

Unrecognised code?

THE NIPS (NON-INVESTMENT PRODUCTS) CODE IS A GOOD PRACTICE GUIDE WITH A DISTINGUISHED PEDIGREE, YET SOME FIRMS STILL APPEAR TO BE UNFAMILIAR WITH IT. GRAHAM BUCK REPORTS.

In 2003, the Bank of England published the Non-Investment Products (NIPs) Code, a good practice guide designed for principals and broking firms in the UK wholesale markets.

Reflecting input from those operating in the foreign exchange, money and bullion markets, the NIPs Code aims to maintain their professionalism and high standards. Its guidelines cover wholesale market dealings in sterling, foreign currency, and gold and silver bullion wholesale deposits; spot and forward foreign exchange; and spot and forward gold and silver bullion.

While the Code is voluntary, it outlines in some detail the standards of good practice for managers and their teams at broking firms and principals. The latter include firms authorised under the Financial Services and Markets Act 2000 and similar firms operating in the UK under the EU passport arrangements. Its audience also extends to companies, institutions, local authorities and other public bodies operating in wholesale markets covered by the Code.

There are signs which suggest that while the Code has undergone periodic updates to reflect market developments in the seven years since it first appeared – most recently in April 2009 – it principally addresses telephone transactions. However, it does acknowledge modern trading methods, with the introduction confirming that “the spirit of the Code applies equally to business transacted via electronic or traditional media”.

Having been developed by market practitioners, the Code is co-ordinated through the Foreign Exchange Joint Standing Committee, the Sterling Money Markets Liaison Group and the management committee of the London Bullion Market Association.

INFLUENCES ON THE LANGUAGE The ACT is one of the professional member associations consulted by the Bank of England when it periodically updates the Code and has influenced its language. Other contributors are the British Bankers’ Association, the Building Societies Association, the Chartered Institute of Public Finance and Accountancy, the London Bullion Market Association, the London Investment Banking Association and the Wholesale Market Brokers’ Association.

Each of these bodies endorses the NIPs Code and commends it to its members, yet there are reasons for suspecting that the Code is less widely recognised than it should be – even after seven years. Despite this, the ACT’s assistant policy and technical director, Martin O’Donovan, believes the likelihood that some firms are unaware of the Code isn’t necessarily cause for concern, as the vast

majority adhere nonetheless to its guidelines by following best practice.

One area where the Code has stirred some dissent is over the third of its four sections, which outlines appropriate controls. This stipulates that “management should have in place, and review regularly, appropriate control procedures that their staff should follow” and its guidelines focus on the phrase “know your counterparty”. It includes four paragraphs, headed Dealing mandates, and the ACT and others lobbied for this section to include a clause stipulating that banks should, when a firm communicates an instruction, check immediately that the action lies within that firm’s mandate. This would create the potential for a firm to be informed that its instruction lay outside the limit of its mandate.

The banks apparently demurred at this requirement though, claiming that carrying out an immediate mandate check each time they received an instruction was not feasible. A compromise was reached whereby Clause 12 of the Code – part of the Dealing mandates section, states that “Consistent with a dealing mandate, a firm may inform a counterparty of changes in its list of authorised traders and limits. Counterparties should use best endeavours to observe such changes.” Using the phrase “use best endeavours” and not “must” somewhat dilutes the duty of the counterparty, being the bank, to note any change.

Clause 14 is also important, establishing that in cases where the bank cannot apply or enforce the stipulations given by them in a mandate from its customer, it is best practice for a written rebuttal to be issued so all parties are clear on the correct procedures.

The full current edition of the Code can be accessed on the BoE’s website at <http://tinyurl.com/3adjh4z>

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