



FINANCIAL REGULATOR
Rialtóir Airgeadais

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June 2010

**Re: Consumer Protection Code (the Code)
Compliance with Rules on Client Premium Accounts**

Dear «Greeting»,

The Financial Regulator has completed a series of themed inspections to monitor compliance with specific requirements of the Code and other relevant statutory provisions applying to insurance intermediaries. This theme examined how intermediaries are dealing with the requirements of the Code in relation to the operation of Client Premium Accounts (CPA). In addition, a number of issues have recently arisen in individual firms which have highlighted the importance of adequate and robust controls and procedures being put in place and implemented effectively in relation to the operation of a CPA.

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

- **Overall view**

The Code has now been fully in force since July 2007 with some aspects of the Code continuing on from the previous handbooks introduced in November 2001. In general, the evidence from inspecting firms under the above theme was that in most cases firms were processing the monies processed through the CPA in accordance with the requirements of the Code. It was disappointing however, to find that a

substantial number of firms examined (40%) did not have their accounts designated in accordance with the requirements contained in chapter 5 of the Code. The inspections also found that 20% of firms had overdrawn accounts, which is contrary to the requirements of the Code. Two firms were found not to have carried out monthly reconciliation of their CPAs in accordance with the Code. The inspections also found instances where three firms had failed to comply with Chapter 5 Provision 28 which sets out what transactions can be passed through the CPA by way of debits and credits.

- **Designation of Client Premium Accounts**

Given that the requirement to have CPAs designated as such has been in place since November 2001, it is of concern that 40% of the firms' CPAs examined were not properly designated. It was noted that firms did maintain a specific account through which premiums were passed but the names on these accounts reflected, in various forms, the provisions of previous legislative requirements. Firms are reminded of the requirements of Provisions 24, 25 and 26 of the Code:

*24. An insurance intermediary must lodge money it receives in respect of a premium or a premium rebate to a segregated bank account. Each such account must be designated '**Client Premium Account**'.*

25. An insurance intermediary must operate separate client premium accounts in respect of life and non-life business.

26. All payment instruments used to make payments from a client premium account must clearly state that the payment emanated from a client premium account.

- **A client premium account must never be overdrawn**

Provision 27, Chapter 5 of the Code requires that a client premium account must never be overdrawn. Examination of these accounts revealed that 20% of firms' CPAs had become overdrawn. However, on examining the majority of cases it was found that the cause of the overdrawn position was bank charges being debited from the CPA. Firms are advised that arrangements should be made with their bank for these charges to be debited to a non-CPA or for the firm to maintain a balance in the

account to operate as a buffer to prevent the account from going into an overdrawn position. It appeared that in the case of one firm the lack of oversight of the client premium reconciliation process led the firm to going into an overdrawn position on its CPA.

- **Monthly reconciliation of amounts due to regulated entities with the balance on the client premium account**

Provision 29, Chapter 5 of the Code requires an insurance intermediary to carry out and retain, on a monthly basis, a detailed reconciliation of amounts due to regulated entities with the balance on each CPA it operates. In all but two firms examined, reconciliations were being carried out satisfactorily. In five other firms, the Financial Regulator recommended that more transparent records be maintained.

Regulated firms are reminded that it is director's/management's responsibility to ensure that adequate control measures and procedures, including oversight procedures, are in place and are being utilised with regard to reconciliation of a firm's CPA in order to identify potential issues at an early stage. The Financial Regulator also reminds firms to retain all information and documents prepared in compliance with the Code as required under Common Rule 49, Chapter 2 of the Code.

- **Transactions passed through the client premium account**

The inspections found that on a number of occasions firms had used their CPAs in a manner not permitted under Provision 28 of Chapter 5. Provision 28 sets out what debits and credit may be passed through the CPA and in some instances items which did not comply with these requirements had been passed through the CPA. The inspection revealed that some firms had paid salaries, rent or travel expenses from the CPA.

Firms are reminded that the Code is very specific at Provision 28 as to what can be passed by way of debits or credits through the CPA. Items not included in this provision must not be passed through the CPA. We would point out that a firm is not permitted to pay a client's premium out of the CPA if it has not been received. If the

firm wishes to provide this service to their client they must pay the client's premium from the office account.

The aim of this letter is to inform firms of the relevant issues surrounding the theme in order to promote compliance in the sector. It is critical that all premiums received are properly receipted and that all functions involved in the operation of a CPA are carried out in a proper manner in accordance with the Code and subject to adequate supervision and control. Firms should be aware that all breaches of the Code are potentially subject to being dealt with under our Administrative Sanctions Procedures and are examined on a case by case basis.

Other issues

Recently, the Financial Regulator issued updated guidelines on how charging and pricing errors should be dealt with under the Consumer Protection Code. In particular it set down timelines and guidelines on how overcharges should be repaid to consumers. Whilst this letter was initially issued to banks, insurers and MIFID firms it may also be of relevance to intermediaries and a copy is enclosed for your attention. Firms are encouraged to familiarise themselves with this document and refer to it if a relevant situation arises.

Should you have any queries in relation to the contents of this letter please contact Paul Gallagher (01) 2244529 paul.gallagher@financialregulator.ie or Joe Donnelly (01) 2244527 joe.donnelly@financialregulator.ie

Yours sincerely

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