



# **BERMUDA MONETARY AUTHORITY**

**INVESTMENT BUSINESS ACT 2003**

**CODE OF GENERAL BUSINESS CONDUCT AND PRACTICE**

**JULY 2022**

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## **I. INTRODUCTION**

1. This *Investment Business Act, 2003 Code of General Business Conduct and Practice (Code)*, replaces the *Investment Business Act 2003 General Business Conduct and Practice Code of Conduct* and the *Advertising Code of Conduct*, both of which were issued in June 2010.
2. The Code is issued pursuant to section 10 of the Investment Business Act 2003 (Act). Section 10 provides that the Bermuda Monetary Authority (Authority or BMA) may issue codes of conduct or practice that offer guidance as to the duties, requirements, and standards to be complied with and the procedures and sound principles to be observed by persons carrying on investment business. Failure to comply with the provisions set out in the Code will be taken into account by the Authority in determining whether an investment provider is meeting its obligation to conduct its business in a prudent manner.
3. The Code should be read in conjunction with the Statement of Principles published under Section 9 of the Act, the Enforcement Guide (Statement of Principles and Guidance on the Exercise of Enforcement Powers) and the Guidance Notes on Outsourcing issued in June 2019.
4. Failure to comply with provisions set out in the Code will be taken into account by the Authority in determining whether an investment provider is meeting its obligation to conduct its business in a sound and prudent manner.

## **II. OBJECTIVES**

5. This Code's objectives are to provide guidance to investment providers as to the:
  - (a) Integrity and fair dealing standards required under the Act in relation to the conduct of investment business;
  - (b) Skill, care and diligence required in providing any services that they provide or indicate a willingness to provide; and
  - (c) The standards required in other areas pursuant to the Act, as well as to the best practice in the industry.
6. This Code shall be interpreted in the light of the above objectives to best give effect thereto. The Act provides that every investment provider shall, in the conduct of its business, have regard to any code of conduct or practice issued by the Authority.
7. The Authority expects an investment provider to comply with the letter and spirit of this Code. Where the Authority has concerns about an investment provider's compliance with the Code, it will bring its concerns to the attention of the relevant investment provider and

take account of the investment provider's comments and representations, as well as, where applicable, its willingness to make appropriate changes to conduct or practice.

### **III. PROPORTIONALITY PRINCIPLE**

8. The Authority appreciates that investment providers have varying risk profiles arising from the business' nature, scale, and complexity. Investment businesses with higher risk profiles would require more comprehensive governance and risk management frameworks to conduct business in a sound and prudent manner.
9. Accordingly, the Authority will assess the investment provider's compliance with the Code proportionately relative to its nature, scale and complexity. These elements will be considered collectively rather than individually (e.g., an investment provider could be relatively small in scale but engage in complex business and, therefore, be required to maintain a sophisticated risk management framework). In defining these elements:
  - (a) Nature includes the relationship between clients and the investment provider or the characteristics of the service provided (e.g., an investment provider that takes custody of a client's assets versus one that does not);
  - (b) Scale includes size aspects such as volume of the business conducted or the size of the balance sheet in conjunction with materiality considerations (e.g., an assessment of the impact of the investment provider's failure); and
  - (c) Complexity includes matters such as organisational structures and product design.
10. In assessing the existence of sound and prudent business conduct or practice, the Authority will have regard for its prudential objectives and the appropriateness of each Code provision for the investment provider, taking into account the investment provider's nature, scale and complexity.
11. The proportionality principle discussed above applies to all paragraphs of the Code regardless of whether the principle is explicitly mentioned.

### **IV. DEFINITIONS**

12. For the purposes of this Code:
  - 'advertisement' means every form of advertising, whether in a publication, via the internet or electronic or digital media, display of notices; by circulars or other documents; or by an exhibition of photographs, films, radio, television, telephone or other information distribution systems. This definition includes investment fund particulars, prospectuses and other offering documents but excludes regulatory documentation and reporting to clients.

- ‘client’ means any person with whom the investment provider has contracted to provide an investment activity
- ‘execution-only client’ means, in relation to the effecting of a transaction by an investment provider, a client with or for whom that transaction is effected in circumstances in which the investment provider can reasonably assume that the client is not relying upon the investment provider for advice or to exercise any judgment on the client’s behalf as to the merits of or the suitability of that transaction
- ‘illiquid’ means, in relation to a security or other asset, unable to be easily sold or converted into cash
- ‘market manipulation’ means acting in any way or engaging in any course of conduct that creates a false or misleading impression as to the market or an investment’s price or value when the action or conduct is undertaken for the purpose of creating that impression and of, thereby, inducing another person to acquire, dispose of, subscribe for or underwrite that investment or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by the investment
- ‘material non-public information’ means price-sensitive information that is not publicly disseminated
- ‘recognised investment exchange’ means an investment exchange in a country regulated by a supervisory body that is a member of the International Organisation of Securities Commissions (IOSCO)

The definitions appearing in section 2 of the Act, including the term ‘investment provider’, shall apply to the interpretation of this Code.

## **V. APPLICATION**

13. This Code applies to all investment providers.

## **VI. PROFESSIONAL CONDUCT STANDARDS**

### **Disrepute**

14. The nature and conduct of an investment provider’s business shall be handled professionally and ethically, such that it will not bring Bermuda into disrepute or damage its standing as a financial centre.

### **Cooperation with the Authority and other relevant regulatory authorities**

15. An investment provider is expected to deal openly and cooperatively with the Authority and any other relevant regulatory authorities. An investment provider should also be proactive in alerting the Authority to any significant developments relevant to its business, such as:
- (a) Its staffing;
  - (b) Its systems and controls environment;
  - (c) Any material insurance claims for damages arising from acts, omissions or breaches of professional duty;
  - (d) Its involvement in criminal proceedings either in Bermuda or abroad;
  - (e) The merger or amalgamation with, or acquisition of, another firm;
  - (f) The sale of the business;
  - (g) Any material cybersecurity incidents;
  - (h) Issues affecting its ability to meet or continue meeting the minimum criteria for licensing or registration criteria or other breaches of expected standards of behaviour;
  - (i) New product offerings and lines of investment business; and
  - (j) Significant or material changes to business plans.

In this regard, the Authority would draw the attention of investment providers to sections 17D, 18, 28, 43 and 44 of the Act.

### **Responsible conduct**

16. An investment provider shall organise and control its internal affairs responsibly and ensure it has well-defined procedures to facilitate compliance with its regulatory requirements. Where the investment provider employs staff or is responsible for the conduct of investment business by others, it shall have adequate arrangements to ensure that such people are suitable, adequately trained and properly supervised. All employees must be sufficiently qualified and experienced to discharge their duties properly.

### **Observance of non-statutory obligations**

17. An investment provider is expected to observe the tenets of any code or set of standards promulgated by anybody, whether in Bermuda or elsewhere, which has responsibility in the public interest for the supervision or regulation of investment business or other financial services or for setting conduct standards that govern the business conducted by the investment provider.

Accordingly, unless it can show any good reason for disregarding any such tenet (such as inconsistency between it and any applicable provision of this Code or any other legal requirement), an investment provider should comply with codes and accepted standards as part of its policy of observing good market practice. (See also paragraph 27).

### **Compliance procedures**

18. An investment provider shall establish and maintain compliance procedures to ensure that:



- (a) Its officers, employees and other representatives are aware of their obligations under the Act, all related principles, rules, codes, regulations and any other applicable legal provisions;
- (b) Such persons are, in practice, complying with the procedures established by the investment provider;
- (c) Sufficient information is recorded and retained regarding the conduct of the investment provider's business and its compliance with the Act; and
- (d) Its reporting officer, for the purposes of the Proceeds of Crime Act 1997, is aware of its responsibilities under that Act, the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 and other related regulations.

Compliance procedures shall be in writing. An investment provider shall, at least annually, carry out a review of its compliance procedures to ensure that they are appropriate and that they have been complied with. (See also paragraph 32).

#### **Risk management framework**

19. An investment provider must implement an appropriate risk management framework commensurate with the nature, scale and complexity of its business.

Risk identification, assessment, monitoring and reporting are critical for an effective risk management framework. As such, the Authority expects an investment provider to have an appropriate risk control framework in place and must implement it effectively for its stakeholders' benefit and to support its business objectives. This includes ensuring that the board (or similar) exercises appropriate oversight of the risk management process to ensure it continues to align with the risk appetite and risk tolerance set by the board (or similar).

#### **Manager of funds to observe the terms of fund particulars**

20. An investment provider that is the manager of a fund within the meaning of the Investment Funds Act 2006 shall take all reasonable steps to comply with every statement in the most recently published prospectus, offering memorandum or other documentation describing how the manager will operate the scheme and shall comply with the duties imposed by or under the Investment Funds Act 2006, Investment Fund Rules 2019 or any provision of law amending or replacing such legislation. An investment provider will take similar steps in acting for a fund registered or licensed, domiciled or incorporated in any jurisdiction outside Bermuda.

#### **Disclosure of licensing body**

21. An investment provider shall ensure that its regulatory body's identity is disclosed in all advertisements, promotional materials and correspondence to clients and potential clients.

*Guidance Note: The following wording is suggested: "Company X is licensed to conduct investment business by the Bermuda Monetary Authority" or "Company Y is registered to conduct investment business by the Bermuda Monetary Authority."*

### **Introductions to unauthorised persons or overseas branches**

22. An investment provider who introduces a client to a person or entity appearing to conduct investment business that is not licensed or registered in Bermuda shall disclose to the client in writing that such business does not fall within the requirements for licensing or registration under the Act; and shall generally inform the client of the system of regulation pertaining to investment business in that jurisdiction.

### **Complaint procedures**

23. An investment provider should ensure its complaints handling process is transparent. An investment provider shall ensure that procedures are in place to deal with client complaints efficiently through a simple and impartial process. These procedures should be clearly disclosed and easily accessible to clients. Client complaints must be properly handled and addressed on a timely basis, and any remedial action needed should be promptly taken. A record of the details of the complaint, the investment provider's response and any action taken as a result shall also be made and maintained.

### **Disciplinary action**

24. A record shall be maintained of the names of employees disciplined by an investment provider in connection with any breach of this Code or for any other act or omission that may reasonably be expected to affect the conduct of the investment provider's investment business and the particulars of:
- (a) the offence for which the employee was disciplined; and
  - (b) the steps taken to discipline the employee.

### **Provision for cessation of business**

25. An investment provider shall make provision for the protection of its clients in the event of the cessation of the whole or any part of its investment business.

### **Skill, care and diligence**

26. An investment provider must conduct its business with integrity at all times and should not attempt to avoid or contract out its responsibilities under this Code. It must exercise its investment business duties prudently, competently and ethically, and it should administer each client's affairs in accordance with the law. It must deal fairly with all clients and seek to ensure that they are not misled as to the service being provided and the duties and obligations of the investment provider. Whether licensed or registered, an investment provider should always act with due care, skill, and diligence in the conduct of investment business.

### **High standards of market conduct**

27. An investment provider shall meet and maintain a high standard of market conduct, including compliance with relevant law and any code or standard (applying to an investment provider) that has been issued or endorsed by any investment exchange on which the investment provider conducts business.

### **Responsible behaviour: communications with clients and prospective clients**

28. An investment provider shall establish and maintain procedures stipulating that their employees seeking to obtain business must be civil and considerate, refrain from using any undue pressure, deception or misrepresentation, and make plain their purpose and identity to clients and potential clients.

### **Unsolicited calls**

29. No investment provider shall, in the course of an unsolicited call by way of business, enter into an investment agreement with the person on whom the call is made or procure or endeavour to procure that person to enter such an agreement.

### **Informed investment decisions**

30. An investment provider shall take all reasonable steps to enable clients to make informed investment decisions and avoid misleading or deceptive representations or practices. (See also paragraph 63).

### **Supervision**

31. An investment provider shall establish procedures to ensure the adequate supervision of staff in their dealings with clients. Appropriate records relating to the training, experience and qualifications of staff shall be maintained, showing the categories of transactions for which the person is competent to conduct.

### **Responsible behaviour in dealings by officers and employees**

32. An investment provider shall have procedures for ensuring that any business executed by its officers and employees:
- (a) Is openly carried out (in that, for example, the officer or employee obtains consent before dealing, or informs the investment provider afterwards, and reveals their status to other investment providers before dealing with or through them);
  - (b) Is fairly carried out (e.g., that the officer or employee does not deal if a transaction by the investment provider would be in breach of this Code);
  - (c) It is carried out in compliance with any applicable rules and regulations relating to investment business in other jurisdictions in which it is operating as far as that can be reasonably ascertained;
  - (d) Prioritises client trades, does not front-run client trades and avoids any conflict of interest (whether with a client of the investment provider or with any business carried on by the investment provider); and
  - (e) Avoids any private benefit to any officer or employee (e.g., by obtaining credit or special dealing facilities without the knowledge of the investment provider).

The officers and employees of the investment provider shall be made aware of the above requirements. (See also paragraph 18).

### **Adequate personnel**

33. An investment provider must formulate and keep up-to-date logs for training and development and ensure that staff receive the necessary training appropriate for their roles. Staff must be provided with on-the-job training on the investment provider's internal policies, procedures and internal controls. The investment provider should ensure that adequate training is provided, specific to staff members' roles and responsibilities. Such training should be provided on an ongoing basis, including training on its anti-money laundering/anti-terrorist financing responsibilities.
34. An investment provider should maintain a high standard of recruitment practices to ensure the probity and competence of all directors, partners and employees. As such, an investment provider should have documented policies and procedures to consider any publicly available information pertaining to regulatory censure, professional reprimands and other formal censure, discipline or public criticisms, and the criminal record of a prospective employee. Once an employee has been hired, the investment provider should continually monitor employee fitness and probity.

### **Inducements**

35. An investment provider shall not (permit anyone acting on its behalf to) offer or receive gifts or other direct or indirect benefits if doing so could influence the giving of advice or the exercise of discretion. This includes the acceptance of soft commissions and other fee rebates unless they are fully disclosed in advance to clients.

## **VII. ADVERTISING AND PROMOTION**

### **General requirements for advertising**

36. An investment provider shall ensure that when publishing an advertisement, the advertisement is clear, fair, and does not contain false or misleading information, including relating to past performance, comparisons, or potential for gains or losses.
37. The content and format of any advertisement shall not:
  - (a) Be so designed as to likely give rise to misunderstandings;
  - (b) Be so designed as to disguise the significance of any warning statement or information that is required to be included under this Code;
  - (c) Be presented in such a way that it is not clearly identifiable as an advertisement; or
  - (d) Signify in any way that the advertisement is approved or has been approved by the Authority.
38. Under no circumstances may an investment provider disclaim its liabilities in respect of the accuracy of the contents of its advertisements.

39. Any advertisement shall:
- (a) Identify the investment provider who issued it or caused it to be issued;
  - (b) When in printed form, contain the address and contact information of the investment provider who issued it or caused it to be issued; and
  - (c) Ensure that the identity of the investment provider's licensing or registration body is disclosed.

*Guidance Note: The Bermuda Monetary Authority will not normally vet or give non-objection to advertisements before issue. Where, exceptionally, it does review an advertisement, such review and any views expressed by the Authority shall not prevent it from subsequently taking a different view in relation to the Code. In assessing whether an advertisement complies with the letter and spirit of the Code, the Authority will take into account matters of fact or opinion or forecasts that have been omitted (or might properly have been included) in the advertisement as well as the content and form of the advertisement itself, the context in which it is issued, the general impression that it creates and the likelihood of any person being misled by it. Where an advertisement has been reviewed by the Authority, such a review does not imply an official recommendation.*

40. An investment provider shall ensure that comparative information is meaningful and is presented in a fair and balanced manner. In addition, advertisements should not denigrate an investment provider's competitors or any product or service offered by its competitors in such a way as might lower the industry's reputation or may be considered unsuitable.

#### **Requirements relating to advertisements of specific investment products**

41. When advertising an investment product or service, the advertisement shall specify all of the terms and conditions attached to an investment unless:
- (a) The terms and conditions that are specified give a fair indication of the nature of the investment and the risks involved; and
  - (b) The advertisement contains information as to how a written statement of all the terms and conditions can be obtained.
42. Advertisements should disclose any specific risk areas relating to the investment, such as limited marketability.
43. In the case of an investment where the value of which may fluctuate and/or which is not guaranteed, the advertisement shall state that fact prominently.
44. In the case of an investment where the value of which is guaranteed, the advertisement shall state clearly the source and nature of the guarantee and to what it relates and whether there are any matters which may affect the investor's ability to benefit from it.
45. An advertisement shall not specify a rate of return without specifying how it is calculated, including any element which may involve a reduction of the client or potential client's capital. An advertisement shall not disproportionately focus on the potential return without

referring in a balanced way to the risks involved. An advertisement shall not give the impression that an investor can profit without risk.

46. All performance information, including awards and rankings, should be dated and referenced to the sources. Rankings and awards should be quoted from recognised or published external sources.
47. An investment provider should keep a record of all advertisements issued by it, including the date of issue, the publications in which it has been included and evidence to support any statement made in an advertisement that purports to be a statement of fact or opinion or details of how clients or potential clients may obtain access to such evidence.
48. An investment provider shall ensure that any financial promotion that is addressed to a potential client is clearly identifiable as such.
49. Investment providers who intend to provide promotional materials to clients or potential clients must ensure clients are in possession of sufficient information, knowledge and experience to be able to make a reasonable evaluation of any offer in the promotion; and are the only persons who may accept such an offer.
50. Advertisements should contain warning statements on the investment's risks. In particular, advertisements should include a warning statement appropriate to the degree of inherent risk.

*Guidance Note: Risk warnings may be worded as follows: “The risks of loss from investing in [type(s) of investment(s)] can be substantial”. Even though the text of warning statements and footnotes may vary, the warning should be explicit and undisguised.*

51. Warning statements and footnotes should be prominent, well-positioned and legible with respect to the font sizes, format and layout, and where the advertisement is displayed or published.

## VIII. CLIENT RELATIONSHIPS

### Client risk profiles

52. Other than for execution-only clients, an investment provider shall obtain from clients all information about their financial circumstances and investment objectives that might reasonably be expected to be relevant in enabling the investment provider to fulfil its responsibilities to its clients. This may best be attained through an exercise known as “risk profiling”.

*Guidance Note: See Appendix A for a sample risk profile document.*

### **General need for a client agreement**

53. Subject to paragraphs 54 and 55 below, an investment provider that conducts investment business with any client shall do so by means of a written agreement that sets out the basis on which its services are to be provided. The agreement shall be easy to understand, not likely to be misunderstood and conform to this Code.

The investment provider shall comply with the relevant client agreement's terms in all dealings with or on behalf of clients.

### **Exceptions**

54. No client agreement is required for:
- a) The issue of any tip-sheet, broker's circular or other similar investment publication;
  - b) A contract by the operator of a fund as principal to sell or purchase units in that scheme;
  - c) Advising on and arranging transactions (not involving any element of discretionary management by the adviser or arranger) that are limited to units in funds where the client's requirements are reasonably believed by the investment provider to be confined to that area of activity; and
  - d) Deals effected or arranged on behalf of an execution-only client.

*Guidance Note: For the avoidance of doubt, an investment provider should confirm "execution-only" status in writing, pointing out the consequent reduction of investor protection.*

55. In the case of b) and c) above, if the investment provider receives client money (e.g., cash or cheques that are made payable to the investment provider rather than a fund manager), a separate agreement shall be entered into with the client detailing the arrangements for handling client money, specifying how the money will at all times be separated from the investment provider's own money and stating the arrangements for crediting interest to the client's account. For specific requirements regarding the separation of client money, investment providers should refer to the Investment Business (Client Money) Regulations 2004, as amended.

### **Dealing while negotiating, etc.**

56. Deals not involving undue risk may be made on behalf of clients while negotiations leading to a client agreement are taking place, and deals may be made after an agreement has expired or been brought to an end solely to complete outstanding obligations.

### **Penalty on termination**

57. The client agreement may provide for any additional payment to be made to the investment provider upon the termination of the agreement, but this shall be clearly disclosed in the client agreement and acknowledged by the client prior to the related investment being executed.

### **Standard client agreement**

58. The standard client agreement shall normally include statements on the following, which is not exhaustive:

- (a) The nature of the services to be provided by the investment provider under it, including, where appropriate, the client's investment objectives and any restrictions on investments or markets in which funds may be invested;
- (b) In respect of any fees payable by the client to the investment provider:
  - i) The basis of calculation. In this regard, the investment provider should give clients at least one month's notice of any proposed fee increase;
  - ii) The basis of payment (e.g., deduction or billing, etc.). In this regard, the investment provider should make no deduction from income or capital belonging to a client in respect of its fees unless it has given notice to the client;
  - iii) The frequency of payment; and
  - iv) Whether any fees payable are to be supplemented or abated by any remuneration receivable by the investment provider with or for the client.
- (c) The fact that the investment provider is licensed or registered to conduct investment business by the Authority (See also paragraph 14 above);
- (d) The manner in which the instructions may be given by the client for any transaction;
- (e) The arrangements for handling and accounting for client money, specifying how the money is at all times separated from the investment provider's money and stating arrangements for crediting interest to the client account;
- (f) The arrangements for registration and identification of ownership and safe custody of documents of title and the name of any nominee company used;
- (g) The processes and procedures for protecting clients' personal data in adherence to relevant laws. A copy of the investment provider's data privacy policy should be available upon request;
- (h) The client's rights of inspection of contract notes, vouchers and copies of entries in books or electronic recording media relating to the client's transactions together with a statement that such records will be maintained for at least five years from the date of the transaction; and
- (i) Arrangements for bringing the agreement to an end should confer the right for the client to terminate the agreement on immediate written notice.



Where an investment provider is effecting margined transactions on behalf of a client, the agreement shall include:

- (j) A warning that the investment provider, in certain circumstances, may be required to obtain additional money from the client by way of margin (see paragraph 96);
- (k) Where the investment provider intends to effect contracts that are not traded on and under a recognised investment exchange, this shall be specified in order that authority may be granted by the client;
- (l) A statement of when a deposit or margin (including the initial and variation margin) may be required and the investment provider's rights on failure to pay; also a warning that failure to meet margin calls may lead to closing out without reference to the client. (The statement may also include arrangements under which the investment provider lends money to the client to meet margin calls); and
- (m) A statement of the circumstances in which it might be possible for an investment provider to close out without reference to the client.

#### **Discretionary portfolio management agreement**

59. Where an investment provider is to exercise discretion for a client in the management of investments, a greater degree of trust is involved. Hence, in addition to items contained in paragraph 58, the investment provider shall include statements specifying the following:

- (a) Whether there is any restriction on the investment's categories or on the amount or on any proportion of the amount that may be invested in any investment category or any one investment and, if so, what those restrictions are;
- (b) The frequency with which the client is to be supplied with a statement of the cash and the investments comprised in the portfolio and valuation thereof, and what the basis of valuation is to be;
- (c) If the agreement is to include a portfolio performance measure, then the basis on which that performance is to be measured;
- (d) Whether hedging or borrowing powers are to be used, the nature of such powers and limits upon their use; and
- (e) Where the investment provider is to have powers to lend securities to or borrow securities from third parties or to charge securities to secure borrowings, how such powers are to be exercised and the limits placed upon them.

A statement showing the initial composition of the portfolio and its initial value (so far as it can be ascertained) shall be provided to the client at the time that the client agreement is signed or as soon as practicable thereafter.

### **Special provisions in discretionary portfolio management agreements**

60. Where an investment is contemplated in areas involving higher-risk investments, the agreement shall specifically state which transactions are permitted and any limits on the investment category or the financial commitment involved. It shall also contain the required risk warnings. (See paragraph 61 and, where applicable, (l) (m) and (n) in paragraph 58).

Examples of such higher-risk investments are:

- (a) Options writing and doing business in futures and contracts for differences;
- (b) Other margined transactions;
- (c) Illiquid investments; and
- (d) Participation in securities underwriting.

### **Understanding of risk**

61. An investment provider shall not recommend a transaction to a client or act as a discretionary manager for them unless it has taken reasonable steps to enable the client to understand the nature of the risks involved.

In particular, an investment provider shall not:

- (a) Advise the client to deal or deal with or for the client in futures or options or contracts for differences, unless it has been arranged for the client to receive (and the client has, by returning a signed copy, shown that he has understood) a risk disclosure statement which explicitly states the risks that are involved in investing in futures, options or contracts for differences; and that it is common for retail clients to not only lose their investments but also be liable for any deficits in their accounts. A risk disclosure statement should contain the elements set out in the form specified in Appendix B; or
- (b) Advise the client to buy or effect in the exercise of discretion any purchase of an illiquid investment or one which is not readily realisable unless it has informed the client of the nature and extent of the risks involved in such investments, including any difficulties in determining their value, and has obtained the client's written consent.

### **Suitability**

62.

- a) Where the investment provider is responsible for providing advice or exercising discretion for or in relation to clients, it must seek from the client such information about their circumstances and objectives as may be appropriate with regard to the services to be provided.

- b) The investment provider must assess the relevant features of products and services against the client's information, including their investment policy statement, to determine the product's suitability before it is recommended or invested in.
- c) The information provided should be sufficient to enable clients to understand the characteristics and any associated risks of the product or investment they are buying and help them understand how it may meet their requirements to enable them to make an informed decision.
- d) The investment provider should retain sufficient documentation to demonstrate that the advice provided was appropriate, taking into account the client's disclosed circumstances at the time the advice was provided.

In making recommendations to a client, in exercising discretion and in advising about the client's instructions, an investment provider shall ensure as far as it can, having taken reasonable steps to inform itself of what is available in the market, that purchases and sales are suitable for the client. (See also paragraph 80).

**Disclosure and information (includes fees, performance statements, etc.)**

- 63. An investment provider shall take all reasonable steps to ensure that a client is given sufficient information, including in respect of spreads, fees and charges, as applicable, which the client is able to understand, to enable the making of balanced and informed investment decisions. (See also paragraph 30).

**Disclosure of remuneration and commissions**

- 64. Before an investment provider undertakes investment transactions for or advises a client, it shall inform the client of all relevant facts relating to its remuneration (including the remuneration of any intermediary that is payable by the client) as well as commissions attributable to the transaction or advice, unless it has been agreed in writing with the client that this is unnecessary or has disclosed a detailed fee schedule in the Standard Client Agreement.

*Guidance Note: Plain language should be used that clearly explains the methods for determining all fixed and contingent fees, commissions, any other costs to be allocated to the client and the types of transactions that will trigger such charges. Information should also be disclosed retroactively if requested by the client.*

**Funds: disclosure of particulars**

- 65. An investment provider shall ensure that before or immediately after a recommendation is made to buy any interest in a fund, a client is given an offering document or prospectus.

Below is a sample (however not an exhaustive) list of the requirements:

- (a) A statement as to whether the investment fund is authorised or registered or has been given regulatory approval, or intends to be authorised or registered in any jurisdiction or with any supervisory or regulatory authority outside Bermuda;
- (b) The date of incorporation or establishment of the investment fund; where applicable, an indication of the stock exchanges or markets where the securities are, or are to be listed or dealt in; names, addresses and other relevant particulars of directors, officers, resident representatives, auditors, fund administrators, custodians, registrars, promoters, legal advisors, investment managers, investment advisors and other persons having a significant involvement in the affairs in the investment fund;
- (c) A statement prepared by the recommender or by the fund which provides a description of the investment fund's investment objectives, including its financial objectives, investment policy and any limitations on that investment policy and an indication of any investment techniques and instruments and any borrowing powers; a detailed description of the fund's material risks;
- (d) All fees or other amounts payable then and in the future; and
- (e) Any other material information that is within the operator's knowledge or that investors would reasonably require for the purpose of making an informed judgment about the ultimate value of the investment and the merits of investing in the fund, inclusive of any trailer fees payable from the operator to the investment advisor.

*Guidance Note: This does not apply where an investment provider is acting under the terms of a discretionary management agreement.*

**Pension services: disclosure of fees**

66. With regard to amendments to pension plan design and provider arrangements, an investment provider must ensure that its fee disclosure policy and practices are re-evaluated on an ongoing basis. Fees disclosed should include:

<b>Plan administration-related expenses</b>	<b>Investment-related fees</b>	<b>Pension commission-related fees</b>
Set-up fee	Front-end load	Registration fee
Trustee fee	Annual management fee	Annual filing fee
Administration fee	Back-end load	Plan amendment fee
Change of investment fee	Custodian fee	Other fees

Termination fee	Other fees	
Other fees		

**Overcharging**

67. An investment provider’s charges must not be unfair in their incidence or unreasonable in their amount. They shall be directly related to the circumstances and nature of the services being provided and the disclosed relationship between the investment provider and the client. (See also paragraph 58(b)).

**Performance: disclosure of information**

68. An investment provider should ensure that performance information is disclosed in a manner that represents a fair view, and data must be accurate, relevant, timely and complete.

Total fees must be disclosed (both those charged directly and indirectly), and performance must be presented both before and after all fees. Performance should also be disclosed compared to the appropriate benchmark.

In accordance with the provisions set out above relating to professional conduct and client relationships, investment providers must guard against any form of misrepresentation in the performance of individual portfolios. The value of client portfolios must be determined utilising fair market values. Where fair-market values for illiquid securities and any other financial instruments cannot be determined from independent third-party sources, an investment provider must disclose the policies and valuation methods that have been used to determine such fair value.

An investment provider is encouraged to adopt a globally recognised standard for performance reporting, such as the CFA Institute’s suggested industry-standard Global Investment Performance Standards (GIPS).

69. Portfolio performance must be disclosed based on actual allocation holdings and not on model allocations. If back-dated performance is used in marketing materials, such figures should be easily distinguishable from actual data (e.g., highlighting, font), and the effective date of actual performance must be clearly disclosed. All investment performance statistics and summaries should be accompanied by a disclosure that any past performance is not necessarily indicative of future results.

**Track records**

70. An investment provider must apply a consistent methodology when constructing and presenting composite portfolios for the purpose of reporting track records. When presenting performance track records, an investment provider must clearly disclose whether performance is presented gross or net of fees, and where gross of fees performance

is presented, and in any event, upon request from a client or an investor in an investment fund, disclose the impact on performance due to fees, trading and administrative costs.

### **Benchmarks**

71. A benchmark should be a passive representation of a portfolio manager's investment process and should be consistent with the risk tolerance or preferences outlined in the portfolio or fund objectives. Specifically, benchmarks should be:
- Unambiguous
  - Measurable
  - Appropriate for the manager
  - A reflection of the manager's current investment opinions
  - Specified in advance (i.e., before the manager's performance review period begins)

If no benchmark is utilised, an investment provider must clearly disclose why there is no appropriate benchmark and how performance can be evaluated.

Changes to a portfolio's benchmark must be clearly disclosed in advance, including the effective dates of all changes and a clear explanation of why the changes were appropriate.

### **Periodic information and valuation**

72. In addition to a portfolio statement, an investment provider that is managing a portfolio for a client must additionally provide the client with a report, at least quarterly, as to the portfolio's actual investment performance, a suitable comparison with the movement of an appropriate benchmark (or market in the absence of a benchmark) and any changes in the portfolio's composition. Additionally, an investment provider must clearly disclose whether performance is presented gross or net of fees and the impact on performance due to fees, trading, and administrative costs.

### **Protection of records and restriction of confidential information**

73. In order to protect all records from the risk of loss, theft, unauthorised access, alteration or destruction, an investment provider shall maintain documented policies and procedures to ensure:
- (a) Adequate security and safekeeping of hardcopy records;
  - (b) Suitable storage and backup for electronic records;
  - (c) Privacy and confidentiality of all client records or information; and
  - (d) Timely accessibility in Bermuda of any records it maintains in hardcopy or electronic format for the inspection by the Authority or client-specific requests for information.

## **IX. PORTFOLIO MANAGEMENT**

### **Independence**

74. An investment provider shall use reasonable care and judgment to achieve and maintain independence and impartiality in making investment recommendations or taking investment action.

### **Integrity and fair dealing**

75. An investment provider shall observe high standards of integrity and fair dealing in the conduct of its investment business and shall avoid conflicts of interest.

### **Unreasonable recommendations**

76. An investment provider shall not recommend a transaction to a client if the recommendation is largely motivated by the benefits it may bring to the investment provider unless the transaction is demonstrably to the client's advantage.

### **Churning**

77. An investment provider shall not affect transactions with unnecessary frequency or in excessive size with or for a client for whom the investment provider exercises discretion as to how the client's funds are invested.

### **Prompt and timely execution**

78. An investment provider shall act promptly in accordance with its instructions unless it has been given discretion as to timing, and it uses that discretion alertly and sensibly. Instructions and decisions to buy or sell shall be recorded as soon as taken, with the date and, whenever possible, the time.

### **Best execution**

79. An investment provider shall not transact business for a client on worse terms than it would expect to obtain for itself, making allowances for the size of the transaction, except that where an investment provider effects a transaction through another investment provider or a duly licensed investment provider in a country or territory outside Bermuda, it may rely upon that investment provider to obtain the best execution provided that the investment provider has accepted such arrangements in writing.

### **Investment Policy Statement (IPS)**

80. Each investor's portfolio should start with and be monitored by an IPS. This states that an appropriate mix for an investor will depend on the investor's specific investment objectives and concerns based on the Client Risk Profile (see paragraph 52). The IPS may include some of the features of the Standard Client Agreement discussed previously in paragraph 58 above and have elements of the fairness in allocation requirements discussed in paragraph 82.

The IPS must be written, agreed to and signed by the parties and must be provided before monies are invested on behalf of the investor.

### **Asset allocation**

81. An investment provider should seek to diversify a client's portfolio adequately and achieve overall correlation to market cycles, whether acting on an advisory or discretionary basis. Asset allocation should be appropriate for the particular client risk profile and consistent with the client's objectives.

#### Guidance Notes:

- (i) *Assets whose correlation to market cycles cannot be determined with a high degree of certainty or have a low historical correlation to market cycles must be considered high-risk for retail clients.*
- (ii) *By incorporating portfolios of different asset classes at varying percentages in a portfolio, an investment provider can adjust potential volatility, the relative level of risk and possible return levels.*

### **Fairness in allocation**

82. Where the supply of shares or other investments is inadequate to meet demand, the investment provider shall always allocate what it has fairly and equitably. An investment provider shall establish and effectively implement a documented trade allocation policy to provide for fair allocation of aggregated orders and transactions, including how the volume and price of orders shall determine allocation and treatment of partial executions.

### **Distributions of transactions among clients**

83. An investment provider shall not allocate or transfer to any client any deal (or part of a deal) in an investment that it entered into as principal unless allocation or transfer was unconditionally decided upon before the deal was done or the investment has improved in value since the deal and the investment provider is satisfied that the investment is suitable for that client and obtains the benefit of best execution and the improvement in value.

### **Market manipulation**

84. An investment provider must not engage in any market manipulation or any other conduct directly or indirectly with the aim of manipulating investments' market prices

Guidance Note: *Market manipulation will include "front running" and the execution either of principal trades before client trades or trades on behalf of one (group of) client(s) before another (group of) client(s).*

### **Valuation of investments that are not marketable**

85. Where an investment provider is a portfolio manager, and the amount of any remuneration of that investment provider is dependent upon the value of the assets in the portfolio, the valuation of those assets, which are not readily marketable or for which information for determining their current value may not be available, shall be on the basis of an arm's length valuation that has been:



- (a) Prepared by or confirmed as an arm's length valuation by an independent and competent person; or
- (b) Expressly agreed with the client at the time that a discretionary management agreement is signed.

*Guidance Note: Valuations should conform to widely accepted industry valuation methods and techniques.*

## **X. CONFLICTS OF INTEREST**

### **Conflicts of interest**

- 86. An investment provider shall endeavour to avoid conflicts of interest on any matter that could reasonably be expected to impair its independence or objectivity. If conflicts exist or arise, the investment provider shall make full and fair disclosure. Any such disclosure shall be prominent, delivered in plain language, and effectively communicate the relevant information. The investment provider must have clearly documented and established policies and procedures to manage or avoid situations in which conflicts of interest arise between its investment business and that of its clients to ensure fair treatment to all its clients.
- 87. An investment provider shall not undertake or recommend an investment transaction in which it has a material interest without the client's prior knowledge.

### **Disclosure of conflicts of interest**

- 88. Where conflicts of interest between an investment provider and its client are unavoidable, the investment provider shall disclose them fully to the client in advance of entering into a transaction. Such disclosures should be prominent, stated in plain language, and effectively communicate the relevant information. (See example Disclosure Template, Appendix E). (See also paragraph 86).
- 89. Where conflicts of interest arise, the investment provider must keep adequate records of such conflicts and act at all times to ensure it does not place its own interests above those of its clients. All reasonable steps to manage conflicts and prevent damage to clients' interests must be taken.

### **Fairness with research or analysis**

- 90. An investment provider shall not:
  - (a) Deal for itself or a client ahead of the distribution of its own or its associate's research or analysis and with the advance knowledge of anything that might possibly be price sensitive in it;
  - (b) Distribute research or analysis containing recommendations from which an investment provider expects to benefit (for example, by way of past or future

- principal transactions or because of a material interest) unless the anticipated source of benefit is disclosed; or
- (c) Otherwise, behave unfairly in the way in which it acts upon its research or analysis.

#### **Disclosure of relationship with an associate**

91. An investment provider shall not advise a client to use the services of another person who is an associate of the investment provider without disclosing that relationship in advance.

#### **Use of material non-public information**

92. An investment provider shall not act or cause others to act on material non-public information that could affect the value of a publicly-traded investment.

### **XI. FUTURES, OPTIONS AND CONTRACTS FOR DIFFERENCES (CFD)**

#### **Risk warning**

93. An investment provider that engages in transactions involving futures, options and CFDs with or for retail clients, in particular, should ensure complete fairness in its dealings with those clients.
94. An investment provider shall ensure before it enters into any transaction in futures, options and CFDs with or for a client that the client signs and returns (whether electronically or otherwise) to the investment provider a risk disclosure statement that, at a minimum, shall contain the elements set out in the form specified in Appendix B.

Nevertheless, this disclosure statement shall not apply if the transaction is effected by the investment provider as a discretionary portfolio manager for a client in accordance with provisions agreed between them. (See paragraphs 58, 59 and 60).

#### **Contracts to be on-exchange**

95. A margined transaction on behalf of a client shall only be undertaken through an intermediate broker if that broker is either:
- (a) Another investment provider permitted to conduct such activity; or
  - (b) A person carrying on investment business outside Bermuda who is required to hold client money received in relation to margined transactions in a segregated bank account for that purpose and in his books to credit the client accordingly.

Except with express permission of the client (see paragraph 58), no investment provider shall effect a margined transaction for a client in contracts other than those traded on a recognised investment exchange.

### **Liability in respect of margins**

96. An investment provider shall maintain a daily record to track the amount of margin or other requirements that should be paid for each client and shall ensure that any margin payable is required to be deposited in advance in cash or approved collateral and that any deposit on a limited liability transaction is deposited promptly and in cash, and that margin, whenever properly required to be paid, is deposited in cash or approved collateral. The client shall be made aware of the consequences of not paying a margin. Where an investment provider is effecting margined transactions as an investment manager, it shall take steps to clarify with the investment exchange or intermediate broker whether the investment provider is responsible for fulfilling its clients' obligations. If there is a shortfall, the relevant investment provider should make up the difference until it obtains more cash or collateral from the relevant client. If the investment provider proposes to lend money to its client for this purpose, its accounting methods shall be adequate to ensure proper records are kept.

### **Appropriateness**

97. When providing execution-only services relating to options, futures and CFDs to a client, an investment provider shall require that client to provide information to demonstrate knowledge and experience in investing in the specific investment products and/or services being requested to enable the investment provider to determine the appropriateness of those products and/or services for that client.

An investment provider shall provide such execution-only services only after determining that the client has the requisite experience and knowledge to understand the risks relating to requested products and services.

*Guidance Note: An investment provider may rely on information provided by a client to support such a request unless it is aware that the information provided is inaccurate, incomplete or outdated. With agreement from the client, an investment provider may use information already in its possession to help determine appropriateness.*

*In some cases, an investment provider may be satisfied to infer knowledge from demonstrated experience. In other instances, a client is sufficiently knowledgeable, even without demonstrated experience, to understand the risks of the products and services being requested.*

## **XII. ENHANCED STANDARDS FOR RETAIL OVER-THE-COUNTER (OTC) LEVERAGED PRODUCTS**

### **Fair dealing**

98. For the purposes of this section, a 'retail client' is any individual client who is not a sophisticated private investor, as defined in the amended Investment Business (Client Money) Regulations 2004.

## Minimum margin requirement

99.

- (a) An investment provider shall ensure that margin arrangements in place for OTC leveraged products are adequate to both protect the interests of retail clients and ensure that the investment provider does not expose itself to unacceptable levels of credit risk from clients trading in these types of products.

*Guidance Note: In setting margin requirements, investment providers should balance considerations of ensuring investor protection while allowing sophisticated private investors who understand the products and risks and have the ability to bear any associated losses, to trade these products. Investment providers should, therefore, also take into account when establishing these requirements:*

- (a) The underlying asset's riskiness and volatility; and*
  - (b) Margin requirements applicable to other comparable or economically equivalent products (such as futures).*
- (b) An investment provider shall establish appropriate minimum initial and maintenance margin requirements for retail clients.
  - (c) Once a client's net equity has fallen below 50% of their margin requirement, if that client does not provide additional collateral to restore margin levels, an investment provider shall automatically close out that position as soon as market conditions allow.
  - (d) An investment provider shall disclose to clients the details of margin close-out triggers and its methodology for calculating margin levels.

## Negative balances and limits on retail client losses

100. An investment provider shall implement adequate practices, processes, and systems to limit retail clients' losses, particularly from CFDs and other OTC leveraged products. This will include ensuring that retail clients are not subject to negative balances with respect to funds deposited.

*Guidance Note: To do this, an investment provider should ensure losses to retail clients are limited to their deposited funds or the amount of funds invested in a specific trade to provide a degree of certainty regarding the maximum loss to which a retail client may be exposed from a specific trade.*

## Disclosure of costs and charges

101. An investment provider shall ensure, consistent with the general requirements in paragraph 63, that it fairly and adequately discloses all costs and charges prior to entering into CFD and other OTC leveraged products with retail clients. Investment providers shall, therefore, ensure that, at a minimum, there is transparent disclosure of the following:

- a) The spread;

- b) Other costs and charges applied, including:
  - i. Any financing charges to keep the position open, such as daily or overnight charges;
  - ii. Commissions (e.g., general commission, commission on each trade or commission on opening and closing an account);
  - iii. Mark-up to market prices the investment provider receives from an external source;
  - iv. Any costs or charges applicable if a client closes out a position; and
  - v. Account management fees.

*Guidance Note: In making these disclosures, an investment provider should consider whether it is being demonstrably fair to clients in the timing and manner of any such disclosures.*

### **Disclosure of risks**

102. An investment provider shall ensure that it accurately and adequately describes to retail clients the nature and degree of risk that may arise from transactions involving leverage and does not disproportionately emphasise the potential for profits.

To this end, an investment provider shall disclose actual, up-to-date investor trading outcomes, including the specific percentage of retail client accounts that lost money over the past calendar year. This percentage of accounts should be calculated every three months, on a rolling basis, based on the investment provider's specific results over the previous 12-month period. The investment provider shall implement adequate procedures and internal controls to calculate trading outcomes of retail client accounts and ensure supporting documentation is maintained, as required.

*Guidance Note: For the purposes of calculating the abovementioned percentage, an individual retail client account should be considered to have lost money if the sum of all realised and unrealised net profits on CFDs and other OTC leveraged products that are traded in that retail client's account during the 12-month period is below zero; and calculation shall include all costs and charges, including those outlined in paragraph 101(ii) above. Accounts for which the sum of all realised and unrealised net profits is zero should be excluded.*

*Guidance Note: The risk disclosure must include the following statements:*

***(a) "OTC leveraged products, including CFDs, are complex investments, which come with a high risk of losing money rapidly due to leverage".***

***(b) "YY % of retail client account lose money when trading OTC leveraged products, including CFDs, with this investment provider".***

### **Marketing and sales promotion**

103. An investment provider shall not issue, advertise, publish or provide any communication, information or public invitation regarding CFDs and other OTC leveraged products to a

retail client, or disseminate such communication, information or public invitation without including the following risk warning statement:

***“OTC leveraged products, including CFDs, are complex investments, which come with a high risk of losing money rapidly due to leverage”.***

The above warning statement should be prominently displayed on the investment provider’s website and included in all client communication.

### **Marketing and sales techniques to market to retail clients**

104. An investment provider shall ensure that it undertakes market assessments to identify an appropriate target market for CFD and other OTC leveraged products. Furthermore, it shall ensure that its strategies for marketing and sales of CFD and other OTC leveraged products do not result in either misselling to retail clients or the use of intrusive sales techniques to unduly influence retail clients.

*Guidance Note: In this context, an investment provider should ensure that it does not, except as a rebate of trading expenses, directly or indirectly provide a retail client with any incentive, whether monetary or non-monetary, when marketing, distributing or selling a CFD or other OTC leveraged product, without the consent of the Authority. In this specific context, the Authority does not consider information and research tools regarding OTC leveraged products to be incentives.*

An investment provider shall not engage in or permit the use of cold-calling and other forms of unsolicited promotion or rely on call centres and similar service providers to market or advertise CFD and other OTC leveraged products to retail clients.

An investment provider shall not sell or distribute a binary option to or trade one with a retail client.

### **Fair pricing methodology and verifiable price sources**

105. An investment provider shall be transparent in demonstrating to clients how prices are derived and how spreads and mark-ups are applied. To facilitate this, an investment provider should have a documented and approved methodology for determining prices and applying spreads or mark-ups. In addition, an investment provider shall rely on data from externally verifiable price sources and liquidity providers (to the extent that information is available).

*Guidance Note: To meet the above requirement, an investment provider should seek, among other things, to include relevant references to market data used in the estimation of prices, as well as compare their pricing with that of similar or comparable products.*

*As much as possible, price source data should be presented to make it easier for retail clients, in particular, to compare prices and assess value for money.*

## **Order execution**

106. An investment provider shall ensure that it delivers the best possible execution prices and outcomes to retail clients, in particular. In addition, an investment provider shall ensure disclosure of:

- Its order execution policy
- Its pricing methodology
- All other relevant data, including but not limited to slippage ratios and requote and rejection rates

*Guidance Note: In meeting the above requirement for an execution policy, investment providers should seek to provide details of their processes for:*

- *Determining execution venues and price sources*
- *Selecting hedging venues for client trades*
- *Selecting and monitoring the technology used for executing client orders*
- *Managing potential conflicts of interest that may arise in executing client orders*

## **XIII. INVESTMENT BUSINESS TRANSACTIONS OVER THE INTERNET OR OTHER FORMS OF COMMUNICATIONS**

### **Offers and advertisements over the internet**

107. An investment provider should apply this Code in regards to advertising over the internet as it would to any other information distribution system. Offers of investments or investment services over the internet may trigger licensing and registration prospectus requirements in much the same fashion as other forms of solicitation. It is inappropriate for investment providers using the internet to rely on regulatory exemptions, in any jurisdiction, that are based on the offer being made only to approved investors or to a limited number of persons, unless able to demonstrate that special procedures are in place to restrict access to the offering materials.

### **Disclosure of information**

108. The investment provider must adhere to any obligation to observe the confidentiality of information communicated by clients (including its shareholders, directors, officers, senior executives, employees, outsourced partners, etc.). Unless the investment provider is given relevant permission by the client, consent is required by the applicable law to disclose information or provide information in accordance with the terms of the client's constitutional documents. Accordingly, persons who have access to the investment provider's confidential information should be advised in writing upon engagement. Further, an investment provider should provide periodic reminders, thereafter, of confidentiality issues.

109. To comply with its duty to uphold integrity and ethics, the investment provider's communication with clients and prospective clients must be clear, not misleading and a fair representation. This includes marketing and promotional material. The investment provider's public platform or materials provided to prospective clients prior to entering into an arrangement must include details of the board (or similar), the chief and senior executive team, head office (and registered office, if different), a description of the complaints procedure and arrangements in case of business failure. The investment provider must disclose to clients any material business changes that impact clients.

#### **Communications and internet business transactions**

110. An investment provider must continue to satisfy suitability and general conduct requirements when transacting business over the internet.

An investment provider must ensure that its computer networks have sufficient operational integrity (security, reliability, capacity, backup systems and alternative means of communications) and that it has adequate personnel to handle internet communications, including, but not limited to, trading instructions.

*Guidance Note: This paragraph should be read in conjunction with the Authority's Cyber Risk Management Code of Conduct.*

#### **Record-keeping**

111. Record-keeping requirements applicable to an investment provider also apply to internet transactions.



## **APPENDICES**

## APPENDIX A: SAMPLE DISCLOSURE TEMPLATE: Risk Profile Letter

Risk Profile Letter  
How We Conduct Risk Profiling

A N Other  
123 Any Street  
Some Town  
ST21 7QB

Other contact information, including telephone numbers, email and website.

### **Meetings:**

Understanding risk is difficult. When meeting for the first time, we define risk in a way that you, the customer, will understand. With this in mind, we will identify the following areas of the Know Your Customer (KYC) and Risk Profiling process:

- Customer hard facts
- Customer soft facts
- Analysis
- Investment options

Variables on initial investment decisions, as well as personal circumstances, change over time. An investment agreement should be completed and signed by both you and us, documenting the agreed investment strategy. We recommend that a discussion of your risk profile and performance expectations is reviewed and documented at least annually. Beyond the initial review, a further review should be carried out when any material changes are made in the investment recommendations.

### **Information gathering:**

Information gathering can take many forms. To provide structure, we utilise, in an initial meeting, a Risk Profile Questionnaire (RPQ) that we use to record client information and begin the building blocks of KYC. This is the beginning of a process that continues throughout the life of the relationship between us, the organisation, and you, its customer. When using an RPQ, it is important to gather as much personal key data as possible. The following should be considered a framework to help us build a profile of you, the client:

#### **1. Customer hard facts:**

- **Personal details** (e.g., name, address, spouse/partner/dependents/children)
- **Current investment assets** (e.g., cash, fixed interest, managed funds, shares, retirement income streams, investment property, other assets and liabilities, insurance)
- **Financial resources** (e.g., assets, income versus expenditure, long and short-term commitments, emergency fund, existing debt, other investments and savings, protection and pension arrangements)
- **Entities** (e.g., trusts, companies, partnerships)

- **Tax status** (if applicable)
- **Objectives** (i.e., purpose of investment: amount sought, income or capital growth, investment timescale, accessibility)

## 2. Customer soft facts:

- **Financial goals, aspirations, priorities and timescales** (i.e., does the customer aim to fund dependents through university, care for an elderly or sick relative, retire early)
- **Financial concerns** (e.g., why is the customer seeking advice, investment preferences, ethics, any expected inheritance)
- **Personal goals, aspirations, priorities and timescales** (e.g., career change, house move, holiday home purchase, will and estate)
- **Ability to comprehend investment risk** (e.g., physical/mental ability to cope with a potential capital loss, whether the customer has previous investment experience, how they feel about market fluctuations gains/losses)

## 3. Analysis:

- **Current and projected economic conditions** (e.g., inflation, interest rates, investment returns, exchange rates, global outlook)
- **Current and projected investment returns** (e.g., types of fund, their underlying portfolios, provider/manager strength and performance)
- **Potential impact on customer's circumstances resulting from changes in economy/investment returns**

## 4. Investment options:

- Minimal capital risk
- Some capital risk
- High capital risk

### **Systems and controls:**

We store information from client meetings electronically, alongside physical file back-ups. It is important to monitor the investment process closely to check that you, the client, stay within the parameters initially agreed. If any material changes are made, we shall review and document these changes accordingly. All clients' hard and soft facts, together with investment options, are reviewed at least annually.

### **Professionalism of employees:**

We require all client-facing staff to be trained appropriately to carry out the risk profiling process. They are required to understand the industry's laws and regulations and what the meaning of risk represents, and they will communicate such to you, the client.

## APPENDIX B: SAMPLE DISCLOSURE TEMPLATE: Risk Disclosure Statement

### DECLARATION

I hereby declare and acknowledge that the risk of loss in investing in commodity or financial futures, foreign exchange contracts, investments and index contracts and options thereon, digital assets, and any other investment transaction(s) that I may request you to enter into on my behalf can be substantial and that this fact has been duly brought to my attention. I understand the nature of such investment, and I have carefully considered whether such investments are suitable for me in light of my circumstances and financial resources. I confirm to you that I am able, financially and otherwise, to assume the risks of such trading. I recognise that guarantees of profit or freedom from loss are impossible and inappropriate in such trading, and I acknowledge that I have received no such guarantees from you or any of your officers or employees and have not entered into this agreement in consideration of or reliance upon any such guarantees or similar representations.

*An optional paragraph that may be included at the investment provider's discretion in those circumstances where the recommendation to purchase futures and options has been made in order to effect an investment strategy that reduces risk.*

[I understand that it is the intention of my investment adviser/manager that futures and options will be purchased on my behalf only to effect an investment strategy of reducing risk. Nevertheless, I acknowledge that there are inherent risks in the use of these instruments should the investment strategy fail.]

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Name of Investment Provider

[on duplicate for signature by client]

I have read and understood the risk disclosure statement set out above.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**APPENDIX C: SAMPLE DISCLOSURE TEMPLATE: Performance and Valuation Statement**

Sample Summary Sheet

**Client Name**

**Acct #:**

**Performance return for the period ending XXXX**

Description	Current period	Previous period
Beginning value	Xxxxxx	xxxxxx
Contributions/subscriptions	Xx	xx
Withdrawals/redemptions	(xx)	(xx)
Investment gain/loss	Xxx	xxx
Fee charged	(x)	(x)
Ending value	<b>xxxxxx</b>	<b>xxxxxx</b>
Rate of return	X%	X%
Benchmark return	X%	X%

**APPENDIX D: SAMPLE DISCLOSURE TEMPLATE: Fees and Expenses Disclosure Report**

**FEES AND EXPENSES DISCLOSURE REPORT**

**(Pension Service Provided)**

**Company Name:** XYZ Corp      **Reporting Period:** 1 January – 31 December 20XX

Investment provider/ fund name	Investment related		Pension administration related	Total expenses
	Fund operating expenses	Front-end/back-end loads	Pension plan fees and expenses	
ABC Strategies Fund - Class A	0.65%	2.00%	1.25%	3.90%
ABC Strategies Fund - Class B	0.55%	2.00%	1.25%	3.80%
ABC Strategies Fund - Class C	0.55%	2.00%	1.25%	3.80%
ABC Strategies Fund - Class D	0.70%	2.00%	1.25%	3.95%
<b>Reporting period:</b>	0.75%	2.00%	1.25%	4.00%

<b>Schedule of stand-alone fees</b>	
	<b>BMD\$</b>
Change of investment fee	50.00
Termination fee	100.00
PC plan amendment fee	500.00
PC annual filing fee	5.00

**APPENDIX E: SAMPLE DISCLOSURE TEMPLATE: Conflicts of Interest Disclosure Report**

<b>CONFLICTS OF INTEREST DISCLOSURE REPORT</b>						
<b>(Funds/pension services)</b>						
<b>Investment provider:</b>				<b>Reporting period: 1 January – 31 December 2010</b>		
<b>Related funds</b>				<b>Unrelated/third-party funds</b>		
<b>Fund name</b>	<b>Ownership /control<sup>1</sup></b>	<b>Trailer fee rebate</b>	<b>Performance fee rebate<sup>2</sup></b>	<b>Fund name</b>	<b>Trailer fee rebate</b>	<b>Performance fee rebate<sup>2</sup></b>
Fund A	50%	0.75%	5.00%	Fund C	0.70%	5.00%
Fund B	100%	0.00%	0.00%			

**Notes:**

<sup>1</sup> The fund is managed and controlled by ABC Parent Co., an 80% shareholder of ABC Life & Pension Co.

<sup>2</sup> Performance fees are only rebated during periods of exceptional fund performance on the attainment of high-water mark thresholds. No performance fees were rebated during the reporting period.



## APPENDIX F: SAMPLE DISCLOSURE TEMPLATE: Terms of Business

### Terms of Business

(Company logo, letterhead, etc.)

About our services and costs [Note 1-3]

123 Any Street

Some Town

ST21 7QB

Other contact information including telephone numbers, email, website, etc.

#### 1. Name of investment provider

[ABC Financial Services] is an independent asset manager. This document is designed to be given to consumers who are considering buying certain financial products or services from ABC. Investors are advised to read this important document. It explains the service we offer and how you will pay for it.

#### 2. Whose products do we offer? [Note 4]

We offer products from the whole market. [Note 5] (Select from the following alternative scenarios making amendments as necessary)

- We offer our own products. You can ask us for a list, but our recommendation will be made following an analysis of the whole market [Note 6]
- We can [Note 8] only offer products from a limited number of companies. These include our own products, but our recommendation will be made following an analysis of our entire product range. [Note 9] A list of all the products that we offer will be provided upon request [Note 11]
- We [Note 8] only offer products from a single group of companies, [name of single company] [Note 10] [Note 12]
- [Note 10] We only offer our own product
- [explanatory text as needed] [Note 13]

#### 3. Which service will we provide to you? [Note 4]

- We will advise and make a recommendation for you after we have assessed your needs

- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products on which we will provide details. You will then need to make your own choice about how to proceed.
- We will provide basic advice on a limited range of stakeholder products, and in order to do this, we will ask some questions about your income, savings and other circumstances, but we will not:
  - Conduct a full assessment of your needs
  - Offer advice on whether a non-stakeholder product may be more suitable

[other explanatory text as needed [Note 14]]

#### **4. What will you have to pay us for our services? [Note 14]**

You will pay for our services on the basis of [Notes 15/16]. We will discuss your payment options with you and answer any questions you have. We will not charge you until we have agreed with you on how we are to be paid. **(Select from the alternatives listed below or construct a new category and describe it below).**

**Paying by fee [Note17]**

- [explanatory text] [Notes18/19]

**Paying by commission (through product charges) [Note 17]**

- [explanatory text] [Notes 20/21]

**Paying by a combination of fee and commission (through product charges) [Note 17]**

- [explanatory text] [Notes 23/24]

Other benefits we may receive [Note 25]

[explanatory text – this relates to when the licensed entity receives compensation either in cash or in-kind from a third party as a direct result of investing client assets into an investment product of that third party] [Note25]

## 5. Who regulates us?

[ABC Financial Services] [Address] is licensed to conduct investment business and is regulated by the Bermuda Monetary Authority, Bermuda's independent financial services regulator. Our permitted business is [as specified in the licence].

## 6. Loans and ownership [Note 26]

[XXX ] owns [YY]% of our share capital. [[XXX ] provides us with loan finance of [YY] per year.] [XXX] (or we) have [YY]% of the voting rights in [ZZZ]. [Notes 27-29].

## 7. What to do if you have a complaint?

If you wish to register a complaint, please contact us:

...**in writing** Write to [ABC Investment Company], [Attention: xxxxxx, address]  
... **by phone** Telephone [(441) xxx xxx. [Note 30]

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## NOTES

The following notes do not form part of the terms of the business document:

### Paragraph 1: Name of investment provider

**Note 1, 2** – insert the investment provider's or appointed representative's or tied agent's name. A corporate logo or logos may be included.

**Note 3** – insert the head office or, if more appropriate, the principal place of business from which the provider, appointed representative, or tied agent expects to conduct business (this can include a branch) with clients.

### Paragraphs 2-3: Whose products do we offer?

**Note 4** –the investment provider should select, for example, by ticking one box appropriate for the service it expects to provide to the clients. This needs to be done only in relation to its service to a particular client.

### Paragraph 3:

**Note 5** –if an investment provider indicates that it will be providing basic advice on stakeholder products, then the first bullet in paragraph 2 does not apply as the company will not be doing so based on personal recommendations from the whole market.

**Note 6** –an investment provider should only include these words if it offers whole-of-market advice and owns or operates products that fall within the relevant market. Investment providers conducting

cross-border business and holding themselves out as whole-of-market should include such free text as is necessary to explain in a way that meets the fair, clear and not misleading rule.

**Note 7** – if the Terms of Business document is provided by an appointed representative or tied agent, the service described should be that offered by the appointed representative or a tied agent.

**Note 8** – insert ‘can’ if the investment provider’s range of products is determined by any contractual obligation. This does not apply where an investment provider is selling its own products.

**Note 9** – an investment provider should only include these words if it offers a limited range of advice and owns or operates products that fall within the relevant range.

**Note 10** – if the investment provider selects this bullet, it will be offering the products of only one investment provider to the client. It should, therefore, follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. If the company does not select this box, the text should follow in Note 12 below.

Insert the name of the investment provider. For example: “We can only offer products from [name of product provider]”. If the provider has only one product, the firm should amend the text to the singular, for example: “We can only offer a fund investment alternative from [name of investment provider]”.

If the investment provider offers only its own products or is part of a product provider offering only the products sold under that party’s trading name, it should use this alternative text.

**Note 11** – this sentence is required only where an investment provider selects this service option. The list of products will be the range of packaged products that is appropriate having regard to the services that the investment provider is providing, or may provide, to the client.

**Note 12** – if the provider does not select this option, it should alter the wording to say ‘a single group of companies’ (e.g., “We only offer the products from a single group of companies”).

**Note 13** – the explanation of whose products the investment provider offers under this paragraph should be fair, clear and not misleading. Therefore, an investment provider should enter as explanatory text such further explanation as is needed of any additional factors that it considers to be relevant.

### **Paragraph 3: Which service will we provide to you?**

**Note 14** – an investment provider may include here a list of its services or the products on which advice is offered, but if it chooses to do so, the list should be fair, clear and not misleading and consist of only a factual description in summary form.

#### **For example:**

“We offer a full financial planning service or, alternatively, can provide specific advice on: savings and investment, protecting yourself and/or loved ones in the event of death, serious illness or disability, and retirement planning.”

**Paragraph 4: What will you have to pay us for our services?**

**Note 14** – any reference in this paragraph to ‘commission’ means commission and commissions equivalent.

Investment providers who are not proposing to give personal recommendations on packaged products can amend this paragraph accordingly. Those companies need not provide information regarding payment options but should provide at this paragraph at least a statement explaining that the client will be told how much the investment provider will be paid before the investment provider carries out any business for the client and honours that undertaking. For example, “We will tell you how we get paid and the amount before we carry out any business for you.”

**Note 15** – investment providers should disclose all of the payment options they will offer to the client, from the alternatives of fee, commission and/or a combination of both fee and commission.

**Note 16** – investment providers holding themselves out as independent are reminded that they are required to offer the fee option.

**Note 17** – investment providers should include the headings: ‘**Paying by fee**’, ‘**Paying by commission (through product charges)**’, and ‘**Paying by a combination of fee and commission (through product charges)**’ that are relevant to the actual payment options being offered. In addition, in accordance with the reference notes, the investment provider should provide an explanation in its own words relating to each option offered.

**Additional text to be included under the heading ‘Paying by a fee’.**

**Note 18** – the text describing an investment provider’s fee-charging arrangements is not prescribed but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of fees, including any specific provision as to the timing for the payment of fees, the circumstances when fees will or will not be payable, and the arrangements for any commission paid in addition to fees.

**For example:**

“Whether you buy a product or not, you will pay us a fee for our advice and services, which will become payable on completion of our work. If we also receive a commission from the product provider when you buy a product, we will pass on the full value of that commission to you in one or more ways. For example, we could reduce our fee, reduce your product charges, increase your investment amount or refund the commission to you.”

Example alternative text for the contingent fee:

“If you buy a financial product, you will pay us a fee for our advice and services, but if you do not buy a financial product, payment is not required.”

**Note 19** – investment providers should provide numerical statements of the amount or rate of their fees, which should be expressed in Bermuda dollars or another appropriate currency, where relevant. A company may describe actual hourly rates, where possible, or typical hourly rates. If a

company describes typical rates, it should undertake to provide the actual rate in writing before providing services (and honour that undertaking).

**For example:**

“Hourly Rate

We will confirm the rate we will charge in writing before beginning work. Our typical charges are: Principal/Director/Partner BD\$[XXYY] per hour; Financial Adviser BD\$[XXYY] per hour; Administration BD\$[XX] per hour.”

“Lump sum

We will confirm what we will charge you in writing before beginning work. Our typical charges are: Investments up to BD\$[XX: YY]; Investments above BD\$[XX : ZZ].”

“Reviews

We will confirm what we will charge you in writing before beginning work. Our typical charges are: Initial review: BD\$[XX]; Annual review: BD\$[YY].”

“Other

We may charge from BD\$[XX] to advise and arrange a personal pension for you. We will confirm what we will charge you in writing before beginning work.”

“General

You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first.”

**Additional text to be included under the heading ‘Paying by commission (through product charges)’.**

**Note 20** – the text for describing an investment provider’s commission payment arrangements is not prescribed but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of a commission.

**For example:**

“If you buy a financial product, we will normally receive a commission on the sale from the product provider. Although you pay nothing to us up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider’s own costs and any commission. These charges reduce the amount left for investment. If you buy direct, the product charges could be the same as when buying through an adviser, or they could be higher or lower.”

**Note 21** – the investment provider should provide details of typical commissions that it might receive that reflect its actual business, together with an undertaking (which the investment provider should honour) to confirm the actual commission that will be received as a result of any investment placed before the proposed transaction is completed. For example, an investment provider that does not have a significant weighting of business in any one area may provide examples showing commission for lump sum investments, whole life and pensions. Whereas a pensions specialist may want to illustrate commission relating solely to pensions.

**For example:**

“The amount of commission we receive will vary depending on the amount you invest and (sometimes) how long you invest or your age.”

**For example:**

“If you invest BD\$[XX] in a Prescribed Retirement Product (PRP), we would receive a commission of [Y]% of the amount invested (BD\$[ZZ]) and [AA]% of the value of the fund (roughly BD\$[BB] every year).

If you pay BD\$[XX] a month into a personal pension (with a term of 25 years), then we would receive a commission of BD\$[YY].

If you pay BD\$[XX] towards a whole life policy, we will receive BD\$[YY].

We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

**Note 22** – investment providers should indicate whether the commission includes payment for any ongoing service such as a periodic or ongoing review.

\*Additional text to be included under the heading “Paying by a combination of fee and commission (through product charges)”.

**Note 23** – the text for describing an investment provider’s arrangements for paying by a combination of fee and commission is not prescribed but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of fees, including any specific provision as to the timing for the payment of fees, the circumstances as to when fees will or will not be payable, and the arrangements for any commission paid in addition to fees, together with an undertaking (which the investment provider may develop) to confirm the actual commission that will be received from any investments before the investment is completed.

*For example:*

“We will charge you a combination of fee and commission. The fee will not exceed the rates shown in this document. We will agree on the rate we will charge before beginning work. The fee will become payable on completion of our work. You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first. We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

“We charge a consultation fee of up to BD\$[X], and, if you buy a financial product, we will also retain commission within the amounts set out in the paragraph headed “Paying by commission (through product charges)”.

“We will charge you a combination of fees and commission. The actual amounts will depend on the service provided to you but will be in line with the arrangements set out in the paragraphs headed ‘Paying by fee’ and ‘Paying by commission (through product charges)’.

“We charge an annual fee as described in the fee information set out above. If we arrange for you to purchase a financial product, then we will also retain commission, which will be in line with the arrangements set out in the paragraph headed ‘**Paying by commission (through product charges)**’.

**Note 24** – if an investment provider offers a combination of fee and commission, they can either: provide the detailed information relating to fees and commission, in which case *firms* should ensure that the information is provided in accordance with the guidance at the relevant notes; or include an appropriate statement that refers the reader to the information provided under the headings of ‘**Paying by fee**’ and ‘**Paying by commission (through product charges)**’.

**Note 25** – Investment providers receiving non-monetary benefits should disclose such benefits in summary form here under the heading ‘**Other benefits we may receive**’. If an investment provider does so, it should include an undertaking to provide further details upon written request and honour that undertaking. Nevertheless, it is not the purpose of this paragraph to provide a significant or extensive explanation of non-monetary benefits such that it distracts from the wider purpose of the document.

**For example:**

“We advise on a range of products from a variety of firms; some of these firms provide us with annual training, which allows us to offer you a better service. This year we expect to receive in total [XX] hours worth of training from XYZ, ABC and DEF firms, predominantly from ABC. Some of the cost of this training may be passed to you as part of the total charges you pay should you choose a product provided by XYZ, ABC or DEF. Further information regarding these arrangements is available on request.”

“ABC company provides us with a specialised software CDROM and accompanying [XX] hours-worth of training per annum. We use this software to process your details when you apply for an investment product. Some of the cost of this software may be passed onto you as part of the total charges you pay ABC firm. Further information regarding this arrangement is available on request.”

**Paragraph 6: Loans and ownership**

**Note 26** – omit this paragraph where there are no relevant loan or ownership arrangements under the following notes.

**Note 27** – insert, in the investment provider’s own words, a short description of any direct or indirect holding of more than 10% in the capital or voting power of the company that is held by an investment provider or *operator* of a *packaged product* or by the parent of the investment provider or *operator*.

**Note 28** – insert, in the investment provider’s own words, a short description of any direct or indirect holding of more than 10% in the capital or voting power of a provider or *operator* of a *packaged product* that the investment provider holds.

**Note 29** – insert, in the investment provider’s own words, a short description of any *credit* provided to the company by a *product provider* (other than *commission* due to the *firm* in accordance with



an indemnity clawback arrangement) or by any *undertaking* in the *immediate group* of the *product provider* where the amount of the *credit* exceeds 10% of the share and loan capital of the company.

**Paragraph 7: What to do if you have a complaint**

**Note 30** – if different to the address in Note 3, give the address and telephone number that is to be used by a *client* wishing to complain.