

Chapter 4

Code of Practice for Approved Persons: specific

4.1 Statement of Principle 1

- 4.1.1 **G** [deleted]
- 4.1.1A **G** The *Statement of Principle 1* (see ■ APER 2.1A.3R) is in the following terms:
"An *approved person* must act with integrity in carrying out his *accountable functions*."
- 4.1.1B **G**
- 4.1.2 **G** In the opinion of the *FCA*, conduct of the type described in ■ APER 4.1.3G, ■ APER 4.1.5G, ■ APER 4.1.6G, ■ APER 4.1.8G, ■ APER 4.1.10G, ■ APER 4.1.12G, ■ APER 4.1.13G, ■ APER 4.1.14G or ■ APER 4.1.15G does not comply with *Statement of Principle 1*.
- 4.1.3 **G** Deliberately misleading (or attempting to mislead) by act or omission:
- (1) a *client*; or
 - (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under ■ SUP 4 (Actuaries)); or
 - (3) the *FCA* or the *PRA*;
- falls within ■ APER 4.1.2G.
- 4.1.4 **G** Behaviour of the type referred to in ■ APER 4.1.3G includes, but is not limited to, deliberately:
- (1) falsifying *documents*;
 - (2) misleading a *client* about the risks of an *investment*;
 - (3) misleading a *client* about the charges or surrender penalties of *investment products*;
 - (4) misleading a *client* about the likely performance of *investment products* by providing inappropriate *projections* of future *investment returns*;
 - (5) misleading a *client* by informing him that products require only a single payment when that is not the case;

- (6) mismarking the value of *investments* or trading positions;
- (7) procuring the unjustified alteration of prices on illiquid or *off-exchange* contracts, or both;
- (8) misleading others within the *firm* about the credit worthiness of a borrower;
- (9) providing false or inaccurate documentation or information, including details of training, qualifications, past employment record or experience;
- (10) providing false or inaccurate information to the *firm* (or to the *firm's* auditors or an *actuary* appointed by the *firm* under ■ SUP 4 (Actuaries));
- (11) providing false or inaccurate information to the *FCA* or the *PRA*;
- (12) destroying, or causing the destruction of, *documents* (including false documentation), or tapes or their contents, relevant to misleading (or attempting to mislead) a *client*, his *firm*, or the *FCA* or *PRA*.
- (13) failing to disclose dealings where disclosure is required by the *firm's* personal account *dealing rules*;
- (14) misleading others in the *firm* about the nature of risks being accepted.

4.1.5 G Deliberately recommending an *investment* to a *customer*, or carrying out a discretionary *transaction* for a *customer* where the *approved person* knows that they are unable to justify its suitability for that *customer*, falls within ■ APER 4.1.2G.

4.1.6 G Deliberately failing to inform, without reasonable cause:

- (1) a *customer*; or
- (2) his *firm* (or its auditors or an *actuary* appointed by his *firm* under ■ SUP 4 (Actuaries)); or
- (3) the *FCA* or the *PRA*;

of the fact that their understanding of a material issue is incorrect, despite being aware of their misunderstanding, falls within ■ APER 4.1.2G.

4.1.7 G Behaviour of the type referred to in ■ APER 4.1.6G includes, but is not limited to, deliberately:

- (1) failing to disclose the existence of falsified *documents*;
- (2) failing to rectify mismarked positions immediately.

4.1.8 G Deliberately preparing inaccurate or inappropriate records or returns in connection with an *accountable function*, falls within ■ APER 4.1.2 G.

- 4.1.9 **G** Behaviour of the type referred to in ■ APER 4.1.8G includes, but is not limited to, deliberately:
- (1) preparing performance reports for transmission to *customers* which are inaccurate or inappropriate (for example, by relying on past performance without appropriate warnings);
 - (2) preparing inaccurate training records or inaccurate details of qualifications, past employment record or experience;
 - (3) preparing inaccurate trading confirmations, contract notes or other records of *transactions* or holdings of *securities* for a *customer*, whether or not the *customer* is aware of these inaccuracies or has requested such records.
- 4.1.10 **G** Deliberately misusing the assets or confidential information of a *client* or of their *firm* falls within ■ APER 4.1.2 G.
- 4.1.10 **E**
- 4.1.11 **G** Behaviour of the type referred to in ■ APER 4.1.10 G includes, but is not limited to, deliberately:
- (1) front running *client* orders;
 - (2) carrying out unjustified trading on *client* accounts to generate a benefit (whether direct or indirect) to the *approved person* (that is, churning);
 - (3) misappropriating a *client's* assets, including wrongly transferring to personal accounts cash or *securities* belonging to *clients*;
 - (4) wrongly using one *client's* funds to settle margin calls or to cover trading losses on another *client's* account or on *firm* accounts;
 - (5) using a *client's* funds for purposes other than those for which they were provided;
 - (6) retaining a *client's* funds wrongly;
 - (7) pledging the assets of a *client* as security or margin in circumstances where the *firm* is not permitted to do so.
- 4.1.12 **G** Deliberately designing *transactions* to disguise breaches of requirements and standards of the *regulatory system* falls within ■ APER 4.1.2 G.
- 4.1.13 **G** Deliberately failing to disclose the existence of a conflict of interest in connection with dealings with a *client* falls within ■ APER 4.1.2 G.

4.1.14 **G** Deliberately not paying due regard to the interests of a *customer* falls within
■ APER 4.1.2 G.

4.1.15 **G** Deliberate acts, omissions or business practices that could be reasonably
expected to cause consumer detriment fall within ■ APER 4.1.2 G.