



GENERAL CODE OF CONDUCT

**Section 15 of
Financial Advisory
And
Intermediary Services Act, 2002
(Act No 37. Of 2002)**



Part I – Definitions

- “Direct Marketing” – rendering of financial services by way of telephone, internet, media insert etc
- “Provider” – authorised financial services provider including a representative
- “Transaction requirement” – information required for a product supplier by/obo a client relation to the financial product
- “Writing” – communication by telefax or any appropriate electronic medium



General Provisions

- General duty of provider
 - A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interest of the clients



Specific duties of provider

- When a provider renders a financial service
 - Information provided must be
 - Factually correct
 - Provided in plain language and not be misleading
 - Be adequate and appropriate taking into account the reasonably assumed level of knowledge of the client
 - Be provided timeously
 - May be provided orally and then confirmed in writing
 - Be in a clear and readable print size
 - Must, as regards all amounts, fees etc be reflected in specific monetary terms



Specific duties of provider continued

- The provider must disclose personal interest in the relevant service or potential conflict of interest
- Non-cash incentives could be viewed as a potential conflict of interest
- The service in accordance with the instructions of the client, be executed as soon as possible
- Transactions must be accurately accounted for
- The provider must not deal in any financial product where the dealing is based upon advance knowledge of pending transactions for or with clients

Specific duties of provider continued

- A provider must have appropriate procedures and systems in place to:
 - Record such verbal and written communications
 - Store and retrieve such records
 - Keep records and documentation safe
- All records must be kept for a period of five years after termination of for the product concerned
- Records must be kept in an appropriate electronic or recorded format
- A provider may not disclose any confidential information




Information on Product Suppliers

- A provider, where appropriate, must furnish the client with full particulars of the following information about the relevant product supplier orally and confirmed within 30 days in writing
 - Name, physical location and postal and telephone contact details of the product supplier
 - Contractual relationship with the product supplier and names and contact details of the compliance and complaints department



Information on Product Suppliers continued

- Where applicable, if the provider:
 - Has any substantial financial interest in the product supplier
 - During the preceding 12 month period received more than 30% of total remuneration from the product supplier



Information on Product Suppliers continued

- A product supplier must with a reasonable time provide such other provider with sufficient particulars to enable the provider to comply with the disclosure requirements
- A provider must, in respect of a choice of product suppliers, exercise judgment objectively in the interest of the client concerned
- A provider may not compare different financial products unless the differing characteristics of each are made clear, and may not make inaccurate criticisms

Information on Providers*

- The provider must furnish the client with full particulars of the following information:
 - Full business and trade names, registration number (if any), postal and physical addresses, telephone and email addresses, as well as the names and contact details of appropriate contact persons
 - Concise details of the legal and contractual status of the provider to make it clear to the client which entity accepts responsibility for the actions of the provider*
 - Details of the relevant compliance department
 - Financial services which the provider is authorised to provide in terms of the relevant license
 - Professional indemnity
 - Whether a representative of a provider is rendering services₁₀ under supervision




Contacting of Client

- A provider must-
 - In all communications and dealings with a client, act honourably, professionally and with due regard to the convenience of the client
 - At the commencement of any contact, explain the purpose thereof




Information about Financial Service

- A provider must-
 - Provide a reasonable and appropriate general explanation of the relevant contract and make full disclosure to enable the client to make an informed decision
 - Provide material, such as projections forecasts etc




Information about Financial Service continued

- Provide full and appropriate information of the following:
 - Name and type of financial product
 - Nature and extent of benefits
 - Where financial product is an investment:
 - Manner in which the value of the investment is determined including concise details of any underlying assets
 - Charges and fees to be levied against the product including amount and frequency
 - On request, information on past investment performance including warning that past performances are not necessary indicative of future performances




Information about Financial Service continued

- The extent of monetary obligations in favour of the product supplier and provider, including the manner of payment, the frequency, the consequences of non-compliance and contractual escalations
- Incentive remuneration, commission, fee or brokerages payable to the provider by any product supplier as well as the identity of the product supplier
- Special terms or conditions and waiting periods




Information about Financial Service continued

- Any guaranteed minimum benefits
- Penalties for early termination
- Material tax considerations
- Risks associated with the product
- In terms of an insurance product – the amount of the increased premium for the first five years



Information about Financial Service continued

- Inform a client in regard to the completion or of any transaction requirement-
 - Accuracy and completeness of all information are the client's own responsibility
 - If the provider completes transaction requirements, the client should be satisfied as to the accuracy



Information about Financial Service continued

- No provider may request any client to sign any document unless all details required are inserted
- A provider must, at the request of a client, provide a statement of account relating to services rendered.

8. Furnishing of Advice

Suitability:

- A provider must, prior to providing a client with advice-
 - Seek from the client appropriate information regarding the client's financial situation and objectives*
 - Conduct an analysis – lifestyle*
 - Identify the financial product appropriate to the client's risk profile and financial needs



Furnishing of Advice continued

- If a “replacement product”, fully disclose to the client the actual and potential financial implications including full details of-
 - Fees and charges
 - Special terms and conditions and penalties
 - If an insurance product, the impact of age and health changes on the premium
 - Tax implications
 - Investment risk
 - Penalties or unrecovered expenses deductible



Furnishing of Advice continued

- Ensure that the client understands the advice and is in a position to make an informed decision
- Where the provider has been unable to conduct an analysis, the provider must fully inform the client-
 - A full analysis could not be undertaken
 - There may be limitations on advice
 - The client must consider on its own whether the advice is appropriate
- Elects to conclude a transaction that differs from that recommended by the provider, the provider must alert the client of the existence of any risks*



Record of Advice

- A provider must maintain a record of the advice. The record must reflect-
 - A brief summary of the information and material on which the advice was based
 - Financial products considered
 - Products recommended with an explanation of why product was selected
 - A provider must provide a client with a copy of the record contemplated above in writing

S10.Custody of Financial Products and Funds

- A provider who receives or holds products or funds must account for such products or funds properly and promptly and-
 - Provide written confirmation of receipt
 - When funds are received without the mediation of a bank, issue a written confirmation of receipt
 - Ensure that the funds are safeguarded
 - Open and maintain a separate account-
 - Pay into the account all funds held on behalf of the client within one business day of receipt
 - Account only contains funds of clients
 - All bank charges are for client's own account
 - Interest accruing is payable to the client



Custody of Financial Products and Funds continued

- Take reasonable steps to ensure-
 - Funds are dealt with in accordance with the mandate
 - The client has ready access to any amount




S11. Risk Management

- Control measures
 - A provider must eliminate as far as reasonably possible, the risk that clients, will suffer financial loss through theft, fraud and negligence etc and must do this by having in place procedures, up to date technology etc



Risk Management

- Specific control objectives
 - Structure the internal control procedures to ensure a reliable and safe service
- Insurance
 - A provider must, if and as required by the registrar, have suitable guarantees, professional indemnity or fidelity insurance cover



Advertising and Direct Marketing

- An advertisement by any provider must-
 - Not contain any statement that is untrue or misleading
 - Give the source of performance data
 - Clearly distinguish between guarantees, and illustrations for illustrative purposes only
- Financial services advertised by telephone
 - Voicelog record of all communications maintained



Complaints

Definitions

- “Internal complaint resolution system and procedures” means the system and procedures established and maintained by the provider in accordance with this Code for the resolution of complaints by clients
- “Resolution”, or “internal resolution” means the process of the resolving of a complaint
- “Rules” means the Rules on Proceedings of the Office of the Ombud for Financial Services Providers, 2002



Complaints continued

- A provider must-
 - Request that the client must lodge such complaint in writing
 - Maintain a record for five years
 - Handle complaints in a timely and fair manner
 - Investigate and respond promptly
 - If a complaint is not resolved, advise the client of any further steps available



Complaints continued

- Basic principles of systems and procedures
 - A provider must maintain an internal complaint resolution system and procedures based on the following:
 - Maintenance of a complaints policy
 - Transparency and visibility: clients have full knowledge of the procedures
 - Accessibility of facilities
 - Fairness to client and staff



Complaints continued


- Resolution of complaints
 - The complaint resolution system must be designed to ensure effective and fair resolution of complaints:
 - Adequate manpower required
 - Adequate training of all relevant staff
 - Responsibility and mandates are delegated to facilitate complaints resolution of a routine nature
 - Provision for the escalation of non-routine serious complaints
 - Internal follow-up procures to improve services

Complaints continued

- Specific obligations
 - The internal complaint resolution system and procedures must contain arrangements which must-
 - Reduce the details of the system to writing
 - Provide that access to procedures is at all times available to clients and made known to existing clients
 - Include a clear summary of the provisions of the Act, which will apply whenever the client, after dismissal of a complaint by the provider, wishes to pursue further proceedings before the Ombud
 - Include the name, address and contact particulars of the Ombud

Complaints continued

- Must stipulate that complaints be submitted in writing
- Make provision that the complaint will as soon as possible be resolved and that-
 - The complaint receives proper consideration
 - The client is informed of the results. If the outcome is not favourable to the client, the client must be given full written reasons and advised that the complaint may within six months be pursued with the Ombud
- Where a complaint is resolved in favour of a client, the provider must ensure that a full and appropriate level of redress is offered to the client without any delay



S20. Termination of Agreement or Business

- A provider must give immediate effect to a request of a client who voluntarily seeks to terminate any agreement
- Where client makes the request on the advice of the provider, the provider must take reasonable steps to ensure that the client fully understands all the implications