

## **Chapter 1 – DISCLOSURES**

### *Introduction*

Disclosures should be made in a comprehensible form in such a manner that Clients are reasonably able to understand the nature and risks of the Service to be provided by the Regulated Person and of the type of Product that is being offered, and consequently to take decisions on an informed basis. Furthermore, any Advertisements issued by the Regulated Persons should be fair, clear and not misleading. Certain disclosures are to be made in good time prior to the provision of the Service or conclusion of the contract leading to the purchase of the Product, such that the Client has adequate time to process the information resulting from the disclosures made before deciding whether to purchase such Service or Product.

To this end, this Chapter deals with the disclosures a Regulated Person is required to make to a Client, and the manner in which a Regulated Person is required to communicate with Client. In particular, the Rules and Guidance contained in this Chapter aim to ensure that all material information about the Regulated Person itself and about the Products and Services which the Regulated Person provides or may provide to the Client, as well as any real or potential conflicts of interest, is duly disclosed.

**Section 1: MEDIUM OF DISCLOSURE**

**Application**

R.1.1.1 The Rules and any relative Guidance set out under the heading ‘General Rule’ shall apply to all Regulated Persons, except to affiliated insurance companies and to pure re-insurance companies.

**General Rule**

R.1.1.2 Where in terms of this Rule Book, information is required to be disclosed to Clients in a durable medium, it shall be disclosed:

- (a) on paper ;
- (b) in a clear and accurate manner, comprehensible to the Client;
- (c) in English, or in any other language agreed by the parties; provided that, in the case of Clients resident in Malta, the documents referred to in Rule 1.1.4, shall be provided both in English and Maltese unless the person to whom the information is to be disclosed specifically chooses to receive such information in either English or Maltese only:

Provided that in the case of insurance undertakings or insurance intermediaries, this Rule shall only apply where such Regulated Persons are providing personal line products, health or long term policies; and

- (d) free of charge.

R.1.1.3 The Regulated Person shall also ensure that:

- (a) any information provided pursuant to this Rule shall be up to date; and
- (b) it has in place appropriate arrangements to ensure the security of information it receives from the Client and the secure transmission of any information to its Clients.

R.1.1.4 For the purposes of Rule 1.1.2(c), the following documents shall be provided in both Maltese and English:

**General**

- (a) The Key Information Document (KID) required under the PRIPS Regulation;

Documents relating to Services Provided by Regulated Persons falling under points (i),(ii) or (v) of the definition of Regulated Person in the Glossary to these Rules :

- (b) Client Agreement required in terms of [Article 25(5) in MiFIDII ] including the details laid down in [Article 39 of the MiFID Implementing Directive]<sup>1</sup>;
- (c) Application Form to purchase any Product or the Order Form through which an order is placed for a financial instrument to be bought/sold on behalf of the Client by the Regulated Person;
- (d) Client Fact Find, Account Opening Form, Account Opening Application Form or any document which is used by the Regulated Person to gather the information required in order for it to assess the suitability or appropriateness of the Client with respect to the Services or Products being sold;
- (e) Suitability Statement required in terms of R. 1.4.17 including, the periodic assessment of suitability required in the case of portfolio management services;
- (f) Reports to be provided to the Client on the Service provided required in terms of R.1.4.59, R.1.4.64 and R.1.4.72, as applicable. These reports should include, *inter alia*, the costs associated with the transactions and Services undertaken on behalf of the Client;

Documents relating Services provided in relation to UCITS Schemes .

- (g) The Key Investor Information Document required under the UCITS IV Directive when selling UCITS;

Documents relating to Services Provided by Regulated Persons falling under points (iii) or (iv) of the Definition of Regulated Person in the Glossary to these Rules :

- (h) In the case of Life Insurance Policies, the quotation and the Schedule containing the summary of the policy;
- (i) Insurance Policy;
- (j) Proposal Form;
- (k) Renewal Notice;
- (l) Claim Form;

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<sup>1</sup> To eventually add cross-reference to rules shaded in yellow once Rulebook is completed

- (m) Suitability statement required in terms of R. 1.4.17;
- (n) The Statutory Notice to be provided to Clients in terms of the Insurance Business (Long Term Business Contract Statutory Notice) Regulations;
- (o) The Statutory Notice Required in terms of Insurance Intermediaries Rule 4 – Code of conduct for Insurance Intermediaries(Bancassurance statutory notice).

Provided that where the subject of the contract of insurance relates to the business of reinsurance or to large risks as defined by Article 5 of the Second Council Directive 88/357/EEC of the 22<sup>nd</sup> June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than the life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amends Directive 73/239/EEC, the information referred to in this rule shall be provided in English, or in any other language agreed to by the parties.

- R.1.1.5 The Regulated Person shall warn the Client that in the case where the Application form, the Proposal Form or the Order form has to be transmitted to an overseas party for final execution, the wording of the English version of the Order form or Application form shall prevail.
- R.1.1.6 By way of derogation from R.1.1.2(a), the Regulated Person may disclose to the Client, any information it is required to disclose in terms of this Rule Book in any one of the following means:
  - (a) Through a durable medium other than paper, where the conditions laid down in R.1.1.7 are met; or
  - (b) by means of a website where the conditions laid down in R.1.1.8 are met.
- R.1.1.7 Where information is required to be disclosed in a durable medium, Regulated Persons may disclose such information, in a durable medium other than on paper, only if:
  - (a) the provision of that information in that medium is appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on; and
  - (b) the person to whom the information is to be disclosed, when offered the choice between information on paper or in that other durable medium, specifically chooses the provision of the information in that other medium.
- R.1.1.8 Where, in terms of this Rule Book a Regulated Person is permitted to disclose information to a Client by means of a website, and where that information is not addressed personally to the Client, the following conditions must be satisfied:

- (a) the provision of that information in that medium is appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on;
- (b) the Client shall specifically consent to the provision of that information in that form;
- (c) the Client shall be notified electronically of the address of the website, and the place on the website where the information may be accessed;
- (d) the information shall be up to date; and
- (e) the information shall be accessible continuously by means of that website for such period of time as the Client may reasonably need to inspect it.

Where a Regulated Person communicates with a Client by means of a website, it must ensure that it has in place appropriate arrangements in order to record all the specific information disclosed to the Client by means of its website, including dated screen shots of such disclosures, in order to demonstrate that it has complied with all its regulatory requirements

Provided that tied insurance intermediaries shall not carry on tied insurance intermediaries activities through the internet, except with the consent of the Regulated Person to which it is tied.

R.1.1.9 Where the information to be disclosed in a durable medium, is disclosed by the Regulated Person using a durable medium other than paper or by means of a website, a paper copy shall be disclosed to the Client upon request and free of charge.

R.1.1.10 For the purposes of R.1.1.7 and R.1.1.8, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Regulated Person and the Client is, or is to be, carried on if there is evidence that the Client has regular access to the internet. The provision by the Client of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

**Section 2: MARKETING RULES**

**Application**

- R.1.2.1 The Rules and any relative Guidance set out under the subtitle “General Rules” shall apply to all Regulated Persons, except as otherwise indicated.
- R.1.2.2 The Rules and the relative Guidance set out under Part A below are applicable to Regulated Persons which fall under paragraph (i), (ii) or (v) of the definition of Regulated Person in the Glossary, irrespective of their licence category.
- R.1.2.3 The Rules and relative Guidance set out in Part B below are applicable to Regulated Persons which fall under paragraphs (iii) and (iv) of the definition of Regulated Person in the Glossary to these Rules.
- R.1.2.4 These Rules shall apply to:
- a) any Advertisement or Information issued in or from Malta; and
  - b) any Advertisement or Information which is circulated, published, broadcast or otherwise received in Malta.

**General Rules**

- R.1.2.5 Advertisements and Information shall be fair, clear and not misleading. Advertisements shall be clearly identifiable as such.
- In issuing, approving or disseminating Advertisements, the Regulated Person shall ensure that:
- a) the design, presentation and content of an advertisement is clear, fair , accurate and not misleading such that any Client can reasonably be expected to know immediately that it is an advertisement.
  - b) the advertisement shall not seek to influence a person’s attitude to the advertised Product or Service or the Regulated Person either by ambiguity, exaggeration or omission;
  - c) the nature and type of the advertised Product or Service shall be clear and shall not be disguised in any way;
  - d) important items, statements or warnings are not disguised, diminished or obscured; and

- e) it avoids taking any improper advantage of any characteristic or circumstances that may make the Client vulnerable.

R.1.2.6 Without prejudice to the generality of R.1.2.5, a Regulated Person shall ensure that any advertisement and Information is not misleading in relation to:

- (a) the nature of the advertised Product or Service;
- (b) the Regulated Person's independence or the independence of the information it provides;
- (c) the Regulated Person's ability to provide the advertised Product or Service and about the nature and type of such Product or Service;
- (d) the scale of the Regulated Person's activities;
- (e) the extent of the resources of the Regulated Person;
- (f) the nature of the Regulated Person's or any other person's involvement in the advertised Product or Service;
- (g) the scarcity of the advertised Product or Service;
- (h) past performance or possible future performance of the advertised Product or Service;
- (i) any relevant risks and, in particular, shall not emphasise any potential benefits of a Product or Service without also giving a fair and prominent indication of relevant risks.

G.1.2.1 *An Advertisement or other Information provided to Clients should be considered to be 'misleading' if it has a tendency to mislead the person or persons to whom it is addressed or by whom it is likely to be received, whether or not the person who issues the advertisement considers or intends it to be misleading.*

G.1.2.2 *These Rules shall not apply where the advertisement approved or disseminated or the Information provided consists only of one or more of the following:*

- (a) the name of the Regulated Person;*
- (b) a logo or other image associated with the Regulated Person;*
- (c) a contact point;*
- (d) a reference to the Services provided by the Regulated Person ;*
- (e) reference to the fees or commissions charged by the Regulated Person .*

- R.1.2.7 The Regulated Person shall ensure that Advertisements or Information it approves or circulates shall:
- a) be sufficient for, and presented in a way that is likely to be understood by, its identified target market<sup>2</sup>; and
  - b) identify the Member State where the Regulated Person is registered.

Issuing and Approving Advertisements

- R.1.2.8 No person, other than a Regulated Person, may issue or cause to be issued, Advertisements in or from Malta, unless its contents have been approved by a Regulated Person. Furthermore, the Regulated Person approving such Advertisements shall ensure that any Advertisements disseminated or circulated principally in or from Malta comply with the requirements of these Rules and any other relevant legislation.

Advertisements relating to Financial Instruments or Structured Deposits, are required to be approved by a Regulated Person falling under point (i) of the definition of Regulated Person in the Glossary to these Rules.

- R.1.2.9 When issuing or approving such Advertisements Regulated Persons, other than Tied Insurance Intermediaries, shall:
- (a) appoint the Compliance Officer, or where the Regulated Person is not required to appoint a Compliance Officer, a designated officer to be notified to the MFSA to:
    - i) approve Advertisements to be issued by the Regulated Person in its own name;
    - ii) approve Advertisements to be issued by a third party but which are required to be approved by a Regulated Person; and
    - iii) report to the Authority any advertisement issued or purporting to be issued by a Regulated Person without the approval referred to in (a)(i) above.
  - (b) Establish internal procedures relating to the approval of Advertisements to be issued by the Regulated Person;
  - (c) Identifies the target market of Client for whom the Advertisement is intended and ensures that the method of circulating the Advertisement is appropriate for the identified target market.

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<sup>2</sup> Article 6(4)(a) of Insurance Rule 14

- (d) keep records of all Advertisements issued and approved, including:
  - i) a signed certification by the Compliance Officer or the designated officer in terms of (a) above, that each advertisement complies with the requirements of these Rules;
  - ii) the name of the individual who approved the Advertisements;
  - iii) the date of approval of the Advertisements;
  - iv) the publications in which the Advertisement was included; and
  - v) documentary evidence in support of any statement made in the Advertisement.

R.1.2.10 Where the Regulated Person appoints Insurance Intermediaries or Tied Agents, it shall approve, before publication, all the Advertisements relating to the business carried on by the Regulated Person, issued by such intermediaries or tied agents,. The Regulated person shall also accept responsibility for such adverts and ensure that they comply with the applicable legal and regulatory requirements. Moreover, the Regulated Person shall also keep a separate record of all such Advertisements.

R.1.2.11 For the purposes of R.1.2.9 and R.1.2.10, the words “*keep a record of all Advertisements*” means that the Regulated Person is required to keep a copy of each, different kind of Advertisement issued or approved by it, for a period of not less than 5years.

#### General Requirements

R.1.2.12 Any disclosure, warning or any other disclaimer which is required to be included in any Advertisement or information shall be shown prominently, clearly and intelligibly.

G.1.2.3 *When issuing an advertisement or communicating information to a Client about a Product or a Service, a Regulated Person should consider whether omission of any relevant fact will result in the Advertisement or information being insufficient, unclear, unfair or misleading.*

G.1.2.4 *Regulated Persons should:*

- (a) *take account of the means of communication used to publish the Advertisement or communicate the information to Clients and of the limitations and/ or disadvantages associated with a particular means of communication. To this effect G. 1.2.29 should be noted for additional guidance with respect to publication of information on different types of media;*
- (b) *ensure that disclaimers, risk warnings and other footnotes used in the Information should be of sufficient size and prominence to be clearly legible and*

*not diminished, disguised or obscured in any way by the content, design or format of the Information;*

- (c) *ensure that quoted performance figures are not selected so as to exaggerate the success or disguise the lack of success of the product;*
- (d) *include a statement in the Information regarding any significant position or holding in the Product which is the subject of the Information or Advertisement;*
- (e) *ensure that only information which is material to the Advertisement being published, is included. The Advertisement should indicate that further information about the Product or Service which is the subject of the Advertisement is available and from where.*

R.1.2.13 A Regulated Person shall include a regulatory disclosure statement in all the Advertisements it issues. This regulatory disclosure shall indicate that the Regulated Person is regulated by the MFSA and the law under which it is so regulated. The Regulated Person shall ensure that this regulatory disclosure statement shall not imply any endorsement by the Malta Financial Services Authority or by any other relevant EU competent authority of the Regulated Person or its Products or Services.

The regulatory disclosure statement required by this Rule should also be made by the Regulated person when providing Information to Clients.

R.1.2.14 A Regulated Person shall ensure that any Advertisement or information it issues, which indicates the MFSA as the regulator of the Regulated Person issuing the Advertisement and which refer to matters not regulated by the MFSA, makes it clear that those matters are not regulated by the MFSA.

R.1.2.15 Where an Advertisement is issued by a tied insurance intermediary or by a tied agent, the Advertisement shall contain a statement that the entity appointing the intermediary is regulated by the MFSA, or by a European regulatory authority, as applicable, as well as a reference to the legislation under which such regulation is afforded.

The regulatory disclosure statement required by this Rule should also be made by the tied intermediary when providing information to Clients.

R.1.2.16 The Regulated Person shall ensure that any Information and Advertisement addressed to, or disseminated in such a way that it is likely to be received by, Clients shall include the name and address of the Regulated Person and identify in the same prominence both the Manufacturer of the Product and the Distributor which issued the Advertisement or the Information. . It should also distinguish between which of the parties is the Manufacturer and which is the Distributor of the Product

- R.1.2.17 A Regulated Person shall ensure that an Advertisement or Information which contains any initials or acronyms (for example AER, EAR, CAR, APR etc.) also states what the initials or acronyms stand for.
- R.1.2.18 A Regulated Person shall ensure that the advertised product or service is described as free only where the product or service in its entirety is available free of charge to the Client.
- R.1.2.19 A Regulated Person shall ensure that any information which appears in an Advertisement is consistent with any information it provides to a Client in the course of carrying on its activities.
- R.1.2.20 In deciding whether and how, to issue an Advertisement to an identified target market, a Regulated Person shall ensure that the medium selected for this purpose is commensurate with the nature of the Product or Service and its likely information requirements as well as the role and extent of the information provided, the risks involved, the risk profile of the target audience in the sales process.
- Where the medium selected by the Regulated Person to disseminate the Advertisement is such that it does not allow the recipient to assimilate all the information included therein (for example billboards), there should be no references to performance rates and/or yields.
- G.1.2.5 *The medium, content and format of the Advertisement should be such that it is easily understood that it is only intended for its identified target market. The Advertisement itself should also be understood by such identified target market. Therefore, where possible, simple and accurate terms should be used as opposed to complicated and technical jargon.*
- R.1.2.21 The Regulated Person shall ensure that an Advertisement or Information which is being aimed at an Identified target market shall also include a statement indicating such identified target market.
- G.1.2.6 *With respect to Advertisements and Information disseminated via the Internet, Regulated Persons should also:*
- a) *include a statement indicating the identified target market which the website or email is intended for;*
  - b) *include appropriate statements that the Client is leaving the Regulated Person's website and accessing another in cases where the Regulated Person's website is hyperlinked to other sites.*

*Warning Statements which should be included in Advertisements and, where applicable, Information.*

- R.1.2.22 A Regulated Person shall ensure that warning statements:

- (a) are prominently situated and of a font size that is at least equal to the predominant font size used throughout the document or Advertisement or Information; and
- (b) appear together with the benefits of the advertised Product or Service.

In the case of non-print media, it is sufficient that the warning statements are mentioned at the end of the Advertisement.

R.1.2.23 A Regulated Person shall ensure that an Advertisement for a product, which is not readily realisable, states that it may be difficult for Client to sell or exit the Product and/or obtain reliable information about its value or extent of the risks to which it is exposed.

R.1.2.24 A Regulated Person shall ensure that an Advertisement or Information relating to a product that cannot be redeemed prior to maturity, or which incurs an early redemption charge if redeemed prior to maturity, clearly states that this is the case.

R.1.2.25 A Regulated Person shall ensure that an Advertisement or Information relating to a product subject to front-end loading states, where applicable, that:

- (a) deductions for charges and expenses are not made uniformly throughout the life of the product, but are loaded onto the early period;
- (b) if the Client withdraws from the product in the early period, the practice of front-end loading will impact on the amount of money which the Client receives; and
- (c) if applicable, that a Client may not get back the full amount invested.

R.1.2.26 Regulated Persons issuing an Advertisement shall ensure that:

- (a) where the Product is complex, a warning is included to the effect that it may not be suitable for retail Clients;
- (b) where a Product is complex, a statement is included to the effect that the Product may only be sold on an advisory basis.
- (c) that the information provided therein is not in conflict, in any way, with the relevant prospectus or product documentation. Phrases similar to or derivatives of ‘fixed annual income, ‘minimum return’, ‘monthly distributions’ amongst others may only be used in accordance with the provisions of the product prospectus or product documentation;
- (d) that the terminology used to describe the rate of return is adequate terminology for that particular Product or service. When quoting rates of return for bond

funds the term 'yield' should be used to describe such a return in lieu of 'interest rate' or 'return'. Care shall also be exercised in using the correct terminology when advertising in Maltese so that the term 'qliagh' is only used where appropriate as opposed to 'rata ta' imghax'.

R.1.2.27 A Regulated Person shall ensure that where any Advertisement or Information relates to a Product or Service that is denominated or priced in a foreign currency, or where the value of such Product or Service may be directly affected by changes in foreign exchange rates, the relevant warning statements are disclosed.

G.1.2.7 *Further to the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: This [product/service] may be affected by changes in currency exchange rates.**

R.1.2.28 A Regulated Person shall ensure that Advertisements should clearly indicate whether the Product or Service being advertised places a Client's capital at risk. An Advertisement for a Product where the consumer may not get back 100% of the initial capital invested should contain the relevant warning.

G.1.2.8 *For the purpose of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: If you invest in this product you may lose some or all of the money you invest.**

R.1.2.29 A Regulated Person shall ensure that an Advertisement for a Product that quotes a yield figure, a balanced impression of both the short and long term prospects for the investment, is given;

R.1.2.28 A Regulated Person shall ensure that for a Product where the promised return of capital is only applicable on a specific date, an appropriate warning is given.

G.1.2.9 *For the purposes of the above Rule, Regulated Persons should use the following warning or such other wording as appropriate in the particular circumstances:*

**Warning: If you cash in your product or redeem your investment before [specify the particular date] you may lose some or all of the money you invest.**

R.1.2.30 A Regulated Person shall ensure that Advertisements for a Product where there is no access to funds for the term of the Product a specific warning in this regard should be included.

G.1.2.10 *For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: If you invest in this product you will not have any access to your money for [insert time required before the product matures].**

R.1.2.31 A Regulated Person shall ensure that in Advertisements that promote a Product or Service whose charging structure is complex shall include the information necessary to ensure that the Advertisements are fair, clear and not misleading. Such Advertisements should also contain sufficient information taking into account the needs of the recipients.

R.1.2.32 A Regulated Person shall ensure that Advertisements that offer packaged products which are not manufactured by the Regulated Person issuing the Advertisements, indicate clearly that the Regulated Person is not the manufacturer of the product advertised.

R.1.2.33 A Regulated Person shall ensure that where the advertised Product or Service can fluctuate in price or value, the relative Advertisement contains a corresponding warning statement.

G.1.2.11 *For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: The value of your investment may go down as well as up.**

R.1.2.34 A Regulated Person shall ensure that where the return on an advertised Product or Service is not set until a particular date (for example, the maturity date of the advertised Product or Service), this should be clearly stated.

R.1.2.35 A Regulated Person shall ensure that where the subject of an Advertisement is a product described as being likely to yield income, or interest in the case of structured deposits, or as being suitable for a Client particularly seeking income, the relevant risk warnings are included where the income from such Product can fluctuate.

G.1.2.12 *For the purposes of the above Rule, Regulated Persons should use the following wording or such other wording as appropriate in the particular circumstances:*

**Warning: The income you get from this investment may go down as well as up.**

Information to be Included in Advertisements

R.1.2.36 A Regulated Person shall ensure that an Advertisement that uses promotional or introductory interest rates clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter.

R.1.2.37 An Advertisement should not describe a feature of a Product or Service as "guaranteed", "protected" or "secure", or use a similar or equivalent term unless the Regulated Person

issuing the Advertisement has made an assessment of the guarantee in question and has found it to be adequate. If such terms are included, then the Regulated Person shall ensure that the terms used are capable of being a fair, clear and not misleading description of the Advertised product and that all relevant information is communicated in the Advertisement with sufficient clarity and prominence, to make the use of those terms fair, clear and not misleading. Furthermore, such Advertisements should also include:

- (a) the name and a description of the guarantor;
- (b) the legally binding nature of the guarantee and what it relates to ; and
- (c) information as to whether there are any conditions, restrictions or other matters which may affect the Client's ability to benefit from it.

R.1.2.38 A Regulated Person shall ensure that any assumptions, on which a statement, promise or forecast contained in an Advertisement is based, are clearly stated, reasonable and up to date.

R.1.2.37 A Regulated Person shall ensure that an Advertisement that promotes more than one Product or Service sets out clearly the key information relating to each Product or Service in such a way that a Client can distinguish between the Products and Services in question.

R.1.2.38 Where an Advertisement contains a statement or report attributed to a person, the Advertisement should also disclose the name of that person, his business address, qualifications and any material interest in the issuer of the Advertisement or in the Products or Services which are the subject of the Advertisement in question.

R.1.2.39 Where the information contained in an Advertisement is sourced from a third party, the Regulated Person issuing the Advertisement should also confirm that this information has been accurately reproduced and that no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, the Regulated Person should also identify the source(s) of the information.

### Advertisements issued by Tied Intermediaries or Tied Agents

R.1.2.40 Where a tied insurance intermediary or a tied agent is tied to a single provider for a particular Product or Service, the tied insurance intermediary or the tied agent shall disclose this fact in all Advertisements for the Product or Service in question.

### Advertisements containing Pricing claims

R.1.2.41 This Rule applies in relation to an Advertisement that makes pricing claims, including financial promotions that indicate or imply that a Regulated Person can reduce the

premium or fees, provide the cheapest premium or fees or otherwise reduce a Client's costs:

A Regulated Person shall ensure that any qualifying criteria in relation to:

- (a) obtaining a minimum price for the Advertised product or service; or
- (b) benefiting from potential maximum savings relating to the Advertised product or service;

is included in the main body of the Advertisement.

R.1.2.42 Such an Advertisement should:

- (a) be consistent with the result reasonably expected to be achieved by the majority of Clients who respond, unless the proportion of those Clients who are likely to achieve the pricing claims is stated prominently;
- (b) state prominently the basis for any claimed benefits and any significant limitations; and
- (c) comply with other relevant legislative requirements.

Disclosures Relating to Taxation

R.1.2.43 If any Advertisement or Information refers to a particular tax treatment of a particular Product or Service, a Regulated Person shall ensure that the Advertisement or Information in question contains:

- (a) details on the tax treatment of the Product or Services, which is complete, fair, relevant, accurate and not misleading;
- (b) an indication as to whether the Regulated Person assumes responsibility for the withholding of the taxes at source;
- (c) an indication that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future.

G.1.2.13 *For the purposes of the above Rule, Regulated Persons should the following wording as the applicable warning or such other wording as is appropriate in the circumstances:*

**Warning: The levels and bases of taxation are dependent on individual circumstances and subject to change and therefore it is highly recommended that you consult a professional tax adviser.**

### Advertisements or Information containing Comparative Information

- R.1.2.44 A Regulated Person shall ensure that comparisons or contrasts are based either on facts verified by the Regulated Person, or on reasonable and up to date assumptions stated within the Advertisement itself. Such Advertisements should be presented in a clear, fair and balanced way and not omit anything material to the comparison or contrast. The Regulated Person shall set out clearly material differences between the products and shall ensure that:
- (a) the comparative information sets out clearly the different features of each Product in such a way that Client can clearly distinguish between the Products or Services;
  - (b) comparisons or contrasts are based either on facts verified by the Regulated Person or on reasonable assumptions stated within the Information or Advertisement.
  - (c) comparisons or contrasts do not omit anything material to the comparison or contrast.
  - (d) the sources of the information used for the comparison shall be specified;
  - (e) the key facts and assumptions used to make the comparison shall be included.

### Advertisements or Information provided to Clients, which Refer to Past Performance

- R.1.2.45 A Regulated Person shall ensure that when issuing Advertisements and when providing any Information to Client, containing an indication of past performance of a financial index or a Service or a Product, the following conditions are satisfied:
- a) that indication is not the most prominent feature of the advertisement or Information provided and is not selected so as to exaggerate the success or disguise the lack of success of the advertised Product or Service;
  - b) the Advertisement includes appropriate performance information which covers at least the immediately preceding five years, or the whole period for which the Product has been offered, the financial index has been established, or the Service has been provided if less than five years, or such longer period as the Regulated Person may decide, and in every case that performance information shall be based on and show complete 12-month periods;
  - c) the basis upon which performance is quoted, the reference period and the source of information are clearly stated;

- d) the advertisement or the Information provided to Clients contains a prominent warning that the figures refer to the past and that past performance is not a reliable indicator of future results;
- e) if the indication relies on figures denominated in a currency other than that of the country in which the Client is resident, the currency is clearly stated;
- f) if the indication is based on gross performance, the effect of commissions, fees or other charges is disclosed;
- g) the past performance is relevant to the Regulated Person concerned or the products offered by the Regulated Person.

*G.1.2.14 With respect to R.1.2.45 (b) Regulated Persons should ensure that all performance figures quoted in the Information or in the Advertisement are annualised. In addition, where Regulated Persons, annualise a rate of return using figures which do not span over a year, they should clearly disclose the basis period over which the annualised rate is calculated and include the following disclaimer or such other wording as is appropriate in the circumstances:*

**'The annualised rate is an indication of the average growth of the investment over one year'.**

*G.1.2.15 The obligations relating to describing performance should be applied in the light of their purpose and in a way that is appropriate and proportionate taking into account the means of communication and the information the communication is intended to convey.*

*G.1.2.16 For the purposes of the above Rule, the Regulated Person is recommended to use the following wording or such other wording as is appropriate in the circumstances:*

*a) With respect to R.1.2.45(d):*

**Warning: The performance figures quoted refer to the past and past performance is not a guarantee of future performance or a reliable guide to future performance' as the applicable warning.**

*b) With respect to R.1.2.44(e)*

**Warning: This [product] may be affected by changes in currency exchange rate movements thereby affecting your investment return therefrom.**

*G.1.2.17 In order to comply with R.1.2.45 (f), Regulated Persons may either quote performance figures:*

*(a) net of all applicable fees, commissions and other charges; or*

- (b) *gross, but clearly highlighting all applicable fees, commissions and charges in the disclaimers contained in the Advertisement or Information and which could have an impact on the value of the quoted performance. In this regard,*
- *for Financial Instruments and for insurance based investment products subject to front- end fees, Regulated Persons should use the following wording or such other wording as is appropriate in the circumstances:*

**Warning: A commission or sales fee may be charged at the time of the initial purchase for an investment and may be deducted from the invested amount therefore lowering the size of your investment’;**

- *for Products subject to exit fees, Regulated Persons should to use the following wording or such other wording as is appropriate in the circumstances:*

**Warning: ‘A fee/surrender penalty may be charged at the time you redeem your investment [or if you wish to withdraw your investment in the early period] /surrender penalty which may have an impact on the amount of money you receive’.**

G.1.2.18 *In relation to packaged products information required in R.1.2.45 should be given on:*

- (a) *an offer to bid basis (which should be stated) if there is an actual return or comparison of performance with other investments; or*
- (b) *an offer to offer, bid to bid or offer to bid basis (which should be stated) if there is a comparison of performance with an index or with movements in the price of units; or*
- (c) *a single pricing basis with allowance for charges.*

G.1.2.19 *If the pricing policy of the packaged product has changed, the prices used should include such adjustments as are necessary to remove any distortions resulting from the pricing method.*

G.1.2.20 *Performance figure/s (including the use of graphs or other phrases used in the information or advertisement which could give an indication of the rate of return) are considered to be the most prominent feature of the information or advertisement when the font size/s used to illustrate the performance figure/s*

- a) *is larger than that used for any other item of information within the same communication;*
- b) *is disproportionate to the font size used for any other item of information including the disclaimers, footnotes, warnings; and*

c) gives the performance rate excessive prominence.

G.1.2.21 Where necessary footnotes or other information included to supplement or elaborate on the key information in the main body of the advertisement, shall be of sufficient size and prominence to be clearly legible. Where an asterisk is used to add explanation, the explanatory text may appear as a footnote provided that the linkage is absolutely clear;

G.1.2.22 Regulated Persons should ensure that the reference period and the source of information is quoted even when disclosing and/ or illustrating past performance figures or indicators in pie charts or any other types of graphs or illustrations.

Advertisements or Information showing Simulated past performance

R.1.2.46 A Regulated Person shall ensure that any Advertisement it approves and any Information it provides and which contains an indication of simulated past performance, satisfies the following conditions:

- a) it relate to a financial instrument or a financial index;
- b) the simulated past performance is based on the actual past performance of one or more financial instrument or a financial index which are the same as, or underlie, the financial instrument concerned;
- c) in respect of the actual past performance referred to in point (b) above the conditions set out in points (a) to (c), (e) and (f) of R.1.2.45 are complied with; and
- d) the data included in the Advertisement or in the Information provided to Clients, contains a prominent warning that the figures refer to simulated past performance and that past performance is not a reliable indicator of future performance.

G.1.2.23 The guidance noted in G.1.2.14 to G.1.2.22 above should be considered as relevant guidance for the implementation of R.1.2.46(b).

G.1.2.24 For the purposes of Rule 1.2.46(d), Regulated Persons are recommended to use the following wording or such other wording as may be appropriate in the circumstances.

<p><b>Warning: The performance figures quoted are only estimates and may not be a reliable indicator of future performance of this investment’.</b></p>
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Advertisements or Information showing Future performance

R.1.2.47 A Regulated Person shall ensure that any advertisement it approves and any information Clients Advertisements containing an indication of future performance satisfies the following conditions:

- (a) it is not based on and does not refer to simulated past performance;
- (b) it is based on reasonable assumptions supported by objective data;
- (c) it discloses the effect of commissions, fees or other charges if the indication is based on gross performance; and
- (d) it contains a prominent warning that such forecasts are not a reliable indicator of future performance.
- (e) the information provided should be based on performance scenarios in different market conditions (both negative and positive scenarios), and should reflect the nature and risks of the specific types of instruments included in the analysis.

G.1.2.25 *A Regulated Person should refrain from approving Advertisements or providing information to Clients referring to future performance if it is not in possession of the objective data needed to comply with the rule on future performance.*

G.1.2.26 *Regulated Persons should not illustrate future performance figures in a way which indicates or gives the impression that the future performance of the investment is correlated in any way to the past performance of the investment.*

G.1.2.27 *In order to comply with R.1.2.47(c), Regulated Persons may either quote performance figures:*

- (a) *net of all applicable commissions, fees and charges; or*
- (b) *gross, but clearly highlighting all applicable commissions, fees and charges in the information disclaimers which could have an impact on the value of the quoted performance as follows:*
  - *for Products subject to front- end fees, Regulated Persons should use the following wording or such other wording as is appropriate in the circumstances:*

**A commission or sales fee may be charged at the time of the initial purchase for an investment , or at the time of the entering into an insurance contract, as applicable, and may be deducted from the amount invested or from the surrender value, as applicable, therefore lowering the size of the proceeds from your investment or insurance policy, as applicable.**

- *for Products subject to exit fees or surrender charges , Regulated Persons are recommended to use the following wording or such other wording as is appropriate in the circumstances:*

**A fee may be charged at the time you redeem your investment [or if you wish to withdraw your investment in the early period] or on the surrender of the policy, as applicable. This may have an impact on the amount of money you receive’.**

- G.1.2.28 *In order to comply with R.1.2.46(d), Regulated Persons are recommended to use the following wording for the applicable warning or such other wording as is appropriate in the circumstances.*

**The performance figures quoted should only be considered as forecasts and may not be a reliable indicator of future performance of this investment.**

*Guidance on Advertisements to be disclosed in Advertisements Broadcast on Television and Radio.*

- G.1.2.29 *With respect to Advertisements broadcast on television and radio, apart from the guidance provided in the above-sections, Regulated Persons should:*

- state the regulatory disclosure statement as set out in R.1.2.13;*
- have clear and legible risk warnings indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen;*
- indicate the captions on a black background and using bold, white text which is non italicised. Captions at the bottom of the screen should not exceed 4 lines each and should only be updated at intervals of not less than 4 seconds each during broadcast of the visual;*
- include a voice over of all the relevant risk warnings relative to the investment;*
- not include any reference to past or future performance rates if the broadcast is less than 30 seconds long.*

**Part A**      **Rules Applicable to Regulated Persons which fall under paragraph (i) or (ii) of the definition of Regulated Person in the Glossary to these Rules.**

R. 1.2. 48      For the purposes of this Part the term “Regulated Person” shall refer to a person which falls under paragraph (i) or (ii) of the definition of Regulated Person in the Glossary to these Rules.

**Advertisements or Information relating to a feeder UCITS Schemes or European UCITS Schemes**

R.1.2.49      A Regulated Person shall ensure that any advertisement or information which comprises an invitation to purchase units in a UCITS scheme or a European UCITS scheme and that contains specific details about the scheme:

- (a)      makes no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information document for the scheme;
- (b)      indicates that a prospectus exists for the scheme and that the key investor information document or document is available; and
- (c)      specifies where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

R.1.2.50      Where a UCITS scheme or a European scheme may invest more than 35% of its scheme property in transferable securities and money market instruments issued or guaranteed by an EEA State, one or more of its local authorities, a third country or a public international body to which one or more EEA States belong, the firm shall ensure that Advertisements relating to the scheme contain a prominent statement drawing attention to the investment policy and indicating the particular EEA States, local authorities, third countries or public international bodies in the securities of which the scheme intends to invest or has invested more than 35% of its scheme property.

R.1.2.51      Where a UCITS scheme or European UCITS scheme invests principally in units in collective investment schemes, deposits or derivatives, or replicates a stock or debt securities index or as indicated in Standard Licence Condition 5.37 of Part BII of the Investment Services Rules for Retail Collective Investment Schemes, the Regulated Person shall ensure that advertisement relating to the scheme contains a prominent statement drawing attention to the investment policy.

R.1.2.52      Where the net asset value of a UCITS scheme or a European UCITS scheme has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the Regulated Person shall ensure that an advertisement relating to the scheme contains a prominent statement drawing attention to that characteristic.

Advertisements and information relating to UCITS Schemes or European UCITS Schemes

- R.1.2.53 A Regulated Person shall ensure that an advertisement and information (other than a key investor information document) relating to a feeder UCITS contains a statement that the feeder UCITS permanently invests at least 85% in value of its assets in units of its master UCITS.

Advertisements relating to an Offer of Securities to the Public or to an admission to trading on a Regulated Market in Malta

- R.1.2.54 Where no prospectus is required in accordance with the Directive 2003/17/EC , any advertisement relating to an offer of securities to the public or for an admission to trading on a Regulated Market in Malta shall include a warning to that effect unless the issuer, the offeror or the person asking for admission to trading on a Regulated market in Malta chooses to publish a prospectus which complies with the requirements of Directive 2003/71/EC and Regulation 809/2004.

Advertisements Containing an Offer or Invitation

- R.1.2.55 Where an advertisement issued by a Regulated Person holding an investment services licence under the Investment Services Act, 1994 contains an offer or invitation of the following nature and specifies the manner of response or includes a form by which any response may be made, it shall include such of the information referred to in R.1.4.15, R.1.4.27, R.1.4.50 to R.1.4.54, R.1.4.64, R.1.4.65 and R. 1.4.75 to R. 1.4.79 as is relevant to the offer or invitation:
- (a) an offer to enter into an agreement in relation to a financial instrument, any product or service with any person who responds to the communication;
  - (b) an invitation to any person who responds to the communication to make an offer to enter into an agreement in relation to a financial instrument, any product or service

However, paragraph (a) shall not apply if, in order to respond to an offer or invitation contained in the advertisement, the potential Client shall refer to another document or documents, which, alone or in combination, contain that information.

**Part B** **Rules and Guidance applicable to Regulated Persons falling under points (iii) or (iv) of the definition of Regulated Person in the Glossary to these Rules.**

- R. 1.2.56 For the purposes of this Part the term “Regulated Person” shall refer to a person which falls under paragraphs (iii) or (iv) of the definition of Regulated Person in the Glossary to these Rules.

Advertisements and Information relating to Linked Long Term Contract of Insurance

- R.1.2.57 In Advertisements and Information relating to an insurance contract which is a linked long term contract of insurance, the Regulated Person concerned shall include a statement that the Client's investment decision should be based on the full details of the product information document, and shall state from where this document may be obtained or accessed.
- R.1.2.58 A box advert carried in print media indicating prices ("price box") for linked long term contracts of insurances shall include:
- (a) the name and contact details of the Regulated Person responsible for the publication of the Advertisement;
  - (b) names of the funds which may be linked thereto;
  - (c) the price(s) and their relevant date;
  - (d) the change from the previously quoted price(s);
  - (e) an indication that initial and/or exit fees apply or may apply, as appropriate.

Advertisements and Information relating to Long Term Insurance Business

- R.1.2.59 In Advertisements or information relating to a long term business insurance policy which gives particulars of any of the benefits payable under the policy, the Regulated Person responsible for that Advertisement shall state:
- (a) which of the benefits under the contract (if any) are of fixed amounts and what those amounts are; and
  - (b) which of them (if any) are not of fixed amounts.

**Section 3: DISCLOSURE OF INFORMATION ON REGULATED PERSONS**

**Application**

- R.1.3.1 The Rules and any relative Guidance set out under the heading ‘General Rules’ shall apply to all Regulated Persons, except as otherwise indicated.
- R.1.3.2 The Rules and any relative Guidance set out under Part A apply to Regulated Persons which fall under paragraph (i) or (ii) or (v) of the definition of ‘Regulated Person’ in the Glossary, irrespective of their licence category.
- R.1.3.3 The Rules and any relative Guidance set out under the heading Part B shall apply to all Regulated Persons which fall under the paragraph (i) of the definition of Regulated Persons in the Glossary and which qualify as UCITS Management Companies.
- R.1.3.4 The Rules and any relative Guidance set out under the heading Part C shall apply to Regulated Person which fall under paragraph (iii) of the relevant definition in the Glossary.
- R.1.3.5 The Rules and any relative Guidance set out under the Part D shall apply to Regulated Persons which fall under point (iv) of the definition of ‘Regulated Person’ in the Glossary.

**General Rules**

- R.1.3.6 A Regulated Person shall in good time, prior to the conclusion of any contract, or if there is a material change after the conclusion of a contract for the provision of a Service or Product, make the following disclosures to Clients:
- (i) its name and address and the Product or Service which is being provided or carried out which, shall include the address of the head office of the Regulated Person (including where applicable, the name of the Member State or Third Country where such head office is situated) and, where appropriate, the address of the branch concluding the contract(including where applicable, the name of the Member State or Third Country where such branch is situated);<sup>3</sup>
  - (ii) a statement of the fact that the Regulated Person is licensed by the MFSA, together with the address of the MFSA.<sup>4</sup>Where applicable, a Regulated Person shall also disclose to the Client the Register in which the Regulated Person, as

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<sup>3</sup> Solvency II article 185(2)(b) and Life Assurance Directive, Annex III. Also includes Solvency II article 182(2)(b) and Life Assurance Directive, Annex III

<sup>4</sup> Irish COB, articles 4.10, 4.13(c) and UK COB 6.1.4(4) and B1, SLC 2.28(d)

well as any Designated Person operating with a Regulated Person, has been included and the means for verifying that it has been registered or notified;

- (iii) information relating to the procedures allowing Clients or other interested persons to register complaints about the Regulated Person;
- (iv) information about any compensation which may be available to the Client under any compensation scheme which may be applicable.;

R.1.3.7 A Regulated Person which decides to appoint a Tied Agent shall ensure that, when contacting or before dealing with any Client such Tied Agent or Tied Insurance Intermediary discloses the capacity in which he is acting and the Regulated Persons which he is representing. In the case of a Tied Insurance Intermediary such disclosure shall also include the enrolment number and show the company's business card.

R.1.3.8 A Regulated Person shall ensure that any designation given to its employees reflects the Service being provided by such employee. The employee shall clearly disclose whether he is authorised to give advice and whether the Service being provided is of an advisory nature or otherwise.

R.1.3.9 Where a Regulated Person is either:

- (i) enrolled in the Brokers List and proposes to place a Client's insurance requirements with an insurance undertaking which is neither a company authorised under the Insurance Business Act, 1998 nor a European insurance undertaking; or
- (ii) licensed under the Investment Services Act, and proposes to transmit a Client's order for execution by another entity which is neither licenced under the Investment Services Act , nor a European Investment Firm,

the Regulated Person shall in good time, prior to the conclusion of a contract, inform the Client of the following:

- a) that the insurer with whom the Client's requirements are proposed to be placed or the company to which the order is proposed to be transmitted, is not a company authorised under the Insurance Business Act, 1998 or the Investment Services Act, 1994, as applicable;
- b) if the insurer with whom the Client's requirements are proposed to be placed or the company to which an order is proposed to be transmitted becomes insolvent, the Client may not be protected by the Protection and Compensation

Fund established by the Insurance Business Act, 1998 or by the Investor Compensation Scheme established by the Investor Compensation Scheme Regulations, 2003 , as applicable;

- c) that the insurer with whom the Client's requirements are proposed to be placed or the company to which an order is proposed to be transmitted may not have a general representative in Malta and the Client may have difficulty in suing or executing judgement against the insurer or the company in question, as applicable;
- d) whether the parties to the contract are entitled to choose the law applicable to the contract;
- e) that any premiums to be paid in respect of a contract of insurance or any funds provided to the Regulated Person for the purposes of purchasing a Product ,any claim that may arise in respect of the insurance contract or any proceeds paid from such investments may have to be paid in foreign currency which is subject to exchange rate fluctuations;

R. 1.3.10 A Regulated Person shall also, in good time, prior to the conclusion of a contract, provide the Client with at least the following information:

- a) Whether a Manufacturer, an insurance undertaking or a parent undertaking of an insurance undertaking or a UCITS management company has a holding directly or indirectly, representing 10% or more of the voting rights of the capital in a Distributor, such insurance intermediary or UCITS Scheme;
- b) Whether a Distributor or an insurance intermediary or a UCITS Scheme has a holding direct, or indirect, representing 10% or more of the voting rights or of the capital in the Manufacturer, an insurance undertaking or a parent undertaking of such insurance undertaking or of a UCITS management company.

**Part A**      **Rules and Guidance applicable to Regulated Persons falling under points (i), (ii or (v)) of the definition of “Regulated Person” in the Glossary.**

R.1.3.11      For the purposes of this Part, a ‘Regulated Person’ means a person falling within point (i), (ii) or (v) of the definition of “Regulated Person” in the Glossary.

R.1.3.12      A Regulated Person shall provide, in good time, appropriate information to Clients about:

- (i)      financial instruments and proposed investment strategies;
- (ii)      execution venues

The information referred to in (i) and (ii) above shall include the details set out in R.1.4.15 (b) to (d) and R. 1.4.36.

Such information shall be provided in a comprehensible form in such a manner that Clients are reasonably able to understand the nature and risks of the investment service and of the specific type of Financial Instrument that is being offered and, consequently, to take investment decisions on an informed basis.

R.1.3.13      A Regulated Person shall provide appropriate information to its Clients on its order execution policy. The information provided shall explain clearly, in sufficient detail and in a way that can be easily understood by Clients, how orders will be executed for that Client. A Regulated person is required to obtain the prior consent of its Clients to the execution policy.

Where the order execution policy provides for the possibility that Client orders may be executed outside a trading venue, the Regulated Person shall, in particular, inform its Clients about this possibility. The Regulated Person shall obtain the prior express consent of its Clients before proceeding to execute their orders outside a trading venue. This consent may either be obtained in the form of a general agreement or in respect of individual transactions.

R.1.3.14      A Regulated Person who executes Client orders is required to make public on an annual basis, for each class of Financial Instruments, the top five execution venues in terms of trading volumes where such Regulated Person has executed Client orders in the preceding year and information on the quality of the execution obtained. This information may be provided in summarised format.

**Part B**      **Rules Applicable to holder of an investment services licence the meaning of the Investment Service Act, 1994 and which qualify as UCITS Management Companies.**

R.1.3.15      For the purposes of this Part, a ‘Regulated Person’ means an investment services licence holder within the meaning of the Investment Services Act, which qualifies as a UCITS Management Company.

R.1.3.16      Where the Regulated Person has carried out a subscription or redemption order received from a Client, it shall notify the said Client, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution, or where the confirmation is received by the Regulated Person from a third party, no later than the first business day following receipt of the confirmation from the third party. The notice shall, *inter alia*, include the identification of the Regulated Person and the Client.

**Part C**      **Rules Applicable to Regulated Person which fall under paragraph (iii) of the relevant definition in the Glossary.**

R.1.3.17      For the purposes of this section, a ‘Regulated Person’ means a person falling under point (iii) of the definition of “Regulated Person” in the Glossary that carries on long term insurance business.

R.1.3.18      Regulated Persons shall provide a concrete reference to the report on its solvency and financial condition as laid down in Article 51 of the Solvency II Directive allowing the policyholder easy access to this information.

**Part D**      **Rules Applicable to Regulated Persons falling under point (iv) of the definition of ‘Regulated Person’ in the Glossary**

R.1.3.19      For the purposes of this section, the term Regulated Person shall mean a person falling under point (iv) of the definition of Regulated Person in the Glossary that acts as an insurance broker, an insurance agent or an insurance manager holding an appointment with authority to enter into contracts of insurance and whose appointment is governed by an agreement which has the effect of an agency agreement. .

R.1.3.20      Where a Regulated Person as referred to in R.1.3.19 proposes to place a Client’s insurance requirements with an underwriting member of Lloyds, it shall make the following disclosures to the Client:

- a) A description of the relationship which the Regulated Person has with the underwriting member of Lloyd's subscribing to the policy;
- b) Explain that a contract of insurance underwritten at Lloyd's is underwritten by underwriting members with several liability and not joint and is limited solely to the extent of each Lloyd's underwriting member's subscription. The subscribing Lloyd's underwriting members are not responsible for the subscription of any co-subscribing Lloyd's underwriting member or other insurer who for any reason does not satisfy all or part of its obligations. However, the Regulated Person should also explain that:
  - (i) the Lloyd's Central Fund may be made available at the discretion of the Council of Lloyd's to meet the liabilities of each of those underwriting members of Lloyd's who are not financially able to meet their own liabilities; and
  - (ii) in the eventuality of claims remaining unpaid in respect of contracts of insurance which are concluded in Malta and which are entered into by a Lloyd's approved Maltese cover holder due to the financial inability of an underwriting member of Lloyd's to meet its liabilities, limited compensation may be available to the Client from the Protection and Compensation Fund established under the Insurance Business Act, 1998;
- c) Give the name and address of Lloyd's representative in Malta and explain that the representative of Lloyd's in Malta is authorised to act generally as judicial representative of, and accept service of any document on behalf of, Lloyd's and of each of its underwriting members and to file any judicial acts in the registry of any court or similar authority in Malta on behalf of Lloyd's or any of its underwriting member;
- d) Furnish all policy details as are specified by or under article 48A of the Insurance Business Act, 1998, particularly:
  - (i) the number reference and date of the policy;
  - (ii) the identifying number of each of the syndicates subscribing to the policy; and
  - (iii) where known, the names of the underwriting members of Lloyd's comprising those syndicates.

- e) Where the contract is to be underwritten through a person enrolled in the Agents List acting as coverholder for the underwriting member of Lloyd's, the name and address of the insurance agent are to be disclosed.

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**Section 4: DISCLOSURES ON THE SERVICES AND PRODUCTS PROVIDED BY THE REGULATED PERSON**

**Application**

- R.1.4.1 The Rules and any relative Guidance set out under the heading “General Rules” and under Parts A and C below shall apply to all Regulated Persons, except as otherwise indicated.
- R.1.4.2 The Rules and the relative Guidance set out under Parts B shall apply to Regulated Persons falling within point (i), (ii) or (v) of the definition of Regulated Persons in the Glossary or to UCITS Management Companies, as applicable.
- R.1.4.3 The Rules and any relative Guidance set out under Part D shall apply to Regulated Persons falling under point (i) or (ii) of the definition of ‘Regulated Person’ in the Glossary, UCITS Management Companies or a collective investment schemes licensed under the Investment Services Act, 1994 and qualifying as a UCITS.
- R.1.4.4 The Rules and any relative Guidance set out under Part E below shall apply to Regulated Persons falling under points (iii) or (iv) of the definition of Regulated Person in the Glossary.
- R.1.4.5 The Rules and any relative Guidance set out under Part F shall apply to Regulated Persons falling under point (iv) of the definition of Regulated Person in the Glossary.
- R.1.4.6 The requirements of this Chapter are without prejudice to the requirements of the Distance Selling (Retail Financial Services) Regulations, 2005 (L.N.36 of 2005).

**General Rules**

- R.1.4.7 A Regulated Person shall ensure that all information it addresses to, or disseminates to retail Clients, shall:
- a) be accurate and in particular shall not emphasise any potential benefits of a Product or Service without also giving a fair and prominent indication of any relevant risks;
  - b) be sufficient for, and presented in a way that is likely to be understood by, the average member of the identified target market to whom it is directed, or by whom it is likely to be received;
  - c) not disguise, diminish or obscure important items, statements or warnings;
  - d) Without prejudice to the requirements of R.1.1.2, shall be consistently presented in the same language throughout all forms of information and

marketing materials that are provided to each Client, unless the Client has accepted to receive information in more than one language.

e) be up to date, relevant to the method of communication used.

R.1.4.8 When a Service is offered together with another Product or Service as part of a package or as a condition for the same agreement or package, the Regulated Person shall inform the Client whether it is possible to buy the different components separately and, in such case, shall provide for a separate evidence of the costs and charges of each component.

R.1.4.9 Where the risks, and, in the case of contracts of insurance, insurance coverage, resulting from such an agreement or package offered to a retail Client are likely to be different from the risks associated with the components taken separately, the Regulated Person shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks, and insurance coverage.

Provided that, in the case of contracts of insurance, the provisions of this Rule and of R.1.4.8 shall not prevent the distribution of insurance products with different levels of insurance coverage or multi-risk insurance policies.

R.1.4.10 A Regulated Person must provide each Client with the terms and conditions attaching to a product or service, in a durable medium, before the Client enters into a contract for that Product or Service.

### Disclosure Duties

R.1.4.11 The Regulated Person shall explain to the Client his duty to disclose all circumstances material to the Product or Service being provided and the consequences of any failure to make such a disclosure, both before the Product or Service is provided and throughout the duration of the Service provided. The Regulated Person shall also take account of the information the Client discloses.

R.1.4.12 In the completion of an application form, proposal form, claim form, or any other material document, as applicable, the Regulated Person shall make it clear that all the answers or statements are the Client's own responsibility. The Client should always be requested to check the details. In the case of a contract of insurance, the Regulated Person shall inform the client that incomplete and/or inaccurate information may result in a claim being repudiated.

### Telephone sales

R.1.4.13 If a Regulated Person's initial contact with a Client or potential Client with a view to providing a Product or Service is by telephone then the following information should be provided before proceeding further:

- (a) the name of the Regulated Person and, if the call is initiated by or on behalf of a Regulated Person, the commercial purpose of the call;
- (b) where relevant, whether the Regulated Person provides independent advice or restricted advice.
- (c) the Regulated Person 's charging structure, where applicable; and
- (d) that the information given under (a) to (c) will subsequently be confirmed in writing.

R.1.4.14 In cases where Regulated Persons make initial contact with a Client on the telephone a Regulated Person shall, in addition, take into account and comply with the requirements of Distance Selling (Retail Financial Services) Regulations, 2005, where these are applicable.

**Part A**      **Rules and Guidance Applying Generally to all Regulated Person with respect to Disclosure of Information on the Service being provided to Clients.**

**Information about the Services Provided by the Regulated Person**

- R.1.4.15 A Regulated Person must disclose to a retail Client, in a durable medium, the following general information, if relevant:
- a) the name and address of the Regulated Person, and the contact details necessary to enable a Client to communicate effectively with the Regulated Person;
  - b) the languages in which the Client may communicate with the Regulated Person, and receive documents and other information from the Regulated Person;
  - c) the methods of communication to be used between the Regulated Person and the Client including, where relevant, those for the sending and reception of orders, or the placing of insurance;
  - d) a statement of the fact that the Regulated Person is regulated by the Authority;
  - e) where the Regulated Person is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered;
  - f) the nature, frequency and timing of the reports (if applicable) on the performance of the service to be provided by the Regulated Person to the Client;
  - g) if the Regulated Person , other than an Insurance Undertaking, holds Client financial instruments Clients' monies, a summary description of the steps which it takes to ensure their protection, including the information referred to in

R.1.3.6 (iv). Provided that this requirement shall not apply to an Insurance undertaking;

- h) a description, which may be provided in summary form, of the conflicts of interest policy maintained by the Regulated Person;
- i) at any time that the Client requests it, further details of that conflicts of interest policy in a durable medium or by means of a website (where that does not constitute a durable medium);
- j) the nature, frequency and timing of the reports on the performance of the service to be provided by the Regulated Person to the Client. In the case of a contract of insurance, this requirement would only apply to long term contracts of insurance;
- k) a description, which may be disclosed in summary form, of the policy required in terms of R.3.7 of this Rulebook.

R.1.4.16 Notwithstanding the provisions of R.1.4.15 above, where the Regulated Person is a Distributor of insurance products in Malta, the information referred to in R.1.4.15 (as applicable) need not be given when such Distributor carries out distribution activities in relation to:

- a) The business of reinsurance;
- b) Large risks as defined by Article 5 of the Second Council Directive 88/357/EEC of the 22<sup>nd</sup> June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than the life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amends Directive 73/239/EEC;
- c) Professional Clients.

*Description of the nature of a Regulated Person's service*

R.1.4.17 Regulated Persons shall provide retail Clients with appropriate information in good time, in a durable medium, before a retail Client is bound by any agreement for the provision of Services or ancillary services or before the provision of those Services, whichever is the earlier on whether:

- a) it provides any type of advice about the products sold;
- b) advice is provided on an independent basis or not. Regulated Persons shall inform clients about the nature and type of the advice provided to them. Regulated persons should explain in a clear and concise way whether and why advice could qualify as independent and the type and nature of the restrictions that apply, including the prohibition to receive and retain inducements.

Where both independent and restricted advice are intended to be proposed or provided to the same Client, Regulated Persons shall:

- i) explain the scope of both services to allow clients to understand the differences between them ; and
  - ii) avoid presenting themselves in general as an independent investment advisor. To this end, Regulated Persons should avoid in their communications with Clients, giving undue prominence to its independent advisory services over its non-independent Services;
- c) advice is based on a fair and personal analysis or a more restricted analysis of different types of Products or Financial Instruments and, in particular, whether the range is limited to Products or Financial Instruments issued or provided by entities having close links the with Regulated Person or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided.

When a Regulated Person intends to provide Advice on an independent or a non-independent basis, it must explain to the Client the range of Products that may be recommended, including its relationship with the issuers or providers of the instruments.

Regulated Persons should provide a description of the types of Products considered, the number of products and providers analysed per each type of product according to the scope of the Service, and, when providing independent advice, how the Service provided satisfies the conditions for the provision of independent advice and the basis of the selection process used by the Regulated Person to recommend a Product or Products.

When the range of Products assessed by the Regulated Person providing advice includes the Regulated Person's own Products or those issued or provided by entities having close links or any other close legal or economic relationship with the Regulated Person and other issuers or providers, the Regulated person shall distinguish, for each type of Product the proportion of the Products issued or provided by entities not having links with the Regulated Person.

- d) it will provide the Client with a periodic assessment of the suitability of the product recommended to Client;

Provided that in the case of contracts of insurance, this requirement applies only to long term insurance business.

In providing the Client with a periodic assessment of the suitability, the Regulated Person shall disclose:

- i) the frequency and extent of the periodic suitability assessment and where relevant, the conditions that trigger that assessment;
- ii) the extent to which the information previously collected will be subjected to re-assessment;
- iii) the way in which an updated recommendation will be communicated to the Client.

In providing periodic suitability statements, Regulated Persons shall consider reviewing the suitability of the recommendations given in order to enhance the service at least annually. The frequency of his assessment should be increased depending on the risk profile of the Client and the type of Financial Instruments recommended.

- e) it is under a contractual obligation to conduct its activity exclusively with one or more Manufacturers. In that case, it shall provide the names of those Manufacturers. Where the Regulated Person is not under such a contractual obligation, and does not give advice on the basis of a fair and personal analysis, it shall provide the names of the Manufacturers with which it may and does conduct business.

R.1.4.18 Regulated Persons are required to notify a Client in good time about any material change to such information which is relevant to a Service that the Regulated Person is providing to that Client.

R.1.4.19 When providing Advice , the Regulated Person shall, before the transaction is made or prior to the conclusion of the contract, provide the retail Client with a statement on suitability in a durable medium specifying the advice given and how that Advice meets the preferences, objectives and other characteristics of that Client.

Where the agreement to buy or sell a Product using a means of distance communication which prevents the prior delivery of the suitability statement, the Regulated Person providing the Service, may provide the written statement on suitability in a durable medium immediately after the Client is bound by any agreement, provided both the following conditions are met:

- (a) the Client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction; and
- (b) the Regulated Person has given the Client the option of delaying the transaction in order to receive the statement on suitability in advance.

*Content and wording of disclosure relating to the independence of the services offered.*

R.1.4.20 A Regulated Person must include the term "independent advice" or "restricted advice" or both, as applicable, in the disclosure. Where no advice has been given, the Regulated Person must also disclose this fact.

- R.1.4.21 If a Regulated Person provides independent advice in respect of a particular product for which there is a restricted market, a Regulated Person must include in the disclosure an explanation of that market, including the types of Products which constitute that market.
- R.1.4.22 If a Regulated Person provides restricted advice, its disclosure must explain the nature of the restriction.
- R.1.4.23 If a Regulated Person provides both independent advice and restricted advice, the disclosure must clearly explain the different nature of the independent advice and restricted advice services.
- G 1.4.1 A Regulated Person that provides both independent advice and restricted advice should not hold itself out as acting independently for its business as a whole.*
- G 1.4.2 A Regulated Person that gives advice in relation to contracts of insurance on the basis of a fair and personal analysis, but offers restricted advice on retail investment products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it gives advice in relation to contracts of insurance on the basis of a fair analysis provided it makes clear in accordance with the fair, clear and not misleading rule that it provides restricted advice for retail investment products.*
- R.1.4.24 Where a Regulated Person does not provide a product or service on the basis of a fair and personal analysis of the market, it must clearly disclose to the Client the names of those Manufacturers whose Products or Services, the Regulated Person intends to consider as part of its analysis.
- R.1.4.25 Where a Regulated Person is tied to a single Manufacturer for a particular Product or Service, it must disclose this fact to the Client in all communications with the Client in relation to that particular Product or Service.
- G 1.4.3 Where a Regulated Person does not provide all of its services in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the Client. It must ensure that there is no ambiguity about the range of Services that it provides in an independent capacity.*

### Disclosure of applicable costs and charges

- R.1.4.26 Regulated Persons shall, in good time, prior to providing a Product or a Service to a Client, disclose to such Client information relating to all costs and associated charges related to a Product or Service and its distributor, which must include the cost of advice, where relevant, the cost of the Product recommended or marketed to the Client also

encompassing any third party payments. The Regulated person should also specify how the Client may pay such costs.

The information referred to in the paragraph above, including costs and charges in connection with the Products and/or Services disclosed to the Client, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the Client to understand the overall cost as well as the cumulative effect on return of the Product, and where the Client so requests, an itemised breakdown of such costs shall be disclosed. Where applicable, such information shall be disclosed to the Client on a regular basis, at least annually, until the Product matures or is redeemed by the Client.

*G.1.4.4 In good time prior to providing a Product or Service to a Client, a Regulated Person must provide the Client on a durable medium, a breakdown of all charges, including third party charges, which will be passed on to the Client and where such charges cannot be ascertained in advance, notify the Client that such charges will be levied as part of the transaction.*

*G.1.4.5 A Regulated Person is recommended to display in its public offices, in a manner that is easily accessible to Clients, a schedule of fees and charges imposed by that Regulated Person. If the Regulated Person has a website, it should also include in it its schedule of fees and charges.*

R.1.4.27 The Regulated Person shall provide its retail Clients with information on costs and associated charges, in good time prior to providing any Service or ancillary services or Product. This information shall include such of the following elements as relevant:

- a) the total price to be paid by the Client in connection with the Product or Service, including all related fees, commissions, charges and expenses, and all taxes applicable via the Regulated Person or, if an exact price cannot be indicated, the basis for the calculation of the total price so that the Client can verify it. Commissions received and commissions charged by the Regulated Person shall be itemised separately in every case;
- b) where any part of the total price referred to in point (a) is to be paid in or represents an amount of foreign currency, an indication of the currency involved and the applicable currency conversion rates and costs;
- c) notice of the possibility that other costs, including taxes, related to transactions in connection with the instrument, product or services may arise for the Client that are not paid via the Regulated Person or imposed by it;
- d) the arrangements for payment or other performance.

*Initial Information for Retail Clients on the Costs of Services Provided*

R. 1.4.28 The Regulated Persons shall allow their Clients allowed sufficient time to consider material information when they make their investment decisions. Therefore, the aggregated information about all costs and charges should be provided to Clients in good time.

G.1.4.6 *A Regulated Person may wish to consider disclosing as its charging structure a list of the Services it offers with the associated charges which will be used for calculating the charge for each service.*

G.1.4.7 *In order to meet the requirement in R.1.4.28, a Regulated Person should ensure that the disclosure of its charging structure is in clear and plain language and, as far as is practicable, uses cash terms. If a Regulated Person's charging structure is in non-cash terms, examples in cash terms should be used to illustrate how the charging structure will be applied in practice.*

G.1.4.8 *In order to meet its obligations under the fair, clear and not misleading rule and the Client's best interests rule, a Regulated Person should ensure that:*

- a) *the charging structure it discloses reflects, as closely as is practicable, the total charges to be paid and*
- b) *if using hourly rates in its charging structure, it states whether the rates are indicative or actual hourly rates, provides the basis (if any) upon which the rates may vary and provides an approximate indication of the number of hours that the provision of each Service is likely to require.*

R.1.4.29 A disclosure under R.1.4.26 and R.1.4.27 shall:

- (a) be in cash terms ( non-cash terms should be converted into illustrative cash equivalents);
- (b) be in a durable medium in terms of Section 1 of this Chapter of this Rule Book on the Medium of Disclosure; and
- (c) if there are payments over a period of time, include the amount and frequency of each payment due, the period over which the adviser charge is payable and the implications for the retail Client if the Product is cancelled;
- (d) before the adviser charge is paid and, if there is no ongoing service, the sum total of all payments to date.

G.1.4.9 *If the price of the Product may vary as a result of fluctuations in the financial markets and the adviser charge is expressed as a percentage of that price, a Regulated Person*

*need not disclose to the retail Client the total adviser charge payable to the Regulated Person or any of its associates by the retail Client until after execution of the transaction, provided it then does so promptly.*

G.1.4.10 *To comply with the Rule on disclosure of total charges and the fair, clear and not misleading rule, a Regulated Person's disclosure of the total charge should:*

- a) *provide information to the retail Client as to which particular Service a charge applied to;*
- b) *include information as to when payment of the charge is due;*
- c) *inform the retail Client if the total charges varies materially from the charges indicated for that Service in the Regulated Person's charging structure;*
- d) *if an ongoing adviser charge is expressed as a percentage of funds under management, clearly reflect that the adviser charge may increase as the fund grows; and*
- e) *if an ongoing adviser charge applies for an ongoing Service, clearly confirm the details of the ongoing Service, its associated charges, and how the retail Client can cancel this Service and cease payment of the associated charges.*

Scope of Disclosures – Point of Sale Disclosures (ex ante)

R.1.4.30 When providing Services to Professional Clients, Regulated Persons shall be able to agree on a limited application of the detailed requirements relating to disclosures of costs and associated charges, except in the following situations:

- a) when the services of Advice or portfolio management are provided, or
- b) when, irrespective of the Service provided, the Products concerned embed a derivative.

R.1.4.31 When providing Services to eligible counterparties, Regulated persons shall be able to agree a limited application of these detailed requirements, except when, irrespective of the Service provided, the Products concerned embed a derivative and the eligible counterparty intends to offer them to its own Clients.

Post Sale Periodic Disclosures on Costs

R. 1.4.32 Information about costs provided on a regular basis during the life of the investment or the long term insurance policy should be based on costs incurred and should be provided on a personalised basis.

R. 1.4.33 Regulated Persons shall provide annual post-sale information about all costs and charges related to both the Product(s) and Services, including Ancillary Service(s) if they have recommended or marketed the said Product(s) or if they had provided the client with the KID/KIID in relation to the said Product (s) and if they have/or have had an ongoing client relationship during the current year.

R. 1.4.34 Regulated Persons shall be allowed to provide aggregated information on costs and charges of the Services and the Products together with any existing periodic reporting provided to Clients.

### Costs and Charges to be aggregated

R. 1.4.35 Costs and charges listed in the Annex to this Chapter shall be aggregated both for ex-ante and ex-post disclosure to Clients.

R.1.4.36 Regulated Persons should aggregate:

- a) all costs and associated charges levied by the Regulated Person or other parties where the client has been directed to such other parties, for the Service(s) and/or Ancillary Services provided to the client;
- b) all costs and associated charges relating to the manufacturing and managing of the Products.

R.1.4.37 Third party payments received by a Regulated Person in connection with the Service provided to a client shall be regarded as part of the cost of the Service provided to the Client and identified separately (i.e. it should be clear to the Client what part of the costs paid are rebated to the Regulated Person providing the Investment service).

R.1.4.38 The Regulated Person shall ensure that costs and charges are totalled and expressed both as a cash amount and as a percentage.

R.1.4.39 Regulated Persons are allowed to provide Clients with separate figures comprising:

- a) aggregated initial costs and chargers;
- b) aggregated on going costs and charges; and
- c) aggregated exit costs.

R.1.4.40 When more than one Regulated Person provides Services or Ancillary Services to the Client, each Regulated Person should provide information about the costs of the Service or ancillary service it provides. A Regulated Person that recommends or markets to its clients the services provided by another Regulated Person, should aggregate the cost of its services together with the cost of the services provided by the other Regulated Person. A Regulated person shall only take into account the costs associated to the provision by other Regulated Persons of other services or Ancillary Services in addition

to the costs associated to the services provided by itself) if it has directed the client to these other Regulated Persons.

R.1.4.41 A Regulated Person shall disclose the duty on documents and any other tax payable by the Client on the purchase of the Product separately to any charges or fees.

R.1.4.42 The obligation to provide a full point of sale disclosure, where aggregated information about the costs related to the financial Instrument and the costs related to the Service or ancillary service is provided, applies to Regulated Persons in the following situations:

- a) when the Regulated Person recommends or markets Financial Instruments to clients; or
- b) when the Regulated Person providing any services is required to provide Clients with a KID/KIID in relation to the relevant Financial Instruments, in accordance with relevant European Union legislation.

### Methodology for the calculation of ex-ante figures.

R.1.4.43 The methodology for calculating ex ante figures should be based on the principle that the Regulated Person should use actually incurred costs as a proxy for the expected costs and charges. If actual costs are not available, the Regulated Person should make reasonable estimations of these costs.

R.1.4.44 Regulated Persons shall review ex ante assumptions based on the ex post experience and should make adjustments to these assumptions, if necessary.

### Cumulative effect of costs on the return of the Client's investments

R.1.4.45 A Regulated Person shall provide its clients with an illustration who own the cumulative effect on costs on the return when providing Services. Such an illustration should be provided at the point of sale. When providing the illustration, the Regulated Person should ensure that the illustration meets the following requirements:

- a) the illustration shows the effect of the overall costs and charges on the return of the investment;
- b) the illustration shows any anticipated spikes of fluctuations in the costs; and
- c) the illustration is accompanied by an explanation of what the illustration shows.

**Part B**      **Rules and Guidance Applicable to Regulated Persons falling within point (i), (ii) or (v) of the definition of Regulated Persons in the Glossary or to UCITS Management Companies, as applicable.**

R.1.4.46      For the purposes of this section, the term Regulated Person shall mean a person falling under point (i), (ii) or (v) of the definition of Regulated Person in the Glossary or UCITS Management Companies, as applicable.

R.1.4.47      Regulated Persons shall be required, in good time before a retail Client is bound by any agreement for the provision of Services or ancillary services or before the provision of those Services, whichever is the earlier, to provide that Client with the following information:

- a)      the terms of any such agreement;
- b)      the information referred in R.1.4.15, R.1.4.64 and R.1.4.65 as is relevant to that agreement or to those services.

R.1.4.48      The Regulated Person shall provide Clients with a general description of the nature and risks of Financial Instruments and/or Structured Deposits, taking into account, in particular, the Client's categorisation as either a Retail Client or a Professional Client. That description must explain the nature of the specific type of Financial Instrument and/or Structured Deposit concerned, as well as the risks particular to that specific type of Financial Instrument and/or Structured Deposit, in sufficient detail to enable the Client to take investment decisions on an informed basis.

The Regulated Persons shall also inform Clients about the functioning and performance of Financial Instruments and/or Structured Deposits in different market conditions (including both positive and negative performance).

R.1.4.49      The Information on Financial Instruments and Structured Deposits and proposed investment strategies which the Regulated Person is to provide to Client in good time shall include appropriate guidance on, and warnings of, the risks associated with investment in those Financial Instruments and/or Structured Deposits or in respect of particular investment strategies and whether the Financial Instrument and/or Structured Deposit is intended for retail or professional Clients, taking account of the Identified Target Market. In particular, the Regulated Person should specifically disclose the risk of Financial Instruments and/or Structured Deposits involving impediments or restrictions for the disinvestment or withdrawal. Information on impediments or restrictions shall include an illustration of the possible exit methods and consequences of any exit, possible constraints and issues and the estimated time frame for the sale of the Financial Instrument or the withdrawal of the Structured Deposit before recovering the initial costs of the transaction or deposit.

R.1.4.50      The description of risks shall include, where relevant to the specific type of Financial Instrument concerned and the status and level of knowledge of the Client, the following elements:

- (a) the risks associated with that type of Financial Instrument including an explanation of leverage and its effects and the risk of losing the entire investment;
- (b) the volatility of the price of such and any limitations on the available market for such Financial Instruments;
- (c) the fact that an investor might assume financial commitments and other additional obligations, including contingent liabilities, additional to the cost of acquiring the Financial Instruments in question, as a result of transactions in such Financial Instruments;
- (d) any margin requirements or similar obligations, applicable to Financial Instruments of that type.

R.1.4.51 If a Regulated Person provides a retail Client with information about a Financial Instrument that is the subject of a current offer to the public and a prospectus has been published in connection with that offer in accordance with Directive 2003/71/EC (“the Prospectus Directive”), that Regulated Person shall inform the Client where that prospectus is made available to the public.

R.1.4.52 Where the risks associated with a Financial Instrument composed of two or more different Financial Instruments or Services are likely to be greater than the risks associated with any of the components, the Regulated Person shall provide an adequate description of the components of that Financial Instrument and the way in which its interaction increases the risks. In case of Financial Instruments that incorporate a guarantee or capital protection, the information shall specify the scope and nature of such guarantee or capital protection. When the guarantee is provided by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the retail Client to make a fair assessment of the guarantee.

R.1.4.53 In the case of Instruments that incorporate a guarantee by a third party, the information about the guarantee shall include sufficient detail about the guarantor and the guarantee to enable the Retail Client to make a fair assessment of the guarantee.

R.1.4.54 A Regulated Person, before entering into securities financing transactions in relation to Financial Instruments held by it on behalf of a Retail Client, or otherwise to use such Financial Instruments for its own account or on the account of another Client, shall in good time before the use of those Financial Instruments provide the Retail Client, in a durable medium, with clear, full and accurate information on the obligations and responsibilities of the Regulated Person with respect to the use of those Financial Instruments, including the terms for their restitution, and on the risks involved.

R.1.4.55 In addition to the disclosures required under R.1.4.15 (b) to (d), R.1.4.49 as well as the disclosures required in terms of R.1.5.11 and R.1.5.12, The Regulated Person shall

provide the Client with the relevant information about the investment strategies being proposed by the Regulated Person (including appropriate guidance on and warnings of the risks associated with such investment strategies) and execution venues used by the Regulated Person for the execution of the Client's orders, if applicable. This information shall include:

- a) the name of the Regulated Person and its Services;
- b) Structured Deposits, Financial Instruments or proposed investment strategies, as applicable. This should include appropriate guidance on and warnings of the risks associated with the Structured Deposit or Financial Instrument or in respect of particular investment strategies;
- c) execution venues, where applicable;
- d) costs and associated charges.

The information for the purposes of this Rule may be provided in standardized format.

### Information concerning Client categorisation

- R.1.4.56 Regulated Persons shall notify new Clients, and existing Clients of their categorisation as a retail Client, a professional Client or an Eligible Counterparty (if applicable).
- R.1.4.57 Regulated Persons shall inform Clients in a durable medium about any right that a Client has to request a different categorisation and about any limitations to the level of Client protection that it would entail.
- R.1.4.58 Where the Client of a Regulated Person is an undertaking falling within the definition of 'Professional Client', the Regulated Person must inform it prior to any provision of Services that, on the basis of the information available to the Regulated Person, the Client is deemed to be a Professional Client, and will be treated as such unless the Regulated Person and the Client agree otherwise. The Regulated Person must also inform the Client that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

### Reporting Obligations in respect of execution of orders other than for portfolio management

- R.1.4.59 Where a Regulated Person has executed an order, other than for portfolio management, on behalf of a Client, it is required to take the following action in respect of that order:
- a) it must promptly disclose to the Client, in a durable medium, the essential information concerning the execution of that order;

- b) in the case of a retail Client, it must send that Client a notice in a durable medium confirming execution of the order as soon as possible and no later than the first business day following execution or, if the confirmation is received by the Regulated Person from a third party, no later than the first business day following receipt of the confirmation from the third party;
- c) In the case of Professional Clients, it must send execution reports no later than the first business day following execution. The content of such reports for professional clients and for eligible counterparties as well as the exceptions in terms of timing of the reports and exceptions applicable to certain financial instruments should be aligned with the requirements applicable to reports for Retail Clients, both for portfolio management and the carrying out of orders.
- d) In the case of Eligible Counterparties, Regulated Persons shall be allowed to enter into agreements with such counterparties to determine content and timing of reporting which are different from those applicable to retail and professional clients.

Point (b) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the Retail Client by another person.

Points (a) and (b) shall not apply where orders executed on behalf of Clients relate to bonds funding mortgage loan agreements with the said Clients, in which case the report on the transaction shall be made together with the consolidated terms of the mortgage loan, but no later than one month after the execution of the order.

- R.1.4.60 In addition to the requirements set out above, the Regulated Person shall supply the Client, on request, with information about the status of his order.
- R.1.4.61 In the case of orders for a Retail Client relating to units or shares in a collective investment scheme which are executed periodically, the Regulated Person shall either take the action specified in point (b) of R.1.4.59 or provide the Retail Client, at least once every six months, with the information listed in R.1.4.62 in respect of those transactions.
- R.1.4.62 The notice referred to in point (b) of R.1.4.59 shall include such of the following information as is applicable, and where relevant, in accordance with Table 1 of Annex I to the Commission Regulation 1287/2006 (the MiFID Implementing Regulation):
  - a) the reporting Regulated Person's identification;
  - b) the name or designation of the Client;

- c) the trading day;
- d) the trading time;
- e) the type of the order;
- f) the venue identification;
- g) the Instrument identification;
- h) the buy/sell indicator;
- i) the nature of the order if other than buy/sell;
- j) the quantity;
- k) the unit price;
- l) the total consideration;
- m) a total sum of the commissions and expenses charged and, where the Retail Client so requests, an itemised breakdown;
- n) the Client's responsibilities in relation to the settlement of the transaction including the time limit for payment or delivery as well as the appropriate account details where these details and responsibilities have not previously been notified to the Client;
- o) if the Client's counterparty was the Regulated Person itself or any person in the Regulated Person's group or another Client of the Regulated Person, the fact that this was the case unless the order was executed through a trading system that facilitates anonymous trading.

For the purposes of (k) above, where the order is executed in tranches, the Regulated Person may supply the Client with information about the price of each tranche or the average price. Where the average price is disclosed, the Regulated Person shall supply the Retail Client with information about the price of each tranche upon request.

R.1.4.63 The Regulated Person may provide the Client with the information referred to in R.1.4.62 using standard codes if it also provides an explanation of the codes used.

*Reporting Obligations in Respect of Portfolio Management Services*

- R.1.4.64 Where a Regulated Person proposes to provide portfolio management services to a Retail Client, it shall provide in good time before the provision of Services or ancillary services to Retail Clients, in addition to the information required under R.1.4.15, with such of the following information as is applicable:
- a) information on the method and frequency of valuation of the financial instruments in the Client portfolio;
  - b) details of any delegation of the discretionary management of all or part of the Financial Instruments or funds in the Client portfolio;
  - c) a specification of any benchmark against which the performance of the Client portfolio will be compared;
  - d) the types of Financial Instrument that may be included in the Client portfolio and types of transaction that may be carried out in such Financial Instruments, including any limits;
  - e) the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion.
- R.1.4.65 When providing the service of portfolio management, the Regulated Person shall establish an appropriate method of evaluation and comparison such as a meaningful benchmark, based on the investment objectives of the Client and the types of Financial Instruments included in the Client portfolio, so as to enable the Client for whom the Services provided to assess the Regulated Person's performance.
- R.1.4.66 The Regulated Person which provides the Service of portfolio management to Client shall provide each such Client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that Client unless such a statement is provided by another person.
- R.1.4.67 In the case of Clients, the periodic statement required above shall include wherever relevant, the following information:
- a) the name of the Regulated Person;
  - b) the name or other designation of the Retail Client's account;
  - c) a statement of the contents and the valuation of the portfolio, including details of each Financial Instrument held, its market value, or fair value if market value is unavailable and the cash balance at the beginning and the end of the

reporting period, and the performance of the portfolio during the reporting period;

- d) the total amount of fees and charges incurred during the reporting period, itemising at least total management fees and total costs associated with execution, and including where relevant, a statement that a more detailed breakdown will be disclosed on request;
- e) a comparison of performance during the period covered by the statement with the investment performance benchmark (if any) agreed between the Regulated Person and the Client;
- f) the total amount of dividends, interest and other payments received during the reporting period in relation to the Client's portfolio;
- g) information about other corporate actions giving rights in relation to Financial Instruments held in the portfolio;
- h) for each transaction executed during the period, the information referred in R.1.62(c) to (l) where relevant, unless the Client elects to receive information about executed transactions on a transaction-by-transaction basis, in which case R.1.4.69 shall apply;
- i) A fair and balanced review of the activities undertaken and of the performance of the portfolio during the relevant period.

R.1.4.68 In the case of Retail Clients, the periodic statement referred to in R. 1.4.66 shall be provided every quarter, except in the following cases:

- a) where the Client so requests, the periodic statement must be provided every 3 months;
- b) in cases where R.1.4.67 applies, the periodic statement must be provided at least once every 12 months;
- c) where the agreement between a Regulated Person and a Retail Client for a portfolio management service authorises a leveraged portfolio, the periodic statement must be provided at least once a month.

The Regulated Person shall inform Retail Clients that they have the right to make requests for the purposes of point (a).

However the exception provided for in point (b) shall not apply in case of transactions in securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures or in Instruments included in points (4) to (10) of the Second Schedule to the Investment Services Act.

Provided that where the Regulated Person provides its clients with access to an online system, which qualifies as a durable medium, where up to date valuations of the client's portfolio can be accessed, the firm does not need to provide a periodic report for the quarter where:

- a) the Client can easily access the information required by R.1.4.73 through the same system; and
- b) it has evidence that the client has accessed a valuation of their portfolio at least once during the quarter.

R.1.4.69 The Regulated Person shall, in cases where the Client elects to receive information about executed transactions on a transaction-by-transaction basis, disclose promptly to the Client, on the execution of a transaction by the portfolio manager, the essential information concerning that transaction in a durable medium.

Where the Client concerned is a Retail Client, the Regulated Person must send him a notice confirming the transaction and containing the information referred to in R.1.4.62 no later than the first business day following that execution or, if the confirmation is received by the Regulated Person from third party, no later than the first business day following sub- paragraph shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the Retail Client by another person.

*Additional Reporting Obligations for Portfolio Management or Contingent Liability Transactions*

R.1.4.70 Where a Regulated Person provides portfolio management transactions for Retail Client or operates Retail Client accounts that includes positions in leveraged Financial Instruments or contingent liability transactions, shall report to the Client where the initial value of each instruments depreciates by 10% and thereafter at multiples of 10%, no later than the end of the business day in which the abovementioned threshold is exceeded or, in a case where the said threshold is exceeded on a non-business day, the close of the next business day.

R.1.4.71 Regulated Persons that provide portfolio management, shall report to the Client where the overall value of the portfolio at the beginning of each reporting period depreciates by 10% and thereafter at multiples of 10%.

Statement of Client Financial Instruments or Client Money

R.1.4.72 A Regulated Person that holds Client Financial Instruments or Client money is required to send on a quarterly basis , to each Client for whom it holds Financial Instruments or money, a statement in a durable medium of those Financial Instruments or money unless such a statement has been provided in any other periodic statement. Such statements shall be provided more frequently on request at reasonable commercial costs.

Provided that this Rule shall not apply to a credit institution authorised under Directive 2000/12/EC, relating to the taking up and pursuit of the business of credit institutions, in respect of deposits within the meaning of that Directive held by that institution.

R.1.4.73 The statement of Client assets referred to above, shall include the following information:

- a) details of all the Financial Instruments or money held by the Regulated Person for the Client at the end of the period covered by the statement;
- b) the extent to which any Client Financial Instruments or Client money have been the subject of securities financing transactions;
- c) the extent of any benefit that has accrued to the Clients by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued
- d) a clear indication of the Client Financial Instruments or Clients' Money which are subject to protection under these Rules and those that are not, such as those that are subject to a Title Transfer Collateral Arrangements (TTCA );
- e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to some security interest; and
- f) the market or estimated value, when the market value is not available, of the financial instrument included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evolution of the estimated value shall be done by the Regulated Person on a best effort basis.

In cases where the portfolio of a Client includes the proceeds of one or more unsettled transactions, the information referred to in point (a) may be based either on the trade date or the settlement date, provided that the same basis is applied consistently to all such information in the statement.

- R.1.4.74 A Regulated Person which holds Instruments or money and which carries out the service of portfolio management for a Client may include the statement of Client assets referred to in R.1.4.73 in the periodic statement it provides to that Client pursuant to R.1.4.66
- Where the Regulated Person holds or controls Financial Instruments or money belonging to Retail the Regulated Person shall provide those Retail Clients with the information specified in R.1.4.54 and R.1.4.75 to R.1.4.79 as is relevant.
- R.1.4.75 The Regulated Person shall inform the Retail Client where the Financial Instrument or money of that Client may be held by a third party on behalf of the Regulated Person and of the responsibility of the Regulated Person for any acts or omissions of the third party and the consequences for the Client of the insolvency of the third party.
- R.1.4.76 Where Financial Instruments of the Retail Client may, be held in a Nominee account by a third party, the Regulated Person shall inform the Client of this fact and shall provide a prominent warning of the resulting risks.
- R.1.4.77 The Regulated Person shall inform the Retail Client where it is not possible for Client Financial Instruments held with a third party to be separately identifiable from the proprietary Financial Instruments of that third party or of the Regulated Person and shall provide a prominent warning of the resulting risks.
- R.1.4.78 The Regulated Person shall inform the Client where accounts that contain Financial Instruments or money belonging to that Client are or will be subject to the law of a jurisdiction other than that of an EU Member State and shall indicate that the rights of the Client relating to those Financial Instruments or money may differ accordingly.
- R.1.4.79 A Regulated Person shall inform the Client about the existence and the terms of any security interest or lien which the Regulated Person has or may have over the Client's Financial Instruments or money, or any right of set-off it holds in relation to those Financial Instruments or money. Where applicable, it shall also inform the Client of the fact that a depository may have a security interest or lien over, or right of set-off in relation to those Financial Instruments or money.

**Part C** **Rules and Guidance Applicable to all Regulated Persons regarding Disclosure of Information on the Product Being Offered to Clients**

**Provision of Product Information to Clients**

- R.1.4.80 A Regulated Person that sells a packaged retail investment product and/or an insurance-based investment product or a Structured Deposit product to a Retail Client or potential retail Client, must provide to that Client, prior to conclusion of a contract, a key information document which document shall be in line with the Regulation of the European Parliament and of the Council on key information documents for investment products (PRIIPs).

- G.1.4.11 *A Regulated Person need not treat each of several transactions in respect of the same type of product as a new or different Service and so does not need to comply with the disclosure rules in this chapter in relation to each transaction. Nonetheless a Regulated Person should ensure that the Client has received all relevant information in relation to a subsequent transaction, such as details of product charges that differ from those disclosed in respect of a previous transaction.*
- R.1.4.81 Prior to offering, recommending, arranging or providing a Product, a Regulated Person must provide information, in a durable medium, to the Client about the main features and restrictions of the Product to assist the Client in understanding the Product.
- G.1.4.12 *Where a Regulated Person provides information in accordance with the Rules in this Chapter, it must not do anything that might reasonably cause a Client to be mistaken about the identity of the Manufacturer of the product sold to the Client.*
- R.1.4.82 Prior to offering, recommending, arranging or providing a Product, a Regulated Person must provide a Client with information on the following, where relevant:
- a) capital security;
  - b) the risk that some or all of the investment may be lost;
  - c) leverage and its effects;
  - d) any limitations on the sale or disposal of the product;
  - e) restrictions on access to funds invested;
  - f) restrictions on the redemption of the product;
  - g) the impact, including the cost, of exiting the product early;
  - h) the minimum recommended investment period;
  - i) the risk that the estimated or anticipated return on the investment product will not be achieved;
  - j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment; and
  - k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

**Part D**      **Rules and Guidance applicable to Regulated Persons falling under point (i) or (ii) of the definition of ‘Regulated Person’ in the Glossary”, UCITS Management Companies or a collective investment schemes licensed under the Investment Services Act, 1994 and qualifying as a UCITS.**

- R.1.4.83      For the purposes of this Part, the term Regulated Person shall mean:
- a)      a Regulated Person falling under point (i) or (ii) of the definition of ‘Regulated Person’ in the Glossary; or
  - b)      a UCITS Management Company; or
  - c)      a collective investment scheme licensed under the Investment Services Act, 1994 and qualifying as a UCITS.

**Key investor information on UCITS**

R.1.4.84      Self-managed UCITS Schemes licensed under the Investment Services Act, 1994 as well as UCITS Management Companies which sell UCITS directly or through another Regulated Person who acts on its behalf and under its full and unconditional responsibility (for every UCITS which they manage) shall provide Clients with a key investor information document on such UCITS in good time before their proposed subscription of units in such UCITS.

R.1.4.85      If a Regulated Person provides a Client with a key investor information document that meets the requirements the PRIIPS Regulation, or of Standard Licence Conditions 6.2.1 to 6.2.6 and 6.2.8 to 6.2.11 of Part BII of the Investment Services Rules for Retail Collective Investment Schemes and the requirements of Standard Licence Condition 3.23 of Part BI of the Investment Services Rules for Investment Services Providers and the KII Regulation, it will have provided appropriate information for the purpose of the requirement to disclose information to clients under the MIFID or, as applicable, on:

- a)      on the investments and investment strategies of the UCITS and
- b)      on costs and associated charges in respect of the UCITS itself, including the exit and entry commissions.

G.1.4.13      *A key information document provides sufficient information in relation to the costs and associated charges in respect of the UCITS itself. However, a Regulated Person distributing units in a UCITS should also inform a Client about all of the other costs and associated charges related to the provision of its Services in relation to units in the UCITS.*

R.1.4.86      Self-managed UCITS Schemes licensed under the Investment Services Act, 1994 as well as Regulated Persons managing UCITS Schemes and which do not sell UCITS directly or through another Regulated Person who acts on its behalf and under its full and unconditional responsibility (for every UCITS which they manage) shall provide key investor information to Manufacturers and Distributors offering units in such UCITS or in

Products offering exposure to such UCITS upon their request. Any Regulated Persons selling or advising Clients on potential investments in UCITS, shall provide the key investor information to their Clients.

R.1.4.87 A paper copy of the key investor information shall be provided to investors free of charge.

R.1.4.88 Self-managed UCITS Schemes as well as UCITS Management Companies, shall provide the following documents for every UCITS managed, in a durable medium or by means of a website:

- a) key investor information containing the information prescribed in R.1.4.85
- b) the prospectus and the latest published annual and half yearly reports

A paper copy of the above documents shall be delivered to the investor on request and free of charge.

R.1.4.89 A paper copy of the prospectus and the annual and half yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

*Products requiring a prospectus under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (“the Prospectus Directive”)*

R.1.4.90 The Rules under this Part apply to Regulated Persons which sell products which require a prospectus to be issued under the Prospectus Directive.

R.1.4.91 Where a prospectus, other than a prospectus falling within the scope of the Prospectus Directive represents or contains the terms of a contract between a Regulated Person and one or more of its Clients, this fact must be clearly stated in the prospectus.

**Part E** **Rules and Guidance Applicable to Regulated Persons falling under points (iii) and (iv) of the Definition of ‘Regulated Person’ in the Glossary.**

R.1.4.92 For the purposes of this Part, the term “Regulated Person” shall mean a Regulated Persons falling under points (iii) and (iv) of the Definition of ‘Regulated Person’ in the Glossary.

Disclosures to be made before certain contracts of insurance are concluded.

R.1.4.93 Before a non-life insurance contract is concluded the Regulated Person shall inform the Client:

- a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and ,if so, of the law which the Regulated Person proposes to choose, otherwise, if not, of the law which will be so applicable.
- b) of the arrangements for handling complaints concerning contracts by policy holders, including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;

Provided that the requirement referred to in this Rule shall apply only where the Client is a natural person.

R.1.4.94 Before a life insurance contract is concluded, saving the requirements of the PRIPS Regulation, the following information relating to the commitment shall be communicated:

- a) the definition of each benefit and each option;
- b) the term of the contract;
- c) the means of terminating the contract;
- d) the means of payment of premiums and duration of payments;
- e) the means of calculation and distribution of bonuses;
- f) an indication of surrender and paid-up values and the extent to which they are guaranteed;
- g) information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;
- h) for unit-linked policies, the definition of the units to which the benefits are linked;
- i) an indication of the nature of the underlying assets for unit-linked policies;

- j) arrangements for application of the cooling-off period;
- k) general information on the tax arrangements applicable to the type of policy;
- l) the arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;
- m) whether the parties to the contract are entitled to choose the law applicable to the contract and, if so, of the law which the Regulated Person proposes to choose, otherwise, if not, of the law which will be so applicable.
- n) In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the Client.

R.1.4.95 Where, in connection with an offer for or conclusion of a life insurance contract, the Regulated Person provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the Regulated Person shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The Regulated Person shall inform the Client in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the Client shall not derive any contractual claims from the specimen calculation.

In the case of insurances with profit participation, the Regulated Person shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the Regulated Person has provided figures about the potential future development of the profit participation, the Regulated Person shall inform the Client of differences between the actual development and the initial data.

R.1.4.96 The information referred to in R.1.4.81 shall be provided in a clear and accurate manner, using a durable medium, in an official language of the Member State of commitment. In the case where the Client resides in Malta, the provisions of Rule 1.1.2(c) shall apply.

R.1.4.97 A Regulated Person providing an insurance quotation to a potential Retail Client must include the following information in the quotation, assuming that all details provided by the potential Retail Client are correct and do not change:

- a) the monetary amount of the quotation;
- b) the length of time for which the quotation is valid; and

c) the full legal name of the relevant underwriter.

R.1.4.98 A Regulated Person must set out clearly in the quotation provided to the Retail Client any warranties or endorsements that apply to the policy. Where the quotation is provided on paper or on another durable medium, this information must not be in a smaller font size than other information provided in the document.

R.1.4.99 A Regulated Person providing an insurance quotation to a Client must set out clearly any discounts or loadings that have been applied in generating the quotation.

R.1.4.100 A Regulated Person must, when offering a motor insurance policy to a Client, set out clearly for the Client the basis on which a Regulated Person may calculate the value of the vehicle for the purposes of settling a claim where the vehicle is deemed to be beyond economic repair following a road traffic accident, fire or theft.

R.1.4.101 A Regulated Person must state the full legal name of the relevant insurer on all insurance policy documentation and renewal notices issued to a Client.

R.1.4.102 A Regulated Person must explain to a Retail Client, at the proposal stage, the consequences for the Client of failure to make full disclosure of relevant facts. The explanation must include, where relevant,

- (a) that a policy may be cancelled;
- (b) that claims may not be paid;
- (c) the difficulty the consumer may encounter in trying to purchase insurance elsewhere.

R.1.4.103 When offering a property or motor insurance policy to a Client, a Regulated Person must, where relevant, explain to the Client that, in the event of a claim, the Regulated Person may appoint its own builder or other expert to undertake restitution work on a property or motor vehicle.

R.1.4.104 Prior to offering, recommending, arranging or providing an insurance policy where the premium may be subject to review by the insurance undertaking during the term of the policy, a Regulated Person must:

- (a) explain clearly to the Client the risk that the premium may increase; and
- (b) provide the Client with details of the period for which the initial premium is fixed.

This Rule shall not apply where the premium may be subject to review as a result of an alteration to the policy that is requested by the Client.

R.1.4.105 The Regulated Person shall provide the following to Clients, as applicable:

- (a) The Statutory Notice required in terms of the Insurance Business (Long Term Business Contract Statutory Notice) Regulations, as prescribed in these Regulations (at the time the contract is entered into) ;
- (b) The Statutory Notice Required in terms of Rule 4 of the Insurance Intermediaries Rule 7. (Bancassurance statutory notice), as prescribed in this Rule, prior to the conclusion of any initial contract and if necessary, upon amendment or renewal thereof.

**Part F**      **Rules Applying to Regulated Persons falling under point (iv) of the definition of Regulated Person in the Glossary.**

- R.1.4.106      For the purposes of this Part, the term “Regulated Person” shall mean Regulated Persons falling under point (iv) of the definition of Regulated Person in the Glossary.
- R.1.4.107      Where a Regulated Person enrolled as an insurance broker accepts its own Client’s risk on behalf of an insurance undertaking under any underwriting agreement or a computer link arrangement, the said Regulated Person shall disclose that fact in a durable medium and in good time prior to the provision of the service, to the Client.

**Section 5: DISCLOSURES ON CONFLICTS OF INTEREST**

**Application**

R.1.5.1 The Rules and any relative Guidance set out under the heading “General Rules” shall apply to all Regulated Persons, except as otherwise indicated, provided that Regulated Persons falling under paragraph (iii) and (iv) of the definition of Regulated Person in the Glossary, shall only be required to adhere to requirements set out in this section in so far as they carry out the distribution of insurance-based investment products.

G.1.5.1 *The requirements in the ‘General Rule’ section only apply where a Product or Service is provided by a Regulated Person. The status of the Client to whom the Product or Service is provided (as a retail Client, Professional Client or Eligible Counterparty) is irrelevant for this purpose.*

R.1.5.2 The Rules and any relative Guidance set out under Part A shall apply to Regulated Persons falling under point (i) and point (v) of the definition of ‘Regulated Person’ in the Glossary, except as otherwise indicated.

R.1.5.3 The Rules and any relative Guidance set out under Part B shall apply to Regulated Persons falling under point (iv) of the definition of Regulated Persons in the Glossary.

**General Rules**

R.1.5.4 Where organisational or administrative arrangements made by the Regulated Person to prevent conflicts of interest from adversely affecting the interest of its Client are not sufficient to ensure, with reasonable confidence, that risks of damage to Client interests (or in the case of UCITS Management Companies, to the interests of UCITS or its unit-holders) will be prevented, the Regulated Person shall clearly disclose to the Client the general nature and sources of conflicts of interest and the steps taken to mitigate those risks before undertaking business on its behalf.

The disclosure shall:

- a) be made in a durable medium; and
- b) include sufficient detail, taking into account the nature of the Client, to enable that Client to take an informed decision with respect to the Service in the context of which the conflict of interest arises.

- R.1.5.5 Regulated Persons shall ensure that disclosure to Clients pursuant to Rule 1.5.4. above, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the Regulated Person to prevent or manage its conflicts of interests, in accordance with R.3.4 of this Rulebook, are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented.
- R.1.5.6 When disclosure of specific conflicts of interests is required, the disclosure shall clearly state that the organisational and administrative arrangements established by the Regulated Person to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence that the risk of damage to the interest of the Client will be prevented. The disclosure to clients must be made in a durable medium and it must also include a specific description of the conflict of interest that arises in the provision of the Services and/or ancillary services, taking into account the nature of the clients to whom the disclosure is being made. That description must explain the general nature and/or sources of conflicts of interest, as well as the risks to the client that arise as a result of the conflict and the steps undertaken to mitigate these risks, in sufficient detail to enable that client to make an informed decision.
- R.1.5.7 In the case of Regulated Persons falling under points (iii) and (iv) of the definition of Regulated Person in the Glossary, the disclosure referred to in R.1.5.4 shall be made by the Distributor offering the product in relation to which such disclosure is to be made.
- G.1.5.2 *Regulated persons have a duty to take effective steps to identify, and prevent or manage conflicts of interest between themselves, including their managers, employees and Tied Agents or Tied Insurance Intermediaries, or any person indirectly linked to them by control and their Clients or between one Client and another and mitigate the potential impact of these risks as far as possible. When some residual risk of detriment to the Client's interests, or in the case of UCITS to one or more UCITS or other Clients nonetheless remains, clear disclosure to the Client of the general nature and sources of conflicts of interest to the Client and the steps taken to mitigate these risks shall be made before undertaking business on its behalf.*
- G.1.5.3 *Where conflicts of interest arise and cannot be reasonably avoided, Regulated Persons shall disclose the general nature and source of the conflicts of interest to the Client, and shall ensure that any conflict does not result in damage to the interests of the Client.*
- G.1.5.4 *The disclosure of conflicts of interest by a Regulated Person should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements relating to the prevention of conflicts of interest. While disclosure of specific conflicts of interest is required by R.1.5.4, an over-reliance on disclosure without*

*adequate consideration as to how conflicts may appropriately be managed is not permitted.*

R.1.5.8 Regulated Persons who charge a fee and also receive commission in respect of the product or service provided to the Client, shall disclose to the Client, in good time, prior to the provision of a Service or Product, whether or not the commission will be offset against the fee, either in full or in part.

R.1.5.9 A Regulated Person shall also be required to disclose the following information to Clients:

- a) a description which may be provided in summary form, of the conflicts of interest policy maintained by the Regulated Person;
- b) at any time that the Client requests it, further details of such conflicts of interest policy in a durable medium or by means of a website.

**Part A** **Rules applicable to Regulated Persons falling under point (i) of the definition of 'Regulated Person' in the Glossary, including UCITS Management Companies, and Regulated Persons falling under point (v), as applicable.**

R.1.5.10 For the purposes of this Part, a 'Regulated Person' means a person falling under point (i) of the definition of Regulated Person in the Glossary including a UCITS Management Companies, or a person falling under point (v) of the definition of Regulated Person in the Glossary, as applicable.

R.1.5.11 A Regulated Person shall, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant Services or Ancillary Service, clearly disclose to the Client the existence, nature and amount of any payment or benefit designed to enhance the quality of the relevant Service to the Client, as defined in R.3.10 of this Rulebook or, where the amount cannot be ascertained, the method of calculating that amount.

R.1.5.12 Where applicable, the Regulated Person shall also inform the Client on mechanisms for transferring to the Client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment or ancillary service.

**Part B**            **Rules applicable to Regulated Persons falling under point (iv) of the definition of Regulated Persons in the Glossary**

R.1.5.13            For the purposes of this section, a Regulated Person means a person falling under point (iv) of the definition of Regulated Person in the Glossary. .

R.1.5.14            A Regulated Person shall, in good time before Client the conclusion of any insurance contract, provide the Client with at least the following information:

- a)            the nature of the remuneration received by the Regulated Person in relation to the insurance contract;
  
- b)            whether in relation to the insurance contract, the Regulated Person works:
  - (i)            on the basis of a fee, that is the remuneration paid directly by the Client; or
  - (ii)            on the basis of a commission of any kind, that is the remuneration included in the insurance premium; or
  - (iii)            on the basis of other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
  - (iv)            on the basis of a combination of both (i) , (ii) and (iii);

Where the fee is payable directly by the Client, the Regulated Person shall provide the amount of the fee or where this is not possible, the method for calculating it.

**Appendix 1**

**Table 1** - All costs and associated charges charged for the investment service(s) and/or ancillary services provided to the client that should form part of the amount to be disclosed

Cost items to be disclosed		Examples:
<b>One-off charges related to the provision of an investment service</b>	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s).	Deposit fees, termination fees and switching costs <sup>i</sup> .
<b>On-going related to the provision of an investment service charges</b>	All on-going costs and charges paid to investment firms for their services provided to the client.	Management fees, advisory fees, custodian fees.
<b>All costs related to transactions initiated in the course of the provision of an investment service</b>	All costs and charges that are related to transactions performed by the investment firm or other parties.	Broker commissions <sup>ii</sup> , entry- and exit charges paid to the fund manager, platform fees, marks up (embedded in the transaction price), stamp duty, transactions tax and foreign exchange costs.
<b>Any charges that are related to ancillary services</b>	Any costs and charges that are related to ancillary services that are not included in the costs mentioned above.	Research costs. Custody costs.
<b>Incidental costs</b>		Performance fees

**Table 2** - All costs and associated charges related to the financial instrument that should form part of the amount to be disclosed

Cost items to be disclosed		Examples:
<b>One-off charges</b>	All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument.	Front-loaded management fee, structuring fee <sup>iii</sup> , distribution fee.
<b>On-going charges</b>	All on-going costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument.	Management fees, service costs, swap fees, securities lending costs and taxes, financing costs.
<b>All costs related to the transactions</b>	All costs and charges that incurred as a result of the acquisition and disposal of investments within the fund.	Broker commissions, entry- and exit charges paid by the fund, marks up embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
<b>Incidental costs</b>		Performance fees

<sup>i</sup> Switching costs should be understood as costs (if any) that are incurred by clients by switching from one Regulated Person to another Regulated Person.

<sup>ii</sup> Broker commissions should be understood as costs that are charged by Regulated Person for the execution of orders.

<sup>iii</sup> Structuring fees should be understood as fees charged by manufacturers of structured products for structuring the products. They may cover a broader range of services provided by the manufacturer.