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# Universal Conduct Obligations for Financial Services Providers Serving Retail Customers

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# Executive Summary

Customer protection in financial services in India is the domain of respective product-specific regulators, namely the RBI, SEBI, IRDAI and PFRDA[2]. The frameworks for customer protection in financial products and services that exist today have been inadequate to protect the interests of households and enterprises. The design of the universe of customer-touch points for the sale of financial products has not sufficiently enhanced the abilities of customers to access unbiased advice and sales practices that keep their best interests in mind. While elements of financial advice are embedded in the sale process, regulators have kept these two offerings separate, and this has resulted in unintended negative consequences. Financial consumers have the freedom to move between institutions for their financial needs but are subjected to differential standards based on the institution-types they engage with. These issues get amplified further with the new waves of disruption happening in financial services and where the distinction between the distributor and the manufacturer is getting progressively blurred in terms of liability for harms and/or losses to the customer. These reasons make it imperative that financial customer protection in India needs a significantly different design and implementation strategy to what is present currently. In this document, we articulated a set of recommendations that financial sector regulators can consider applying on regulated financial services providers in order to improve outcomes for households and enterprises.

We start by defining the 'retail customer' for financial services, in the interactions with whom, all financial services providers must ensure they are meeting certain conduct requirements as set out by the regulator, irrespective of their own legal form. In deciding these requirements, regulators need to shift to a regime that requires providers to exhibit a set of behaviours against a set of clearly articulated conduct obligations. The responsibility of interpreting these conduct obligations and adhering to them is to be placed on the provider to demonstrate through reasonable efforts.

We recommend that an additional obligation of suitability in distribution/sale be introduced on financial services providers in order to ensure that customers' interests are adequately and effectively protected as a matter of business process. For this, the provider must invest in efforts that are proportionate to the complexity that the financial product or service can introduce in the financial life of the customer and the risk of harm to the customer, considering the nature of the customer, and the nature of the financial product or financial service provided.

[2]The design of regulatory bodies that is product/function specific (as opposed to the twin-peaks model that splits regulatory bodies along the functions of prudential and market conduct) creates issues where certain products slip through gaps in the regulatory net. While the ideas articulated in this document cannot solve for these issues, the Financial Redress Agency can in its inter-regulatory role, serve as an effective plug for capturing such issues. This document also does not articulate solutions for better supervisory frameworks, but is intended as a starting point for moving towards better regulation and supervision. The twin-peaks model was first put forward by Micheal Taylor of the Centre for the Study of Financial innovation in 1995, and later adopted by Australia and other countries. Source: Taylor.M. (1995). "Twin Peaks: A Regulatory Structure for the New Century", Centre for the Study of Financial Innovation. Available at: https://static1.squarespace.com/static/54d620fce4b04 9bf4cd5be9b/t/55241159e4b0c8f3afe1d11e/1428427097907/Twin+Peaks+A+regulatory+structure+for+the+new+century.pdf

We also recommend that all financial services providers must publish a board-approved policy and corresponding processes on how they intend to comply with these obligations. The governing boards of providers must take a proportionate approach, by considering the nature, scale and complexity of business while deciding these board-approved policies. These board-approved policies, along with their customer-facing practices are to be open to scrutiny by the regulator/supervisor.

We propose a set of universal conduct obligations in this note that reflect our recommendations.

# A. Background and Rationale for a Shift in Financial Customer Protection Regime to One that Focuses on Conduct of Providers

**➢ Customer Protection in Financial Services is fundamentally different from that for non-financial products and services**

Many important financial decisions such as taking a loan[3], investing in a goal-linked plan or saving for retirement are undertaken very infrequently in the course of a lifetime of the individual customer. The outcome of such financial investments and strategies becomes clear only in the long term, and not immediately upon product purchase. In stark contrast, for physical products, the outcome of the purchase becomes obvious upon immediate usage, and high-quality producers can distinguish themselves through signalling devices such as warranties on their products. Financial product outcomes are also complicated by the fact that market movements can have a substantial impact on performance, and it can be difficult to ascertain whether the reasons behind poor outcomes were primarily on account of product mis-sale or the consequence of random shocks (even if providers were performing their dues well). These factors serve to distinguish consumer protection in finance and provide the rationale for separating it from consumer protection regulation for other products and services[4]. Indeed, financial services regulators have carved out customer protection regimes that operate in addition to existing customer protection regimes for all financial and non-financial products (put in place through the Customer Protection Act 1986)[5]. However, tradional approaches to financial customer protection have relied heavily on limiting obligations on providers to disclose terms and conditions and conflicts of interest if any, and placing responsibilies on customers to take their own decisions regarding what products might be best suited for them. It needs to be acknowledged that any shortcoming on the part of the retail customer in understanding financial products and their terms and conditions, arising from the informational[6] and/or power asymmetries[7] between him/her

[3]With the exception of microfinance loans where there is evidence of borrowers having atleast one such loan on a continuous basis

[4]Sahasranaman.A, George.D, Rajendran.D, Prasad.V. (2013). "A New Framework for Financial Consumer Protection in India", Dvara Research Position Paper. Available at: https://www.dvara.com/research/wp-content/uploads/2013/06/A-New-Framework-for-Financial-Consumer-Protection-in-India-IFF-Position-Paper.pdf

[5]The Customer Protection Bill 2018 has been passed in the Lok Sabha at the time of publishing this document

[6]For instance, lack of basic literacy, lack of knowledge regarding basic principles of money management and or personal financial planning, inability to understand portfolio allocation based on the Capital Asset Pricing Model, and so on

[7]For instance, in a low-access environment, the threat of credit denial can make customers shy away from questioning statements by the provider regarding the usefulness of a product in meeting the customer's requirements

and the provider, cannot realistically be bridged for financial services[8]. This makes it imperative that frameworks for financial customer protection must be fundamentally different in approach from that for non-financial products and services.

**➢ The design of the universe of customer-touch points for the sale of financial products has resulted in sub-optimal outcomes for customers. They cannot access unbiased advice that keep their best interests in mind**

The universe of customer-touch points includes the following:

- The product manufacturer[9], selling through direct approaches such as through their branches, employees and websites.

- Intermediaries[10] who are either agents who represent the product manufacturer or are brokers who are expected to represent the customer. The former gets paid by the manufacturer (either from revenues or from commissions deducted from customer payments). The latter gets paid a non-volume-based fee by the customer. Examples of the former are MF distributors under AMFI, banks under the bancassurance model, the business correspondent model, insurance agents and so on. Examples of the latter are insurance brokers[11], although insurance brokers can get paid remuneration and rewards by insurers[12].

- In neither of the above two cases, is unbiased advice available to the customer (due to conflicted remuneration structures), which implies that *caveat emptor* is the principle being followed, i.e., the customer is to ascertain for himself/herself, whether the product and the terms and conditions are suitable for him/her. In case the customer finds it difficult to decide on whether to purchase a product in the above two cases, he/ she can access a class of professionals providing the service of financial advice. These are licensed by

    a. SEBI as Investment Advisers

[8]A good parallel can be drawn to medical services, where the complicated nature of the service offers different dimensions of negligence by a provider. For instance, in the case of Dr. Laxman Balkrishna Joshi vs. Dr. Trimbark Babu Godbole (Available at: https://indiankanoon.org/doc/297399/), it was laid down by the Supreme Court that "A person who holds himself out ready to give medical advice and treatment impliedly holds forth that he is possessed of skill and knowledge for the Purpose. Such a person when consulted by a patient, owes certain duties, namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment to give, and a duty of care in the administration of that treatment. A breach of any of these duties gives a right of action of negligence against him. The medical practitioner has a discretion in choosing the treatment which he proposes to give to the patient and such discretion is wider in cases of emergency, but he must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care according to the circumstances of each case."

[9]For the purposes of this note, a manufacturer is an entity that holds the risk associated with a financial product such as a deposit and/or credit arrangement (banks or NBFCs), an insurance contract (insurance companies) or a securities contract (mutual funds, pension funds), or a combination of any of these.

[10]For the purposes of this note, an intermediary is a person or an entity providing a financial service, which means dealing in financial products, such as in the sale of securities, acceptance of public deposits, providing credit facilities, and operating investment schemes.

[11]A 'Direct Broker' means an Insurance Broker, registered by IRDAI, who for a remuneration and/or a fee, solicits and arranges insurance business for its clients with insurers located in India and/or provides claims consultancy, risk management services or other similar services, permitted under the IRDAI (Insurance Broker) Regulations 2018

[12]IRDAI (Insurance Brokers) Regulations, 2018 and IRDAI (Payment of Commission or Remuneration or Reward to Insurance Agents and Insurance Intermediaries) Regulations 2016

b. PFRDA as Retirement Advisers

c. IRDAI as Insurance Advisers

d. The Financial Planning Standards Board of India (FPSB) as Certified Financial Planners

While advisers are free to start their own independent practice, many of them are employed in various financial businesses including in banks[13] as employees in their retail investment and wealth management departments, thus taking away their ability to provide unbiased advice (due to conflicted sales-volume based incentives). Although independent advisers can execute transaction on behalf of customers without receiving any volume-linked payments, this design is not the predominant model seen in India. Indeed, the industry for financial products has been characterised traditionally by an army of agents and other forms of intermediaries having the freedoms to make statements that influence customers in their decisions regarding the purchase of financial products.

➢ **In reality, financial advice is embedded in the sale process**

We define financial advice as 'a statement, provided either verbally or in written or electronic format, that is intended to directly and/or indirectly influence a customer in their decision to purchase and/or not purchase a particular financial product(s) and/or service or a class(es) of financial product(s) or service(s), but does not include product advertisements made by the financial service provider that are not personalised to a particular customer and does not take into consideration the customer's unique information'. If this definition is to be considered, current sale processes will encompass the provision of advice by intermediaries who are not licensed as Advisers but are nevertheless engaging in providing what is described by SEBI as 'incidental advice'[14]. Such advice influences the decisions of customers about whether to transact and in which products to transact in (Annexure A covers some examples by the Australian regulator that clarifies how it distinguishes between providing *factual information* and *financial advice*).

The industries for credit, investment and insurance products are characterised today by an army of agents and other forms of intermediaries identifying themselves as agents providing incidental advice and receiving volume-based incentives for sales completed. While volume-based incentives help to increase the uptake of financial products by customers, it can have dire consequences for the customer if intermediaries engage in misleading, wrong, and/or harmful advice to maximise sales.

To deal with this incentive misalignment, financial services regulation in India has traditionally taken the position of a) separating sale from advice and building separate licensing regimes for these two functions, and, b) requiring disclosures of conflicts of interest wherever it exists.

[13]See Slide 7, Career opportunities and Pay Scale, CFP Cerfication Training Program, ICICI Direct Centre for Financial Learning. Available at: https://www.icicidirect.com/idirectcontent/FinancialEducation/StaticData/CFPVClass.pdf

[14]Consultation paper on Amendments/Clarifications to the SEBI (Investment Advisers) Regulations, 2013. Available at: https://www.sebi.gov.in/reports/reports/oct-2016/consultation-paper-on-amendments clarifications-to-the-sebi-investment-advisers-regulations-2013_33435.html

The consequent expectation that an adviser must follow fiduciary obligations[15] and can only be compensated by the customer, unfortunately, results in gaming, such that more agents self-identify as sellers or distributors rather than as advisers. Research also shows that there are no benefits nor is there any protection from harms[16] to customers from being informed by their financial services provider that it is conflicted in their interactions with them. Both these outcomes combine to result in customers being worse-off from such an approach of separating out advice and sale in financial services.

Taking cognisance of this, SEBI has published three consultation papers on the subject between 2016 and 2018[17], which provide comprehensive analyses of issues and make recommendations. The consultation papers broadly recommended prohibiting mutual fund distributors from providing services that investment advisers cover (providing incidental or basic investment advice on mutual fund products or identifying oneself as an independent adviser) while also prohibiting investment advisers from engaging in distribution services, whether by self or through immediate relatives or through 'holding', 'subsidiary', and/or 'associate' companies.

Given that the separation of advice and sale in financial services has not resulted in the creation of a supply environment that creates trust in the system for the retail customer, this artificial separation of advice and sale can be collapsed, and regulators can embark on a regime that regulates the nature of interactions that the provider engages in with the retail customer.

➢ **Financial consumers have the freedom to move between institutions for their financial needs, but are subjected to differential standards based on the institution-types they engage with**

There are differences in regulations on sales across channels and intermediaries even for the same product, such as for insurance (individual agents, corporate agents, bancassurance model, brokers, insurance marketing firms, web aggregators, insurance advisers, others), investments (AMFI certified agents, investment advisers), pensions (retirement advisers, aggregators), savings and credit (agents under DSA model, representatives of business correspondents, online loan platforms that originate for credit institutions), payments (agents of PPIs, payments banks and other scheduled commercial banks, representatives of business correspondents). Existing regulations pertaining to market conduct are mostly observed in institution-specific or product-specific or distribution channel-specific 'Fair Practice Codes'

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[15] 15(1). An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflict of interests as and when they arise. Chapter III General Obligations and Responsibilities, SEBI (Investment Advisers) Regulations 2013

[16] Hechle.D, Ruenzi.S, Schaub. N, Schmid.M. (2018). "Financial Advice and Bank Profits", Review of Financial Studies, *Society for Financial Studies*, Vol *31*(11), 4447-4492. Available at: https://ideas.repec.org/a/oup/rfinst/v31y2018i11p4447-4492..html. Also see: Cain. D, Loewenstein. G, Moore. D. (2011). "When Sunlight Fails to Disinfect: Understanding the Perverse Effects of Disclosing Conflicts of Interest''. *Journal of Consumer Research*, Vol (37), 836-857. Available at: www.jstor.org/stable/10.1086/656252

[17] Consultation Paper on Amendments/Clarifications to the SEBI (Investment Advisers) Regulations, 2013- First, Second, Third, published on the SEBI website on October 7, 2016, June 22, 2017 and January 2, 2018. Available respectively at: https://www.sebi.gov.in/reports/reports/oct-2016/consultation-paper-on-amendments-clarifications-to-the-sebi-investment-advisers-regulations-2013_33435.html; https://www.sebi.gov.in/reports/reports/jun-2017/consultation-paper-on-amendments-clarifications-to-the-sebi-investment-advisers-regulations-2013_35152.html; and https://www.sebi.gov.in/reports/reports/jan-2018/consultation-paper-on-amendments-to-the-sebi-investment-advisers-regulations-2013_37247.html

rather than them being function-specific (such as for credit, insurance, savings and deposits, payments, investments, pensions). This leads to regulatory arbitrage opportunities for market participants to tend towards seng up businesses under licenses that afford laxer regulatory treatment. This can be both between regulators as well as between different licensing arrangements or in product-level regulations put forward by the same regulator. Some examples are provided below:

- There exists a variety of binding and non-binding codes such as the RBI's Fair Practice Code for NBFCs with a special carve-out for NBFC-MFIs[18], the Code of Bank's Commitment to Customers[19], and the Code of Bank's Commitment to Micro and Small Enterprises put out by the Banking Codes and Standards Board of India (BCSBI), and the Code for Banking Practice put out by the Indian Banks' Association (IBA)[20]. This results in differential regulatory treatment in terms of conduct requirements across RBI-regulated credit providers, for instance, NBFC-MFIs versus all other NBFCs and all banks for credit affordability requirements[21] or NBFC-MFIs versus other NBFCs with regard to the two-loan restriction.

- The BCSBI Code of Banks' Commitment to Customers contains an obligation to ensure suitability, although it is applied only to banks' sales of third-party products[22]. This keeps banks' sales of their own products such as loans and term deposits outside the ambit of such a requirement.

- AMFI has a responsibility to ensure that distributors abide by AMFI's Code of Conduct for Intermediaries of Mutual Funds[23]. However, if distributors also provide complementary or incidental advice to customers, such as on an online platform, they are not covered under adviser regulations.

- There exist two sets of guidelines, namely RBI's outsourcing guidelines and the Business Correspondent guidelines, the latter being a special case of the former with the intention of facilitating financial inclusion. This distinction along the lines of the profile of the end-customer results in an additional supervisory framework and the creation of industry bodies focussed on meeting requirements under this specific network of customer touch-points, while the customer is free to quickly move between the universe of

[18]Available at: https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7089&Mode=0

[19]Available at: http://www.bcsbi.org.in/Pdf/CBCC2014.pdf

[20]Available at: https://www.iba.org.in/customercare/iba-code.html

[21]MFIN, the SRO for NBFC-MFIs, has articulated clearly, a requirement of 'Avoiding over-indebtedness' in the MFIN Mutually Agreed Code of Conduct. To comply with this requirement, member NBFC-MFIs `need to conduct proper due diligence as per their internal credit policy to assess the need and repayment capacity of the client before making a loan and must only make loans commensurate with the client's ability to repay'. Also, entities must have 'Internal checks (reviewed by Board) including through sampling of clients to ensure the efficacy of their processes relating to avoidance of over-indebtedness'. This is therefore the most stringent in terms of credit affordability requirements. The corresponding treatment by the BCSBI Code of Banks' Commitment to Customers is "8.12 Lending: a) We will have a Board approved policy on Loans and Advances. b) We will base our lending decision on a careful and prudent assessment of your financial position and capacity to repay". The Master Circular - Fair Practices Code applicable to other NBFCs has no language around credit affordability requirements. Available at: https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9823

[22]BCSBI Code of Banks' Commitment to Customers states "8.18 Third Party Products: i) we will sell a product to you only if we believe it is suitable and appropriate for you".

[23]Code of Conduct for Intermediaries of Mutual Funds (Revised), AMFI. Available at: https://www.amfiindia.com/research-information/circulars-and-announcements/announcements/revised-code-conduct-of-inter-mf

customer touch-points available to him/her. Similar is the carve-out for microfinance institutions whose end-customers are free to borrow from banks and other NBFCs with less stringent lending restrictions and different conduct standards.

➢ **Capital regulations and product-specific micro-prudential regulations have been em ployed as a mechanism for customer protection, often leading to unintended outcomes**

Certain types of institutions are prescribed higher capital adequacy regulations (consider banks versus NBFCs) and certain sub-categories of NBFCs have stricter capital adequacy regulations than others. For instance, consider non-systemically important NBFC-MFIs and Gold Loan NBFCs who are required to maintain 10% and 12% Tier I respectively, and 15% Tier I & II capital adequacy ratios, as compared to other non-systemically important NBFCs who do not have these requirements. The Working Group on the Issues and Concerns in the NBFC Sector (Chair: Usha Thorat, 2011) acknowledges this use of capital regulations as a subsitute for lighter-touch regulations in other areas[24].

Product-specific regulations such as qualifying assets regulation for NBFC-MFIs, microinsurance regulations, interest rate-caps on loans (base rate + 8%) for qualifying under PSL, and so on, have enabled the orderly development of certain business models and sectors in the economy. However, these have inadvertently also restricted freedoms of institution to innovate in deciding how they want to serve the under-served or low-income customers, even if these regulation were meant to limit exposure of customers to a specific product type in order to 'protect' them. Similar is the carve-out for microfinance institution whose end-customer is free to borrow from banks or other NBFCs with less stringent lending restrictions. Another example is the micro-insurance regulations which have restrictions on the maximum sum assured[25]. While such regulations are aimed at facilitating financial inclusion, these end up creating a product-specific restriction, making the product inadequate for the end-customer.

Such regulations take away obligations on providers to ensure they are acting in the customers' interests and stifle innovation in areas where exclusion is prevalent due to cost and risk considerations that cannot be overcome by traditional business models. This inadvertently keeps certain classes of customers away from accessing and fully benefiting from innovative products and they are left to transact only in 'basic' cookie-cutter products.

India, therefore, does not have a customer protection regime that is uniformly applicable to all financial services providers serving a class of customers who are characterised as 'retail'.

[24]"The CRAR for NBFCs is higher at 15 per cent compared to 9 percent for banks taking into account their size, concentration risk and lighter touch regulation in other areas." Report of the RBI Working Group on the Issues and Concerns in the NBFC Sector (Chair: Usha Thorat, 2011). Available at: https://www.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=647

[25]Upto Rs.100,000 for personal accident insurance, asset insurance and individual health insurance contracts, and upto Rs.250,000 for family/group health insurance contracts. IRDAI (Micro Insurance Regulations), 2015

➢ **Current supervisory mechanisms are inadequate to prevent and comprehensively detect conduct violations, thus leading to systematic under-reporting of mis-sale and unsuitablesale**

While the RBI Charter of Customer Rights enshrines a Right to Suitability[26], the contours of Suitability have not been defined, and are left to banks to interpret. Current supervisory mechanisms have minimal efforts directed towards systematic detection of conduct regulations in a regular manner in a way that is function-specific, such as for violations of affordability assessments across all lending channels, or third-party product sales driven by misleading incidental advice provided by RBI-regulated institutions. Even if such efforts were to exist, they are not placed proactively by the supervisor in the public domain. There is, therefore, a systematic under-representation of, and a lack of adequate evidence on the extent of unsuitable sale to households occurring in today's context (products being unsuited to client needs, unfair contract terms, misleading conduct and market practices of intermediaries and so on).

When it comes to ex-post redressal, a cursory analysis[27] of existing Ombudsman schemes re- veals that there is no recognition of unsuitable sale as a separate category of complaints (except for the Banking Ombudsman which began accommodating complaints around unsuitable sale for third-party products[28] without any reference to banks' own products). In the absence of a preventive regime requiring a higher standard of conduct from financial services providers, customers experience harm, bear losses including financial losses, and seek redress through the Ombuds or the courts (a process that is expensive and can take years to resolve). We consider the absence of such a preventive regime an important factor that could continue to buoy the lack of trust exhibited by under-served customers and households towards financial services providers. There is also inadequate information about 'misconduct' practices feeding back to regulators and supervisors, providing no respite for consumers even in the longer run.

➢ **Unsuitable sales practices that go undetected drive households to sub optimal portfolio allocation decisions**

We present evidence that unsuitable sales practices drive households to sub-optimal portfolio allocation and eventually experience substantial financial distress. Halan and Sane (2016)[29] undertook a mystery shopping audit of third-party insurance and investment products sold through bank branches in an urban centre and found that bankers'/agents' recommendation to customers is shaped by the nature of their own incentives even in cases where such a rec- ommendation was sub-optimal or unsuitable for the customer.

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[26]The RBI's Charter of Customer Rights, 2014. Available at: https://rbidocs.rbi.org.in/rdocs/content/pdfs/CCSR03122014_1.pdf

[27]See blog posts on the topic. Available at: https://www.dvara.com/blog/tag/ombudsmen- framework/; Swarup. D. (2017). "Establishing the Financial Redress Agency", The Leap Blog. Available at: https://blog.theleap journal.org/2017/01/establishing-financial-redress-agency.html

[28]An Amendment to the RBI Banking Ombudsman Scheme 2006, effective from July 1, 2017, widens the scope of the scheme to include non-adherence to RBI guidelines on para-banking activities through improper, unsuitable sale of third-party financial products (such as insurance and investment products offered through banks. Available at: http://rbidocs.rbi.org.in/rdocs/Content/PDFs/BOSS2006_2302017.pdf; Ananth.B, George.D. (2019). "Shining the light on mis-selling in Indian banking", Livemint. Available at: https://www.livemint.com/money/personal-finance/shining-the-light-on-mis-selling-in-indian-banking-1556621985217.html

[29]Halan.M, Sane.R. (2016). "Misled and Mis-sold: Financial misbehaviour in retail banks?", Dvara Research. Available at: https://www.dvara.com/research/wp-content/uploads/2016/08/Misled-and-Mis-sold-Financial-misbehaviour-in-retail-banks.pdf

Prathap and Khaitan (2016)[30] studied the incidence of unaffordable unsecured debt and identified several weaknesses in micro-lending practices that led to repayment distress and negative outcomes for borrower households. Both studies underscore the role of market practices mediating outcomes from access to finance. The Report of the RBI Household Finance Committee (Chair: Tarun Ramadorai, 2017) also reiterated the need to 'clamp down on misselling as was done in the ULIP mis-selling episode'[31].

For households to truly experience gains from participating in financial markets, there is a need to strengthen the obligation of financial services providers to ensure the suitability of their offerings to retail customers.

**➢ The distinction between the distributor and the manufacturer of financial services is progressively getting blurred in terms of who is to shoulder liability for harms and/or losses to the customer, and therefore, approaches that treat them differently are inadequate for the current challenges faced in customer protection**

The financial services sector is experiencing a global trend of transformation through 'disintermediation' and 'modularisation'. Disintermediation is a trend where market participants engage in transactions directly with each other without taking the help of traditional entities providing the function of intermediation (such as banks for deposit and credit intermediation to p2p platforms that directly connect lenders to borrowers). Modularisation is the unbundling of the financial services value chain into different modules such that businesses would evolve from being fully integrated models where functions of manufacturing and distribution are performed by the same institution to ones where multiple partnerships are forged between institutions to supply the end-product to the consumer. India is not immune to these trends[32] and new and untested business models are emerging, such as the creation of marketplaces that move away from one-to-one to many-to-many principal-agent relationships, as well as an explosion in delivery channels for financial services across both offline and online real sector businesses. These trends are resulting in the blurring of lines between financial and non-financial service delivery, and a new level of opacity that makes it harder to monitor and place accountability for customer outcomes. Unauthorised customer data flows can cause a variety of harms to customers and the abuse of customer consent becomes much tougher to monitor. These trends further exacerbate misconduct risk and raises questions on assignment and enforcement of liability in the case of misconduct.

While traditional models of liability have relied on placing full liabilities on the manufacturer of the financial product for the market practices and conduct of its agents and other third-party service providers, newer and updated frameworks are emerging that place liability for conduct on whoever is holding the interface with the retail customer, irrespective of where the underwritten financial risks get warehoused. Also, a similar overhaul of supervisory frameworks is in order given that the watchful eyes of the supervisor can no longer be expected to carry out surveillance of every customer touch-point.

[30] Prathap.V, Khaitan.R. (2016). "When is Microcredit Unsuitable? Guidelines using primary evidence from low-income households in India", Dvara Research. Available at: https://www.dvara.com/research/wp-content/uploads/2017/01/When-is-Microcredit-Unsuitable-Guidelines-for-Lending.pdf

[31] G 87, Report of the RBI Household Finance Committee (Chair: Tarun Ramadorai), 2017. Available at: https: //www.rbi.org.in/scripts/PublicationReportDetails.aspx?UrlPage=&ID=877

[32] Conference Proceedings, Designing Regulations for a Rapidly Evolving Financial System, Dvara Research Financial Systems Design Conference Series 2017. Available at: https://www.dvara.com/research/wp-content/uploads/2017/10/ConferenceProceedings_DvaraResearch.pdf

# B. Our Recommendation on Way Forward

Keep in mind our objective of achieving better financial well-being outcomes for retail customers of financial services, and taking cognisance of the arguments in Section A, we make following recommendations:

1. We recommend ***defining the 'retail customer' with whom all financial services providers must ensure that in their interactions, they are expected to meet conduct obligations as laid down by all financial sector regulators, namely RBI, SEBI, IRDAI and PFRDA***. While the Financial Sector Legislative Reforms Commission (FSLRC) was the first to put forward such a carve-out for the 'retail customer', we go a step further to define the retail customer in a manner that is unambiguous yet flexible enough to accommodate for all foreseeable possibilies that must require conduct obligations on financial services providers engaged with such a customer[33].

2. All customer touch-points for the sale and distribution of financial products and services can be brought under a common umbrella defintion of 'financial services provider', such that anyone who can be idenfied as a 'financial services provider' will be subjected to a set of uniform and universal conduct obligations irrespective of whether they are directly licensed by a financial sector regulator or not. This, therefore, requires a ***shift to a customer protection regime that requires financial services providers to exhibit a set of behaviours against a set of clearly articulated conduct obligations. These conduct obligations are uniformly applicable across different classes of providers who are engaged in the sale of similar products or services. The responsibility on interpretation of these obligation and adherence to them is to be placed on the provider to demonstrate on a reasonable efforts basis.***

   This is to be followed up with a stronger supervisory and monitoring framework and capacity to proactively assess `conduct risk' of regulated institutions by engaging with key persons[34] of these institutions to move towards improved outcomes for their processes, as well as to build in feedback loops into improved regulation.

3. We recommend that an obligation of ***suitability in distribution/sale be introduced on financial services providers in order to ensure that customers' interests are adequately and effectively protected as a matter of business process, and that such an outcome is driven directly by regulator-prescribed market conduct requirements.*** Such a recommendation was mooted for India by the RBI Committee for Comprehensive Financial Services for Small Businesses and Low-Income Households (Chair: Nachiket Mor, 2014). The committee had proposed that, under a Suitability approach, financial services providers would be "accountable for the service to the buyer, by ascertaining

[33] In doing so, we studied approaches in defining the retail customer by UK and Australia. Annexure B provided a brief summary of definions for what constitutes a Retail Customer in these regimes

[34] In developed economies, there is a move towards incorporating personal liability on 'key persons' of financial services businesses. Examples of these are UK FCA's Senior Managers and Certification Regime, Australia's Banking Executive Accountability Regime, Hong Kong's Manager-In-Charge Regime, and Singapore's proposed guidelines on individual accountability and conduct.

that the products sold, or advice given is suitable for the buyer, given her needs and current financial situation''. The FSLRC recognised a right to suitability of advice[35] for the retail consumer, and the RBI incorporated a right to suitability in the RBI Charter of Customer Rights[36]. Suitability also finds mention as a requirement under the Code of Conduct for Insurance Brokers[37]. In articulating suitability, the regulator can lay down what it considers as high-level obligations along functions such as credit, insurance and investments (includes pensions) and monitor the quality of adherence through mystery shopping exercises and off-site reporting requirements as laid out by respective regulators, through significantly strengthened market conduct departments that are empowered to do so. The obligation ***to not make an unsuitable sale or advice*** must lie directly with financial services providers irrespective of whether they are legally licensed as advisers, intermediaries/agents or principals.

4. We recommend that ***all the financial services providers must publish a board-approved policy and corresponding processes on how they intend to comply with such conduct regulations, including the obligation to not make an unsuitable advice or sale.*** This policy must cover the conduct of all employees as well as all channel and distribution partners engaged in specified activities in relation to the retail customer. A regime that moves away from placing predominant liability on front-line staff for culpability in customer protection to one that focuses on the intentions of the boards and senior management of regulated entities in setting organisational processes is not an entirely new approach for India. Regulators already require regulated entities to have in place board-approved policies for a variety of reasons[38]. They can now require regulated institutions to have similar board-approved policies for compliance with conduct regulations. An indicative draft of what such regulations may entail, is covered in Section C.

[35]Chapter 22, Report of the Financial Sector Legislative Reforms Commission, Vol. II: Draft Law. Available at: https://dea.gov.in/sites/default/files/fslrc_report_vol2_1.pdf

[36]RBI Charter of Customer Rights. Available at: https://rbidocs.rbi.org.in/rdocs/content/pdfs/CCSR03122014_1.pdf

[37]3 (e) Ensure that the policy proposed is suitable to the needs of the prospective client. Conduct in matters relating to sales practices, as part of Schedule I - Form H, Code of Conduct - Insurance Broker, IRDAI (Insurance Broker) Regulations, 2018

[38]For instance, RBI requires banks to have board-approved policies on how they will uphold and monitor for its customers, the rights in the RBI's Charter of Customer Rights. It also requires banks to have board-approved policies for customer service (which includes comprehensive deposit policy, cheque collections policy, customer compensation policy, customer grievance redressal policy) and for interest rates on advances (including on charging penal interest rates). IRDAI requires insurers to have board-approved policies on payment of commission or remuneration or reward to insurance agents and insurance intermediaries

# C. Our Proposal for a Set of Universal Conduct Obligations Applicable on Financial Service Providers Serving Retail Customers

1. **Scope**: These regulations apply to all financial services providers engaging in activities in relation to a retail customer, as defined in this regulation.

2. **Definitions**

   a. A **financial product** is a deposit and/or credit arrangement, an insurance contract or a securities contract, or a combination of any of these.

   b. A **financial service** is rendered by a financial services provider when the financial services provider deals in financial products, such as in the sale of securities, acceptance of public deposits, providing credit facilities, and operating investment schemes.

   c. A **financial services provider** is an individual or corporate (other than lawyers, chartered accountants, company secretaries, actuaries or anybody else as specified by RBI from time to time) that is involved in at least one of the following activities, irrespective of the nature of risk-sharing arrangements in place between the financial services provider and any other entities:

      i. engaging in the business of carrying on financial services,

      ii. engaging in arranging, distributing, or assisting in arranging or distributing a financial product or financial service,

      iii. providing financial advice in relation to a financial product or service in (i) or (ii) of this clause, that is either

         1. independent financial advice, where the provider of the advice is remunerated solely by the retail customer for the provision of the advice; or

         2. financial advice that results in a monetary payment to the provider of the financial advice, whether such payment is linked to the sale of a financial product or financial service or not.

   d. A **retail customer** is

      i. a natural person, or an eligible entity but is not a professional customer, and

      ii. who has availed, avail or intends to avail a financial product by engaging with a financial services provider

   e. A **professional customer** is one who meets any of the following criteria:

      i. a financial institution regulated by one by one or more of the financial sector regulator, namely RBI, SEBI, IRDAI, and PFRDA

ii. a Qualified institutional Buyer as defined by SEBI in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

iii. Central or State Governments

iv. a local public authority or municipality which has prior experience in accessing the debt capital markets

f. An **eligible entity** is a limited or unlimited liability company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, society, cooperative society, government or any agency or political subdivision thereof or any other entity that may be treated as a Person under Applicable Law, and with a turnover not greater than Rs. 250 crore.

g. **Activities in relation to a retail customer** are the following activities that the financial services provider engages in, in relation to a retail customer:

i. all communications whether face-to-face, or through digital or other modes, and

ii. all decisions taken by the financial services provider in relation to the retail customer, and

iii. covers all such communications and decisions from the time of first contact, including through an advertisement about a financial product or service by the financial services provider, and is applicable through the period extending from pre-sale including soliciting for sale, point-of-sale, and post-sale period, and for the entire period for which contract between the financial services provider and the retail customer extends.

h. A **Representative** means all employees, individuals and body corporates who act on behalf of a financial services provider in connection with the sale of a financial product or service to a retail customer or the post-sale servicing of such financial product or service.

i. **Financial advice** means, in relation to a financial product or service, a statement, provided either verbally or in written or electronic format, that is intended to directly and/or indirectly influence a retail customer in their decision to purchase and/ or not purchase a particular financial product or service or a class of financial product or service, but does not include product advertisements made by the financial service provider that are not personalised to a particular retail customer and does not take into consideration the retail customer's unique information.

3. **Universal Obligations that the financial services provider must meet:** All financial services providers engaged in activities in relation to a retail customer, must demonstrate that they have taken reasonable steps to ensure compliance with the following obligations.

a. Obligation to act with professional diligence with the retail customer, i.e.; to carry out business that follows the general principle of good faith, with an intention to be fair and in line with honest market practices.

b. Obligation of fiduciary responsibility to the retail customer in the case where the retail customer's monies are entrusted to the financial services provider for purposes of investment and is not a demand deposit made at a regulated bank or monies placed in an e-wallet provided by a regulated prepaid payment instrument issuer.

c. Obligations to ensure that financial product or service that a representative deals in or attempts to deal in with respect to an individual retail customer is *not unsuitable* for the customer, considering the customer's needs, objectives and financial situation, as covered in 3(d).

   i. The financial services provider can choose to not meet this obligation if it can satisfy all the four condions below:

      1. The retail customer must state in writing to the financial services provider that he/she/it wishes to be treated as a professional Customer either generally or in respect of a par ticular financial product, financial service or a type of financial product or financial service;

      2. The financial services provider must give the retail customer a clear written warning of the protection that the retail customer may lose if he/she/it wishes to be treated as a professional customer;

      3. The retail customer must state in writing, in a separate document from the contract he/she/it is entering into with the financial services provider, that he/she/it is aware of the consequences of losing such protections; and

      4. The financial services provider undertakes an adequate assessment of the expertise, experience and knowledge of the retail customer that gives reasonable assurance, considering the nature of the financial product or financial service or type of financial product or financial service requested, that the client is capable of making his/her/its own financial decisions and understands the risks involved.

d. Depending on the specific financial function or a combination of financial functions that the financial product or service is intended to serve for the retail customer, the Obligation in Section 3(c) will comprise of one or more of the following specific Obligations as laid out in Section 3(d)(i) to Section 3(d)(iii).

   i. **Function of credit:** If the financial services provider is dealing in a product that provides the function of credit to the retail customer, it has an obligation to ensure that it conducts, prior to making available the credit facility to the retail customer, adequate due diligence on the retail customer to ascertain the ability of the retail customer to meet his/her repayment obligations when they are expected to fall due (both unique repayment obligations as well as the total repayment obligation under the credit arrangement), out of own income and savings without having to realise security or assets. Where credit is expected to be used for increasing income-earning capacity of the retail customer's livelihood by means of self-employment, the financial services provider must carry out adequate due diligence to ascertain, to its satisfaction, the ability of such investment in increasing the income-earning capacity of the livelihood such that it can generate cashflows that would be adequate to meet his/her re-

payment obligations when they are expected to fall due (both unique repayment obligations as well as the total repayment obligation under the credit arrangement). Any due diligence of the retail customer must not be based primarily or solely on the value of any security that the retail customer is willing to furnish.

ii. **Function of insurance**: If the financial services provider is dealing in a product that provides the function of insurance to the retail customer, it has an obligation to ensure that it conducts, prior to enabling a transaction in relation to insurance, adequate due diligence on the retail customer to ascertain, including through information obtained from the retail customer about his/her financial situation, that the transaction is appropriate and adequate for the customer's interests and needs, and that the customer has the ability to make payments for the premiums when they come due.

iii. **Function of investment**: If the financial services provider is dealing in a product that provides the function of investment to the retail customer, it has an obligation to ensure that it conducts, prior to enabling a transaction in relation to investment, adequate due diligence on the retail customer to ascertain, including through information obtained from the retail customer about his/her financial situation risk profile and capacity, that the transaction meets the customer's investment objectives. Such due diligence must ensure that the customer is able to bear any investment risks related to such transaction in line with his/her investment objectives. Such due diligence must not be based primarily or solely on the risk appetite of the retail customer for a specific product.

iv. In demonstrating compliance with the Obligations in Section 3(c) and 3(d), the financial services provider must invest in efforts that are proportionate to the complexity that the financial product or service can introduce in the financial life of the customer. Such a demonstration of compliance should reflect the risk of harm to the customer, considering the nature of the customer, and the nature of the financial product or financial service provided.

e. Obligation to disclose relevant information about the financial product or service to the customer before the customer decides to purchase the financial product or service, as well as on an on-going basis in a manner that is easily accessible for the retail customer

i. Such disclosure should be accurate, timely, and in a language that is intended to improve the understanding of the product or service by the retail customer.

ii. Obligation to inform retail customer reasonably in advance about impending transactions in relation to the financial product or service purchased, which will cause material changes to the customer's finances.

f. Obligation to ensure that the collection, processing, storage, sharing and use of personal information of the retail customer must not be in contravention of applicable laws and that the decision to seek any information from the retail customer must be taken based on whether it is for a legitimate purpose, i.e., it is lawful, it is necessary for the provision of the financial product or financial service, and it is pr-

oportionate, i.e., balanced against the rights of the retail customer.

g. Obligation to ensure that the design of all forms of performance measurements, remuneration and incentives applicable to the financial services provider or its representatives does not compromise the ability of the financial services provider or its representatives in discharging the Obligations laid out in Section 3.

   i. This is applicable to all forms of benefits and pay structures, whether paid out one-time or otherwise, and whether paid out from the monies of the financial services provider, the customer or of any other entity(ies) who is party to the offering of the financial product or service that the retail customer is purchasing or is considering purchasing.

h. Obligation to avoid conflicts of interest, or where unavoidable, to manage conflicts of interest, arising as a result of any misalignment between the objectives of the business of the financial services provider and the objectives of the customer, that may cause a representative to inadequately perform one's duties as laid out in these regulations towards their retail customers. In managing any conflicts of interest, the financial services provider must not resort solely to the act of disclosing the nature of the conflict of interest to the retail customer, without demonstrating additional efforts to manage such conflicts of interest.

i. Obligation to ensure that one's representatives are trained adequately, and as a consequence of such training, acquire the necessary capabilities to adequately uphold the duties laid out in these regulations towards their retail customers, both at the time of employment and on an ongoing basis.

   i. Such training, at a minimum, is to include relevant generally accepted training programs and certification courses, besides any mandatory training requirements laid out by sectoral regulators.

   ii. The financial services provider must assess whether such training is adequate for the purposes of performing the duties laid out in these regulations towards their retail customers, and where this is found to be inadequate, the financial services provider must ensure additional training is undertaken for its representatives both at the time of employment and on an ongoing basis.

j. Obligation to ensure that the financial services provider has adequate technological capabilities to support its representatives in performing the duties laid out in these regulations towards their retail customers.

   i. This includes the application of technology solutions for the purposes of maintaining customer records of personal data and transactions, protecting the privacy of customers and the integrity of such records, as well as solutions for real-time authentication and posting of transactions, and if impossible, near-real-time authentication and posting of transactions by customers in order to minimise chances of operational fraud.

ii. This includes the application of technology solution that can identify, for every transaction that involves the purchase of a financial product or service, the customer-facing representative involved in the execution of that transaction, including through the use of unique identification numbers mapped to each representative, which get recorded for every sale of a financial product or service by the financial services provider.

k. Obligation to maintain an effective internal grievance redressal (IGR) mechanism that is independent of the sales and operations departments and whose functioning is visible to at least one member of the governing board.

i. The IGR system must have a clear definion for what constitutes a complaint and a dispute and when an inquiry from a retail customer does not fall under these defini ons, the financial services provider must have adequate processes to deal with such queries through mechanisms outside of the IGR.

ii. The financial services provider must ensure that the IGR system deals with complaints and disputes it receives in a fair and consistent manner.

iii. The financial services provider must ensure that the IGR system exhibits responsiveness to the retail customer who approaches any representative of the customer management system with a complaint or dispute. This includes acknowledging receipt of the complaint in a real-time or near-real-time manner and treating the complaint with due seriousness and urgency depending on the severity of the issue and the level of financial risk to the retail customer. However, a final solution must be offered to all complainants within 30 days of receipt of the complaint or dispute.

l. In order to comply with the Obligations in Section 3 in relation to the retail customer, the financial services provider must ensure the following:

i. The financial services provider must put in place board-approved internal policies that provide details of how the financial services provider expects to comply with these Obligations.

1. In putting in place the board-approved policies, the governing board must take a *proportionate* approach, by considering the nature, scale and complexity of business in arriving at the board-approved policies[39].

2. The board-approved policies must be updated from time to time and be approved at least once a year by the governing board of the financial services provider.

ii. The financial services provider must demonstrate at least on an annual basis, the availability of adequate resources, including systems and human resources

[39]For instance, if the financial services provider is a small enty with geographically focused operations in a single product, it can consider relying on a check-list based approach to building and operaonalising the said policies. In contrast, if the financial services provider is a multi-product provider operating across multiple geographies, customer segments and has a large balance sheet, it must have detailed processes laid out for demonstrating compliance with the duties in Section 3.

for the purpose of compliance with these regulations towards their retail customers.

iii. The financial services provider must demonstrate the presence of an effective internal control mechanism that is involved in actively monitoring compliance towards the duties set out in Section 3 in relation to the retail customer and one that provides regular feedback to the governing board on potential areas of non-compliance or ineffective compliance.

iv. If there is more than one financial services provider involved in the sale of a financial product or service[40], and there is a conflict in the manner in which the pertinent policies are to be executed, the policy that is more conservative for the purposes of the duties covered in this regulation, would be applicable, except in a case where adherence to the policy will result in a direct breach of a regulation.

[40]For instance, a lending company that uses the services of a due diligence agency to conduct credit worthiness assessment of a retail borrower, with the loan originated being held in the books of the lending company

# Annexure 1: Distinguishing Between Providing Factual Information and Financial Advice

The Australian Securities & Investments Commission's (ASIC) Regulatory Guide 36[41] provides several examples of making a distinction be-tween *factual information* and *financial advice*, which would suffice to establish that advice is implicit in the process of 'sale' that is typically executed by intermediaries/agents in India. For instance,

Example 1: A client visits their local bank branch with $10,000 to deposit. The client asks for the different interest rates on a savings account and a term deposit and is referred to a customer service officer. The officer provides the interest rates for each of these facilities. This is likely to constitute the provision of *factual information*. However, suppose the officer not only explains the interest rates for each of these facilities but also adds that there is an 'attractive special rate' available on term deposits for a six-month term. This is likely to constitute the provision of *financial product advice* because it is a matter of opinion as to whether the special rate is 'attractive' and the teller could reasonably be regarded as intending to influence the client to choose the term deposit.

Example 2: A client approaches a financial institution to ask about a home mortgage. The client also asks the customer service representative about income protection insurance. The representative confirms that the financial institution also offers income protection insurance products. This is likely to constitute the provision of *factual information*. However, suppose that the customer service representative suggests that the client should consider taking out income protection insurance because it can give 'peace of mind' in meeting mortgage payments. This is likely to constitute the provision of *financial product advice* because whether income protection insurance provides peace of mind or not is a matter of opinion. The representative's suggestion could reasonably be regarded as intending to influence the client to purchase income protection insurance.

[41] Licensing: Financial product advice and dealing. Regulatory Guide 36, ASIC, 2016. Available at: http://download.asic.gov.au/media/3889417/rg36-published-8-june-2016.pdf

# Annexure 2: A Brief Summary of Definitions for what constitutes a Retail Customer in UK and Australia

<table>
<tr><th></th><th colspan="2">Definitions</th><th>Remarks</th></tr>
<tr><td>India</td><td colspan="2">No such definition in India currently</td><td></td></tr>
<tr><td>Proposed by FSLRC[42]:</td><td colspan="2">The value of the financial product or service does not exceed the limit specified by the regulator in relation to that financial product or service. The regulator may specify different limits for different categories of financial products and services. An eligible enterprise is an enterprise that has less than a specified level of net asset value or has less than a specified level of turnover. Each of these caps is to be specified by the regulator</td><td>This definition incorporates both individuals and enterprises. It also takes the route of defining a retail product, and not the customer. This approach is similar to that in Australia (product specific filter) and the UK (size specific filter).</td></tr>
<tr><td>UK[43]:</td><td colspan="2">Anyone who is not a professional client or an eligible counterparty is a retail client.<br><br>Two types of professional clients<br>Per se professional client: includes the following[44]:<br>- an entity required to be authorised or regulated to operate in the financial markets[45].<br>- A large undertaking (corporates, LLPs, included) meeting two of the following size requirements on a company basis: (a) balance sheet total of EUR 20,000,000; (b) net turnover of EUR 40,000,000; c) own funds of EUR 2,000,000<br>- A partnership or unincorporated association with net assets of at least $5 million or equivalent<br>- National or regional government<br>- For local public authority or municipality, which does not manage public debt, they are `retail clients' unless the firm checks to see if they pass the test of whether they are 'elective professional clients'.<br>- A few more categories that are institutional in nature.<br><br>Elective Professional client:<br>The Firm may treat the client as this if it complies with A, C, and where applicable, B, below:<br>A. Qualitative test - the firm undertakes an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved<br>B. Quantitative test (in relation to MiFID or equivalent third country business) - At least two of the following criteria are met: (a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters; (b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000; (c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged<br>C. The following procedure is followed: (a) the client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product; (b) the firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and (c) the client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.</td><td>This definition is characterised by the absence rather than the presence of distinguishing features</td></tr>
<tr><td rowspan="2">Australia[46]:</td><td>Type of Financial Service</td><td>Retail Client</td><td rowspan="2">Product class used to define retail client.</td></tr>
<tr><td>General Insurance</td><td>The person to whom the advice is provided is a retail client if the financial product to which the advice relates is prescribed under s761G(5)(b) (including regulations made for the purposes of that paragraph) and:<br>• client is a natural person; or<br>• the product is or would be used in connection with a small business (s761G(5) and 761G(12)).<br>Note: General insurance products prescribed under s761G(5)(b) are motor vehicle, home building, home contents, sickness and accident, consumer credit, travel, personal and domestic property, and medical indemnity insurance.</td></tr>
</table>

| | | | |
|---|---|---|---|
| | Superannua-tion or Retirement Savings Account | The person to whom the advice is provided is generally a retail client unless s761G(6)(c) applies.<br><br>Note: Advice to an employer about a default fund or other superannuation product is a financial service `in relation to a superannuation product or an RSA product' under s761G(6)(b) and reg 7.1.28AA and, as such, the service is always provided to the employer as a retail client. This is the case irrespective of the size of the employer or the value of their business assets. It does not apply if the employer is the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme that has net assets of at least $10 million, or is an RSE provider. | |
| | All Other Products | The person to whom the advice is provided is a retail client unless:<br>• the price for the provision of the product or the value of the product is above the prescribed amount (s761G(7)(a) and regs 7.1.18-7.1.26);<br>• the advice is provided for use in connection with a business that is not a small business (s761G(7)(b) and 761G(12));<br>• the client has net assets or net income in excess of the prescribed amounts (s761G(7)(c) and regs 7.1.28, 7.6.02AB and 7.6.02AC);<br>• the client is a professional investor (e.g. an AFS licensee or body regulated by the Australian Prudential Regulation Authority (s761G(7)(d) and reg 7.6.02AE); or<br>the advice is provided by an AFS licensee to a client where:<br>• the licensee is satisfied on reasonable grounds that the client has previous experience in using financial services and investing in financial products that allow the client to assess the products and services, and the licensee provides a written statement to the client explaining why it is satisfied; and<br>• the client signs a written acknowledgment that the licensee will not be treating the client as a retail client and giving them the retail disclosure documents: s761GA. | |

[42] Meaning of `retail customer' as laid out in FLSRC Report 1. Available at: https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf

[43] Client Categorisation, Chapter 3, Conduct of Business Sourcebook, FCA. Available at: https://www.handbook.fca.org.uk/handbook/COBS/3.pdf

[44] For a full list, refer Client Categorisation, Chapter 3, Conduct of Business Sourcebook, FCA. Available at: https://www.handbook.fca.org.uk/handbook/COBS/3.pdf

[45] (a) *credit institution*; (b) *an investment firm*; (c) any other authorised or regulated financial institution; (d) an insurance company; (e) a collective investment scheme or the management company of such a scheme; (f) a pension fund or the management company of a pension fund; (g) a commodity or commodity derivatives dealer; (h) a local; (i) any other institutional investor

[46] Licensing: Financial product advisers - Conduct and disclosure, Regulatory Guide 175, ASIC, 2018. Available at: https://download.asic.gov.au/media/4698465/rg175-published-10-april-2018.pdf