



FINANCIAL REGULATOR
Rialtóir Airgeadais

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Re: The Investment Intermediaries Act, 1995 as amended (the Act)
The Consumer Protection Code (the Code)

Dear «Greeting»

As you may be aware, the Financial Regulator has been carrying out a series of consumer focussed themed inspections to monitor compliance with specific requirements of the Handbooks for Multi-Agency Intermediaries (MAIs) and Authorised Advisors (AAs), the Code and other relevant statutory provisions applying to such firms. The first theme looked at whether intermediaries were returning rebates in full to their customers and also whether these rebates were being processed in a timely manner. The second theme involved the examination of firms' terms of business documents to identify their fee charging structure, how it was applied in practice and whether firms were charging fees which exceeded the parameters set out in their documentation. While our findings are based on a relatively small sample of firms, nonetheless these themed inspections have raised concerns in relation to a number of significant issues including concerns about the disclosure of fees/charges and payment of rebates due to clients. All intermediaries are reminded of the general principles in the Code which require them to act in the best interests of their customers and to make full disclosure of all relevant material information in a way that seeks to inform the customer.

The purpose of this letter is to provide you with some general feedback in relation to the findings from these themed inspections. We appreciate that not all of the issues discussed in this letter will be applicable to your firm. Where a specific compliance issue arises with

an individual firm this is addressed directly with the firm and where appropriate, regulatory action may be taken. We hope that this information will be of assistance to you in developing and ensuring your own firm's compliance.

Set out below, are details of the particular issues identified from our inspections:

1. Premium Rebates

- (a) Payment of rebates in full: We have noted that some firms have been making deductions from rebates without advising the customer. The Code states that a rebate due to a consumer must be paid in full and that any charges due to the intermediary must not be recovered without the prior written agreement of the consumer. Intermediaries must satisfy themselves that they are in full compliance with this provision and that they are in possession of the prior written agreement of the consumer before deducting a fee or other charge from a rebate.
- (b) Deduction of claw-back commission: We have also noted that some firms have made deductions from client premium rebates in respect of commission "clawed back" by product producers. Commission arrangements on a policy are a matter solely between the intermediary and the insurance undertaking and any rebate to the consumer should not be affected by a subsequent claw-back by the insurer of non-earned commission due to early cancellation/amendment of a policy.
- (c) Remission of rebates in a timely manner: When examining the payment of rebates to clients, it was noted that in some cases these were not being returned within the parameters laid down in the requirements of the Handbooks or the Code. Firms are reminded that the Code now requires the transfer of a premium rebate to a consumer within five business days of it becoming due.

2. Charges:

- (a) Prior disclosure of all charges: In an industry letter issued in May 2005, the Financial Regulator advised intermediaries that before charging a fee, clients should be provided with relevant information on those fees and maintain documentary proof of having done so. General Principle 6 of the Code requires regulated entities to *make full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer.* Firms are also reminded of provision 44 in chapter 2 of the Code in this regard. We have found that while in general firms make disclosure of the fact that they will charge their customers a fee for conducting business on their behalf, the detail contained in some firms' terms of

business varies greatly, and in the majority of firms examined, is non-specific in nature. All intermediaries are reminded that they must adhere to the provisions of the Code and ensure that their disclosure sets out details of their charges in a way that seeks to inform their customers. Provision 44 requires the regulated entity to provide the consumer with details of all charges, which they will pass on to the consumer, prior to providing a service to the consumer.

We are aware that some firms also disclose their fees in invoices or premium renewal notices issued to clients. Where fees are referred to in this way, firms should also ensure that they are in accordance with those fees referred to in the terms of business document. Where firms do not disclose fees separately in such invoices or premium renewal notices, regard should be taken of provision 12 of Chapter 2 of the Code which requires a regulated entity to ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

- (b) Fees charged in excess of those stated in the terms of business: In the situation where fees are set out in the firm's terms of business document, or the level of the fees had been specified, it was noted that some firms charged fees in excess of those set out in that document. This is not an acceptable practice and is in contravention of the requirements in the Code. In this regard, please see the attached appendix which sets out our general principles in relation to charging issues to be observed by all regulated entities. Please also note that Chapter 2, provision 45 of the Code requires that errors in any charge or price levied on, or quoted to a consumer in respect of any service or product the subject of the Code are corrected speedily, efficiently and fairly. All intermediaries should check their records to ensure compliance with this provision and in particular the requirement to notify the Financial Regulator where they consider that there may have been a material charging error.

3. Retention of premium reductions

It appears that in a small number of cases where firms have achieved reductions in premiums on behalf of customers, these reductions may not have been passed on to those customers. We are continuing to examine this potentially very serious issue. We expect intermediaries to check that this is not an issue within their firms and to rectify all instances where applicable, in accordance with provision 45 of the Code as referred to in paragraph 2(b) above. Intermediaries are also reminded of the

requirement under the Code to act in the best interests of their customers and the integrity of the market.

4. Other matters

- (a) Becoming a debtor of the customer: It was noted that some intermediaries run a rolling account in relation to client premiums due. It appears that this practice was adopted mainly in relation to commercial clients due to the number of alterations occurring on their clients' policies during a period of insurance. This can have the effect of the intermediary becoming a debtor to the client where rebates are due and money is owed to the client. Failure to issue rebates in a timely manner was a contravention of the Handbooks and is not in compliance with the Code. In addition, under the terms of their authorisation under the Act, an Authorised Advisor or a Multi-Agency Intermediary cannot become a debtor of their client.

- (b) Receipts issued in accordance with Section 30 of the Act: Section 30 of the Act imposes requirements on intermediaries to issue a receipt for each non-negotiable or negotiable instrument or other payment received for the purposes of transmitting an order. It also specifies the format of this receipt. It was noted that intermediaries do not always issue receipts in the format as specified in that section of the Act. Any breach of Section 30 is a criminal offence and it is mandatory for the Financial Regulator to make a report to the Gardai in respect of any suspected failure to comply with these requirements.

- (c) Legal expenses insurance: It was noted that some firms may have included legal expenses insurance with other policies (in particular motor insurance policies) without premiums being disclosed separately and with the client being required to "opt out" if they did not want this cover. In addition, some firms did not appear to be issuing the required statement of suitability in relation to this product.

Chapter 2 provision 5 states that a regulated entity must not charge a consumer a fee for any optional extra(s) offered in conjunction with a product or service, unless that consumer has positively indicated that they wish to purchase the optional extra(s).

Firms are also reminded that chapter 2 provisions 24 and 31 of the Code requires that an intermediary must gather and record sufficient information to recommend a product and then to issue a written statement of reasons why a product is suitable for that particular customer.

Should you have any queries in relation to the contents of this letter please contact Paul Gallagher (01) 410 4626 or Jim Murphy (01) 410 4948.

Yours sincerely

Brenda O'Neill
Deputy Head of Consumer Protection Codes Department