



FINANCIAL REGULATOR  
*Rialtóir Airgeadais*

**Press Release**

**4 February 2010**

## **Weakness in Sales Processes for Older Customers Identified in Regulatory Inspections**

The Financial Regulator today (4 February 2010) published the findings of a four part examination of selected credit institutions, life insurance firms and investment and stockbroking firms in relation to the suitability of investment products sold to older consumers. The examination commenced in December 2008 and was conducted throughout 2009. As part of this examination, a mystery shopping exercise was also carried out to assess how credit institutions interact with older customers regarding the sales process for investment products.

A number of issues of concern were identified during this examination and firms should ensure that their sales processes for older people are robust to ensure only suitable products are sold. The Financial Regulator has issued its industry feedback on the findings from this exercise and firms must consider the issues identified in the context of their operations and address them through appropriate amendments to procedures. The compliance issues identified during this inspection are already subject to separate engagement by the Financial Regulator with the individual firms concerned.

A range of issues were identified during the course of this exercise and include the following:

- Despite previous guidance from the Financial Regulator on the importance of a practical definition for older customers, a number of firms still do not have a definition of an older customer. The Financial Regulator has in the past advised that 60 is an appropriate benchmark.

- In the course of the inspections, the Financial Regulator noted instances where basic client information such as income and assets/liabilities were not recorded on the fact finding documentation of firms. The Consumer Protection Code requires that before providing a product or service to a consumer, a regulated entity must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The Financial Regulator also found that all the required information regarding the assessment of suitability for investments in accordance with the Markets in Financial Instruments Directive was not on file.
- A number of incidents were also found where firms selected a default risk rating, which was not the lowest risk rating of the firm, for clients that had failed to complete a section of the Know Your Client documentation. This means that a consumer may have been allocated an inaccurate risk profile.
- It was found that not all institutions offer older customers the option of having a third party present at a sales meeting. While some older people may prefer to deal directly with financial advisers, the Financial Regulator believes that the option to have a third party present may be useful where the customer has no prior investment experience.
- In certain cases firms did not give customers any advice on the level of emergency funds that should be maintained to provide for medical or other long term care expenses. The Financial Regulator recommends that firms refer to the need for an emergency fund, to ensure that customers have access to sufficient disposable funds in the event of a requirement for future health care needs or other potential unforeseen events.
- Some statements of suitability reviewed during the inspections were generic in nature. The Consumer Protection Code requires that the written statement of suitability provided to a consumer sets out the reason why a product or service offered to a consumer is considered to be suitable to that consumer.

The Mystery Shopping Exercise was conducted by an independent third party appointed by the Financial Regulator in selected banks and building societies. While a number of matters were identified as part of the mystery shopping, the results of this exercise were generally better than the inspections, primarily because thirteen of the fourteen mystery shoppers, who had a profile of between 72 and 79 years of age, were recommended a deposit where the term

was no longer than three years. However, in four cases, discussions took place regarding products that could not be accessed for up to six years which is of concern given the age profile.

The Financial Regulator has already taken a number of steps in relation to the weaknesses identified as this examination continued, which include, requesting firms to conduct an independent assessment of certain files regarding products sold to older customers, engaging with all firms where there were findings as a result of inspections conducted and providing feedback on positive practices.

Any breach of a legislative provision or regulatory requirement, such as the Consumer Protection Code, may be considered under the Administrative Sanctions Procedure.

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#### **Notes to Editors**

**1. There were four parts to this examination which focused on:**

- (i) Suitability of Sales of Investment Products to Older Customers by Credit Institutions;
- (ii) Suitability of Sales of Investment Products to Older Customers by Life Insurance Firms;
- (iii) Suitability of Sales of Investment Products to Older Customers by MiFID Firms; and
- (iv) Mystery Shopping Exercise to Examine the Treatment of Older Customers in the Context of the Consumer Protection Code.

**2. Markets in Financial Instruments Directive Regulations (MiFID)**

MiFID is a comprehensive regulatory regime covering investment services and financial markets in Europe and introduces common standards for investor protection throughout the European Union. It applies to both investment firms and credit institutions when providing investment services, and to regulated markets.

**Client Categorisation**

MiFID sets out a three-tier categorisation system classifying parties as retail clients, professional clients or eligible counterparties. MiFID attaches different levels of regulatory protection and approaches to each party differently depending on the category of client, with retail clients receiving the highest level of MiFID protection.

### **Suitability and Appropriateness**

MiFID requires suitability tests to be conducted by an investment firm to ensure that its investment advice or its portfolio management services are suitable for potential retail and professional clients. Firms must obtain sufficient information about the client to enable them to make an adequate and objective assessment of an investment's suitability. The suitability of an investment must be based on the client's relevant experience, knowledge, financial situation and investment objectives. Where a potential client does not provide the required information the investment firm shall not recommend investment services or products to the client.

When providing services other than investment advice or portfolio management, a firm is required to assess the appropriateness of its investment services and activities for the client. Sufficient information about the client must be obtained by an investment firm to assess the client's experience and knowledge. Investment firms are obliged to warn their client if they conclude that a particular investment service or product is inappropriate. Where sufficient information is not forthcoming from a client the firm must warn the client that it cannot determine whether the service or product is suitable.

### **3. Suitability – Consumer Protection Code**

Under the statutory Consumer Protection Code, regulated entities are required to ensure that any products or services provided or recommended to customers are suitable to the customer, based on the information provided by the customer. Those regulated entities who do not provide advice or recommendations, but who offer the customer a range of products, will be required to ensure that all of the products in that range are suitable to that particular customer.

### **4. Administrative Sanctions Procedure**

Any breach of a legislative provision or regulatory requirement, such as the Consumer Protection Code, may be considered pursuant to the Administrative Sanctions Procedure.

The Financial Regulator can take a number of actions from directions, cautions and reprimands up to and including monetary penalties. It is also important to note that:

In determining sanctions, under the terms of our administrative sanctions procedure, the conduct of the regulated financial service provider or person concerned in its management after a contravention is taken into account:

- (a) How quickly, effectively and completely the financial service provider or person concerned in its management brought the contravention to the attention of the Financial Regulator or any other relevant regulatory authority;
- (b) The degree of co-operation with the Financial Regulator or other agency provided during the examination of the contravention; and
- (c) Any remedial steps taken since the contravention was identified, including: identifying whether consumers have suffered loss and compensating them; taking disciplinary action against staff involved (where appropriate); addressing any systemic failures; and taking action designed to ensure that similar problems do not arise in the future.