



Jersey Financial Services Commission

Guidance Note: Suitability of Advice

1 Background

- 1.1 This Guidance Note is intended to provide a benchmark to assist registered persons in interpreting and complying with sections 2.5 and 2.6 of the Codes of Practice for Investment Business (the “**Codes of Practice**”). This Guidance Note must be read in conjunction with the Codes of Practice.
- 1.2 Section 2.5 of the Codes of Practice requires that:
 - 1.2.1 *Where a registered person is responsible for providing advice or exercising discretion for its clients, it must be able to demonstrate in writing that the advice or exercise of discretion is suitable for that client having regard to:*
 - 1.2.1.1 *the facts disclosed by that client;*
 - 1.2.1.2 *the terms of any agreement with that client; and*
 - 1.2.1.3 *any other relevant facts about the client of which the registered person is, or reasonably should be, aware.*
- 1.3 Section 2.6 of the Codes of Practice requires that:
 - 1.3.1 *Where a registered person is responsible for providing advice it must make available to its client, in a comprehensible and timely manner, appropriate information so as to allow the client to make an informed investment decision.*
- 1.4 The Commission acknowledges that these provisions are principle based and therefore require a registered person to interpret and apply the requirements to the circumstances of their own business. The Commission further acknowledges that investment businesses in the Island service a wide range of clients from retail to institutional and it is therefore necessary to identify an advisory process which is both compliant with the principles of the Codes of Practice and appropriate to the business being undertaken.
- 1.5 This Guidance Note offers a range of actions that a registered person might take in respect of various investment scenarios where advice has been provided to clients. These serve as an indication of how the Commission will interpret the relevant requirements of the Codes of Practice.
- 1.6 It must be emphasised that this guidance is not prescriptive and that a registered person may adopt other appropriate measures to those set out in this Guidance Note, including

policies and procedures that may already be in place or may have been established by group, provided that the registered person can demonstrate that such measures also achieve compliance with the Codes of Practice.

- 1.7 This allows a registered person discretion as to how to apply the requirements of the Codes of Practice to the particular circumstances of the type of investment business that it conducts, its products, services, transactions and clients.
- 1.8 All registered persons that are permitted to give investment advice (i.e. those that hold either a Class C or Class D investment business registration) will be expected to be able to provide the Commission with evidence of recommendations that have been made to clients, together with evidence to demonstrate why the advice that has been given is suitable for the client in question.

2 Scenarios

2.1 Scenario 1

2.1.1 Mrs A is a pensioner who has £200,000 to invest following the sale of her house and has contacted her IFA for advice. Mrs A has been a housewife for all of her life and has little knowledge or experience of investments.

2.1.2 Where investment advice has been provided to this client, the Commission would expect the following documents (or similar) to be issued:

2.1.2.1 Suitability Letter - this should be provided to the client prior to any transaction taking place (see Notes) and should ideally be countersigned by the client. (See section 3 for further guidance on Suitability Letters.)

2.1.2.2 Key Features Documents and explanatory material from the product provider - these should always be forwarded to the client promptly upon receipt, with a copy retained by the registered person.

2.1.2.3 A covering letter and/or personal illustration should also highlight and explain, but not be limited to, where the client can find reference to:

2.1.2.3.1 the charging structure (which should already have been disclosed);

2.1.2.3.2 any penalties for early surrender;

2.1.2.3.3 any cooling-off period.

2.1.2.4 Confirmation of investments transacted - this should be sent to the client promptly after each transaction. 'Promptly' means no later than one business day following the transaction or within any period specified by the client.

2.2 Scenario 2

- 2.2.1 Mr B is a successful businessman who speaks regularly with his stockbroker in connection with his portfolio of investments and possible additions to the portfolio.
- 2.2.2 Where investment advice has been provided to this client, the Commission would expect the following documents (or similar) to be issued:
 - 2.2.2.1 Record of telephone conversation and/or document retained on the client's file or the registered person's system, evidencing any recommendations made with reference to why they are appropriate for the client, having regard to the information held by the registered person concerning the client's circumstances and investment objectives.
 - 2.2.2.2 Confirmation of investments transacted (e.g. contract note) - this should be sent promptly after each transaction. 'Promptly' means no later than one business day following the transaction or within such period as has been agreed with the client. This should contain reference to the fact that the deal was undertaken on an advisory basis, if applicable.

2.3 Scenario 3

- 2.3.1 Mr C is a trader at an investment bank and has been involved in the financial markets for all of his working life. He has £100,000 from his bonus to invest and has contacted an investment adviser at his private bank seeking an investment with exposure to emerging markets.
- 2.3.2 Where investment advice has been provided to this client, the Commission would expect the following documents (or similar) to be issued:
 - 2.3.2.1 A list of suggested investments that would meet the client's needs and an explanation of why any recommendations are being made. This should be provided to the client prior to any transaction taking place.
 - 2.3.2.2 Confirmation of investments transacted (e.g. contract note) - this should be sent promptly after each transaction. 'Promptly' means no later than one business day following the transaction or within such period as has been agreed with the client. This should contain reference to the fact that the deal was undertaken on an advisory basis, if applicable.

3 **Suitability Letters**

- 3.1 Suitability letters should be tailored to each individual client and should be written using clear, jargon-free language.
- 3.2 A suitability letter should explain clearly to the client how and why any recommendations are suitable for them, having regard to the client's personal and financial circumstances, their investment objectives, attitude to risk and time horizon (including any period for which they may be willing to restrict access to their money).

- 3.3 A suitability letter that fulfils the above requirements should not only result in the client being better informed about the appropriateness of an adviser's recommendations for their needs, but should also give the client an opportunity to identify any areas where they may wish to seek further clarification at this stage in the process.
- 3.4 Best practice in terms of information to be provided within a suitability letter indicates that some or all of the following should be included:
- 3.4.1 the reasons for each recommendation, including explicit references to how these relate to the client's objectives and risk profile;
 - 3.4.2 an explanation of each product that is being recommended, together with an outline of the main consequences (and any disadvantages) of each recommendation, i.e. a balanced view;
 - 3.4.3 any alternative products or providers that were considered;
 - 3.4.4 the costs, charges and any potential penalties associated with the investments recommended;
 - 3.4.5 access to the money that is to be invested, together with details of any free switches that may be available;
 - 3.4.6 the amount of commission that the registered person may earn from the transaction;
 - 3.4.7 a conclusion as to why the investment is suitable for the client and their circumstances;
 - 3.4.8 reference to any other financial needs that were identified from the fact-finding process and whether advice is being provided on these; and
 - 3.4.9 whether the registered person will be undertaking any periodic reviews of the product or service that is being recommended and, if so, the frequency at which the client can expect these to occur.

4 Notes to the Guidance Note

- 4.1 The Commission is aware that for some investment products that involve underwriting, such as long-term insurance contracts, it may not always be practicable for a registered person to provide a client with an accurate suitability letter at an early stage in the advice process, as certain details (such as the premium payable) may alter in the period between the recommendation being made and the policy going 'on risk'.
- 4.2 In such instances, the Commission would find it acceptable for a suitability letter to be provided to the client at a later stage in the process, although this should be issued to the client promptly once any variable details have been confirmed.
- 4.3 For investments that do not require underwriting however, a registered person should provide a suitability letter to the client at the time, or as soon as possible after the advice has been given.