. The term includes but is not limited to, **futures, options** and **rollovers**. It may also include an **option** purchased by a **customer** the terms of which provide the maximum liability of the **customer** in respect of that **transaction** will be limited to the amount payable as premium.

**“member firm”** has the meaning specified in Section 2 of the Stock Exchange Act, 1995.

**“Member State”** has the meaning specified in Section 2 of the Investment Intermediaries Act, 1995.

**“money”** includes cash, cheques or other payable orders together with current and deposit accounts maintained with **credit institutions**.

**“moneylender”** has the meaning specified in Section 2 of the Consumer Credit Act, 1995

**“mortgage lender”** has the meaning specified in Section 2 of the Consumer Credit Act, 1995.

**“moneylending agreement”** has the meaning specified in Section 2 of the Consumer Credit Act, 1995.

**“mortgage intermediary”** has the meaning specified in Section 2 of the Consumer Credit Act, 1995.

**“officer”** shall have the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.

**“open position”** in relation to an **investment instrument** of a particular description at a particular time, means a **person’s** net position in relation to that **investment instrument** at that time.

**“options”** has the meaning specified in Section 2 of the Investment Intermediaries Act, 1995.

**“order”** in relation to an order from a **customer**, means –

- a) an **order** to a regulated entity from the **customer** to effect a **transaction** as agent; or
- b) any other **order** to a regulated entity from the **customer** to effect a **transaction** in circumstances giving rise to similar duties as those arising on an **order** to effect a **transaction** as an agent; or
- c) a decision by a regulated entity in the exercise of discretion for the client.

**“outsourced activity”** is where a regulated entity employs another firm to carry out an activity on its behalf.

**“partner”** means a **person** who has been admitted to a partnership of a regulated entity.

**“person”** includes a natural person or a legal person.

**“private customer”** means a **customer** who seeks to do business with a regulated entity and who is not a **professional customer**.

**“product producer”** has the meaning specified in section 2 of the Investment Intermediaries Act, 1995.

**“professional customer”** means a **customer** who possesses the experience, knowledge and expertise to make its own financial decisions and to properly assess the risks it incurs. The criteria for being considered a professional client are set out in Annex II to Directive 2004/39/EC of 21 April 2004 on markets in financial instruments.

**“property”** means any freehold or leasehold interest in any land or building.

**“protection policies”** in the context of this Code means non-life insurance policies (other than payment protection policies) and **term life assurance policies**.



**"PRSA"** is a personal retirement savings account,

**"records"** see definition of **"books, records and other documents"**.

**"regulated business activities"** refers to activities of a regulated entity which are regulated by the Financial Regulator.

**"regulated market"** has the meaning assigned to it by Article 1 (13) of the Investment Services Directive 93/22/EEC.

**"related undertaking"** has the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.

**"rollover"** of a position means a **transaction** or a set of **transactions** carried out on a **regulated market** or recognised exchange, the effect of which is to postpone the settlement of that position.

**"soft commission agreement"** means any written agreement under which a regulated entity receives goods or services to direct business through or in the way of another **person**.

**"Statement of Authorised Status"** is a written notice stating that the regulated entity is authorised by the **Bank/** Financial Regulator and listing the activities which the regulated entity has been authorised to carry out.

**"term life assurance policy"** is a life insurance policy which provides life cover for a fixed term of years in return for a fixed premium. The cover ceases at the end of the policy term and the cover does not provide a cash return if terminated.

**"terms of business"** means the document in which the respective responsibilities of the regulated entity and its **customers** are set out in circumstances where the regulated entity has no discretion to deal outside a **customer's** instructions.

**"tied insurance agent"** has the meaning assigned to it in Section 2 of the Investment Intermediaries Act, 1995.



**“Tracker Bonds”** are deposits or life assurance policies, which contain the following features:

- a) a minimum payment, at the expiration of a specified period of time, of a specified % of the amount of capital invested by the **customer** in the product, and
- b) a cash bonus payable after a specified period of time, which is linked to or determined by, changes over the period of investment in the level of one or more recognised stock market indices, commodity prices, any other recognised financial indices or the price of one or more securities specified at the outset or from time to time.

**“transaction”** includes –

- (a) the purchase or sale by a regulated entity of an **investment instrument**; or
- (b) the subscription for an **investment instrument**; or
- (c) the underwriting of an **investment instrument**; or
- (d) the placing or withdrawal of a deposit.

**“valuation date”** means the date as of which the total value of a portfolio has been valued.

# CHAPTER 9

## APPENDIX 1

### RISK DISCLOSURE STATEMENT FOR MARGINED TRANSACTIONS

This brief statement does not disclose all of the risks and other significant aspects associated with **margined transactions**. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. **Margined transactions** are not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

#### **FUTURES**

1. Effect of "Leverage" or "Gearing"

**Transactions** in **futures** carry a high degree of risk. The amount of initial margin is small relative to the value of the **futures** contract so that transactions are "leveraged" or "geared". A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial **margin** funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or **margin** levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing orders or strategies

The placing of certain orders (e.g. "stop-loss" orders, where permitted under local law, or "stop-limit" orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such **orders**. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.

## OPTIONS

### 3. Variable degree of risk

**Transactions in options** carry a high degree of risk. Purchasers and sellers of **options** should familiarise themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the **options** must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of **options** may offset or exercise the **options** or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a **futures** position with associated liabilities for **margin** (see the section on **Futures** above). If the purchased **options** expire worthless, you will suffer a total loss of your investment which will consist of the **option** premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money **options**, you should be aware that the chance of such **options** becoming profitable ordinarily is remote.

Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing **options**. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller may be liable for additional **margin** to maintain the position if the market moves unfavourably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for **margin** (see the section on **Futures** above). If the option is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for **margin** payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

## OTHER FORMS OF MARGINED TRANSACTIONS

### 4. Effect of "Leverage" or "Gearing"

Other forms of **margined transactions** may also carry a high degree of risk. The amount of initial **margin**, where payable, may be small relative to the value of the contract so that a relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial **margin** funds deposited with the firm to maintain your position. If the market moves against your position or **margin** levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

## RISKS COMMON TO ALL MARGINED TRANSACTIONS

### 5. Terms and conditions of contracts

You should ask the firm with which you deal about the terms and conditions of the specific **margined transactions** which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a **futures** contract and, in respect of **options**, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

### 6. Suspension or restriction of trading and pricing relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold **options**, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the **futures** contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

7. Deposited cash and property

You should familiarise yourself with the protections accorded to **money** or other property you deposit for domestic and foreign transactions, particularly in the event of a firm's insolvency or bankruptcy. The extent to which you may recover your **money** or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

8. Commission and other charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other **charges** for which you will be liable. These **charges** will affect your net profit (if any) or increase your loss.

9. Transactions in other jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

10. Currency risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

11. Trading facilities

Most open-outcry and electronic trading facilities are supported by computer based component systems for the **order** routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure. Your ability to recover certain losses may be subject to limits on liability imposed by the system provider, the market, the clearing house and/or **member firms**. Such limits may vary: you should ask the firm with which you deal for details in this respect.

12. Electronic trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your **order** is either not executed according to your instructions or is not executed at all.

13. Off-exchange transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks. Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarise yourself with applicable rules and attendant risks.

***I hereby acknowledge that I have received and understood this risk disclosure statement.***

***Date*** \_\_\_\_\_

***Signature of Customer***\_\_\_\_\_

## APPENDIX 2

This Table sets out the information to be included in Contract/Confirmation Notes

Column A applies to the purchase or sale of an **investment instrument**;

Column B applies to the purchase or sale of a **futures** contract; and

Column C applies when an option has been exercised.

		Column A	Column B	Column C
<b>General Information</b>				
1	Name and address of the regulated entity	✓	✓	✓
2	Where applicable, the fact that the regulated entity is a member of an exchange and that the transaction is governed by the rules of that exchange	✓	✓	✓
3	The customer's name, account number or other identifier	✓	✓	✓
<b>Information relating to individual transactions</b>				
4.	The date of the transaction	✓	✓	✓
5	The time at which the transaction was executed or a statement that the customer will be notified of that time on request	✓	✓	✓
6	The investment instrument or margined transaction concerned, the size involved and whether the transaction was a purchase or sale	✓	✓	✓
7	The maturity, delivery or expiry date of the margined transaction		✓	
8	The unit price at which the transaction was executed or averaged and the total consideration due to or from the customer and a statement, if applicable, that the price is an averaged price	✓	✓	
9	The settlement date	✓		
10	The strike price of the option and, where applicable, the total consideration due from, or to, the <b>customer</b>			✓
<b>Details re charges and costs</b>				
11	The amount of the regulated entity's charges to the customer in connection with the transaction	✓	✓	✓
12	The amount or basis of any charges shared by the regulated entity with another person (except officers and employees) or the fact that this will be made available on request	✓	✓	
13	The amount of any charges, including transaction taxes, which are incidental to the transaction and which will not be paid by the regulated entity out of the charges referred to in (11) above	✓	✓	✓
<b>Other information</b>				
14	A statement, if this is the case, that any dividend, bonus or other right which has been declared, but which has not been paid, allotted or otherwise become effective in respect of the relevant investment instrument, will not pass to the purchaser under the transaction	✓		
15	The amount or basis of any remuneration which the regulated entity has received or will receive from another person in connection with the transaction	✓		
16	If any interest which has accrued or will accrue on the relevant security is accounted for separately from the transaction price, the aggregate amount of the interest which the purchaser will receive or the number of days for which he/she will receive interest and the applicable rate of interest accruing	✓		
17	If the transaction involved a foreign currency, the rate of exchange involved and the time and date of determination of such, if other than the date of the transaction	✓	✓	✓
18	A statement, if this is the case, that the regulated entity has acted as principal or that it has executed the transaction with or through a single member firm	✓	✓	
19	The exchange on which the transaction was carried out, or in the case of a transaction not carried out on any exchange, the fact that the transaction was off-exchange	✓	✓	✓

## APPENDIX 3

### Information to be Disclosed in Periodic Statements to Discretionary Customers

Column A applies to **investment instruments** and cash balances;

Column B applies to **futures** and cash balances; and

Column C applies to **options** and cash balances.

		Column A	Column B	Column C
	Contents and Value			
1	The number, description and value of each investment instrument held in the portfolio	✓	✓	✓
2	The amount of cash balances (which may be shown on a separate statement)	✓	✓	✓
3	The aggregate amount of the portfolio's value on the valuation date	✓	✓	✓
	Basis of Valuation			
4	A statement of the basis on which the value of each investment instrument at the valuation date has been arrived at (or a reference to an earlier document containing this statement), and, if applicable, valuation report. Where some of the investment instruments are shown in a currency other than the standard one used for valuing the portfolio, the relevant currency exchange rates must be shown	✓	✓	✓
	Transactions and Changes in Composition			
5	Particulars of each transaction entered into for the portfolio during the period covered by the statement	✓		
6	The aggregate of money and particulars of all investment instruments transferred into and out of the portfolio during the period covered by the statement	✓	✓	✓
7	The aggregate of interest payments, dividends and other benefits received by the regulated entity for the portfolio during the relevant period	✓	✓	✓
	Charges and Remuneration			
8	The aggregate of <b>charges</b> and taxes (as known by the regulated entity) deducted in respect of the purchase, sale and management of investment instruments, or a reference to the fact that details of <b>charges</b> and taxes have been separately disclosed in writing to the <b>customer</b> on earlier statements or contract notes giving the date of such earlier statements	✓	✓	✓
9	Particulars of all, or any, remuneration received by the regulated entity from a third party (except for a simultaneous matching transaction) in respect of the transactions entered into for the portfolio during the relevant period, or a statement that the basis or amount has been separately disclosed in writing to the <b>customer</b> in earlier statements, contract notes or other documents giving the date of such earlier statement	✓	✓	✓



Investment Instruments Pledged or Charged				
10	Particulars of any investment instruments at the valuation date which have either been pledged by the regulated entity as collateral or charged by the regulated entity to secure borrowings on behalf of the portfolio and the aggregate of any interest payments made during the period in respect of such loans	✓	✓	✓
Closed Positions				
11	In relation to each transaction effected during the period to close out a customer's position, the resulting profit or loss to the customer after deducting or adding commission (as appropriate) in respect of that transaction.		✓	
12	A net profit or loss may be shown in respect of the customer's overall position in each investment instrument rather than the profit or loss attributable to each contract		✓	
13	The particulars required in respect of closed positions may be disclosed on separate statements (excluding confirmations or difference accounts) issued to the customer during the valuation period.		✓	
Open Positions				
14	Particulars of each open position in the account at the close of business on the statement date showing unrealised profit or loss in respect of each position (before deducting in either case any commission which would be payable on the closing out of that position)		✓	
15	A net profit or loss may be shown in respect of the customer's overall position in each investment instrument rather than the profit or loss attributable to each contract		✓	
16	In respect of each open position contained in the account on the statement date:			✓
	- the share, future, index, or other investment instrument or asset involved;			
	- the trade price and the date of the opening transaction;			
	- the market price of the contract;			
	- the exercise price of the contract together with the date on which it may be exercised;			
	- the market price or value at the valuation date of the underlying share, future, index or other investment instrument or asset			
Aggregate of Contents				
17	The aggregate of each of the following in, or relating to, the customer's account at the close of business on the statement date :		✓	
	- cash			
	- collateral value			
	- management fees; and			
	- commissions attributable to transactions during the period or a statement that this information has been disclosed in writing on earlier statements or confirmations to the customer			

# APPENDIX 3

## KEY FEATURES DOCUMENT FOR TRACKERS

### HOW DOES THE XXXX (INSERT NAME) TRACKER BOND WORK?

This section must include:

- name and address of the **product producer(s)**.
- a brief description of the benefits promised by the bond to the **customer**, including the guaranteed payment which applies. The CAR equivalent of the guaranteed payment, related to the total investment amount, must be shown.
- If averaging and/or any lock in provisions can impact negatively on the promised benefits, as compared with an identical investment without such benefits, the way in which such an averaging or lock in provision can lead to reduced returns must be disclosed prominently.
- The fact that the cash bonus element does not benefit from dividend or interest earnings should also be disclosed, in conjunction with a clear indication that the deposit or life assurance policy is only suitable for capital growth investment.
- If the relevant **credit institution** or life **assurance undertaking** benefits from any dividend or interest income arising from the **investment instrument** used to secure the cash bonus promised to the **customer**, this fact must be disclosed.
- If there is any currency risk for the **customer**, in relation to the benefits promised, this fact should be disclosed.
- the investment term of the bond, i.e. the period to the date of the guaranteed payment.

## WHERE DOES MY INVESTMENT GO?

This section should show clearly the split of the investment amount (or a typical investment amount for this type of product if the disclosure is being made on a provisional or generic basis) into three components:

- the open market value, at the date of investment, of the guaranteed payment promised to the **customer**;
- the open market value, at the date of investment, of the cash bonus promised to the **customer**; and
- **charges** representing the balance.

The implied CAR of the guaranteed amount promised to the **customer**, relative to the total investment amount, should also be stated prominently.

The disclosure should take the following format:

Your proposed investment of €xx,xxx will be used, at the date of investment, as follows :

€xx,xxx ,	or xx%, will be used to secure the guaranteed payment of €xx,xxx payable after xx years and yy months. This is equivalent to a guaranteed return on this part of your investment of xx% pa, before tax is deducted.
€xx,xxx ,	or xx%, will be used to secure the cash bonus which may be payable after xx years and yy months.
€xx,xxx,	or xx%, will be taken in charges. Sales and intermediary remuneration accounts for €x,xxx of this amount
€xx,xxx	Total

If the cash bonus is zero, the guaranteed payment will represent a return of x.x% pa, on your total investment over the period to the date of the guaranteed payment, before any tax is deducted. This is the lowest possible return you can get.

The open market value referred to above is the open market cost of the benefit promised to the **customer** at the date of investment, net of the value of any commission or other reward or benefit payable to the credit institution or insurance undertaking and/or a connected party to that credit institution or insurance undertaking.

## DO I HAVE ACCESS TO MY INVESTMENT?

In this section the **customer** must be informed of the limited nature of the guaranteed payment, e.g. that it is payable on one specified date only.

The **customer** must also be informed of:

- whether or not they can get access to part or all of their investment, before the date of the guaranteed payment;
- if access is provided before this date, whether the encashment will be on guaranteed terms or not; and
- whether the **customer** is likely to suffer a penalty or financial loss if access is provided to part or all of their investment, before the date of the guaranteed payment.

## WHAT HAPPENS IF I DIE BEFORE THE BOND MATURES?

This section must include :

- the circumstances, if any, in which the product may or must be encashed on death and the procedure for encashing it on death, if this is allowed; and
- the benefit payable on encashment of the product on death, when this benefit is payable, how this benefit is calculated, and whether there is any guaranteed level of benefit payable on death.

## WHAT ABOUT TAX?

In this section the **customer** should be made aware of :

- the tax that may be deductible by the **credit institution** or **insurance undertaking** from benefits payable;
- the circumstances, if any, in which the tax referred to above, may not be deductible from the benefits payable;
- the circumstances, if any, in which the tax referred to above, may be reclaimed by the **customer** or offset against other tax liabilities;
- any potential liability to PRSI or Health Levy in relation to any benefits received from the deposit or life assurance policy;
- any requirements to report to the Revenue Commissioners details of the investment in the deposit or life assurance policy, including the reporting of any details of benefits received from the deposit or life assurance policy, and potential Revenue penalties for not so reporting.

## IS THIS BOND SUITABLE FOR ME?

In this section the **customer** should be made aware of circumstances in which the proposed investment might not be a suitable investment.

## CAN I CHANGE MY MIND ABOUT INVESTING?

In this section the **customer** should be made aware of the 30 day cooling-off period applicable.

## REFERRING TO THE FINANCIAL SERVICES OMBUDSMAN

In this section the **customer** should be made aware of the circumstances in which he can refer a dispute about this proposed investment to the Financial Services Ombudsman scheme.

## DECLARATION & SIGNATURE

The vendor acting on behalf of the relevant **credit institution** or **life assurance undertaking** is required to sign a declaration to signify that this document has been provided to the **customer** before signing the relevant application form, while the **customer** is required to sign to testify that they have received the relevant information.



IRISH FINANCIAL SERVICES  
REGULATORY AUTHORITY

Please clearly mark your submission 'Consumer Protection Code' and send it to:

Consumer Protection Codes Department  
Irish Financial Services Regulatory Authority  
PO Box 9138  
College Green  
Dublin 2

E-mail [codesconsultation@ifsra.ie](mailto:codesconsultation@ifsra.ie)

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