



## Guidance to the ABFA Code

### February 2013 Edition

This document provides guidance on some of the ways that a Member of ABFA might comply with the six commitments of the ABFA Code.

This Guidance contains examples of industry best practices that Members may wish to consider adopting. Unless preceded by the word “shall” or “must” they are not prescriptive<sup>1</sup>. This is not an exhaustive list of such practices. Members can choose other practices. Those Members which are regulated<sup>2</sup> will also have regard to practices and policies imposed to ensure their own regulatory compliance.

Where the context permits, references to the “Code” shall be treated as including this Guidance and references to a “client” or a “guarantor” shall be treated as including a prospective client or a prospective guarantor. A “guarantor” or “guarantee” includes an indemnifier or an indemnity.

<b>Commitment 1:</b>	<b>ABFA Members shall abide by this Code and all applicable laws and regulations.</b>
1.1 Abiding by the Code	<p>ABFA Members shall:</p> <ul style="list-style-type: none"> <li>1.1.1 follow the Code and all applicable laws in all areas of their business activities;</li> <li>1.1.2 regularly review compliance with the Code and provide annual confirmation of the same to the ABFA;</li> <li>1.1.3 annually provide the ABFA with copies of its audited accounts;</li> <li>1.1.4 provide adequate training for staff, bringing to their attention those aspects of this Code that are relevant to them and require them to carry out their duties in accordance with it.</li> </ul>

<sup>1</sup> Accordingly if preceded by the word “should” then such practices are not prescriptive.

<sup>2</sup> “Regulated” means that a Member is part of, or is ultimately or intermediately owned by, an entity which is authorised by the Financial Services Authority (or its successors) to carry on a regulated activity under the Financial Services and Markets Act 2000 or is similarly authorised by a regulator in the EEA or which is a subscriber to the Lending Code of the British Bankers’ Association and other associations, namely the Building Societies Association and The UK Cards Association.



<p>1.2 Maintaining general standards of professional conduct</p>	<p>ABFA Members shall:</p> <p>1.2.1 respect the confidentiality of information supplied by clients, or guarantors; Members are reminded of their duties of confidentiality imposed by the Data Protection Act 1998 and other laws;</p> <p>1.2.2 only disclose information to external parties about clients or guarantors, if permitted or required by law or public duty or if requested by a regulator or government body and (if necessary) an informed consent has been clearly given;</p> <p>1.2.3 ensure that their marketing activities, whether through advertising, sales literature or verbal assertions shall be honest, fair and clearly understandable;</p> <p>1.2.4 ensure that their advertisements do not infringe either the British Code of Advertising Practice or the equivalent Irish Code</p> <p>1.2.5 ensure that any services promoted by them are actually available to the extent and quality described</p> <p>1.2.6 ensure that any arrangement for the making of commission or other payments to anyone who is not an employee of the Member or of the Member's group in connection with the referral or introduction to the Member of a client is disclosed in writing to the client prior to the completion of the legal documentation; such disclosure shall include the name of the party receiving the payment; upon request the Member shall provide details in writing to the Client of the amount of any known commission and the method of calculation of future commission;</p> <p>1.2.7 Members must avoid any actions that bring the industry into disrepute.</p>
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<b>Commitment 2: ABFA Members shall act with integrity and deal fairly and responsibly with clients and guarantors.</b>	
2.1 Making agreements that are in the interests of the client and appropriate to their needs	2.1.1 Products and associated services should perform as clients have been led to expect;
	2.1.2 Any guidance should be suitable and take account of the particular circumstances of the recipient;
	2.1.3 Members shall provide funding responsibly and only offer facilities to a client which they believe are appropriate to the client's needs.
2.2 Protecting the reputation of the Industry	2.2.1 Members shall notify the ABFA of any matters which might adversely affect the reputation of the industry or the ABFA, provided that client confidentiality is respected and all legal requirements are complied with;
	2.2.2 Complaints by one Member about the behaviour or non-compliance with this Code of another Member shall only be reported in writing by a director (or CEO of the Member's asset based finance business) of the Member lodging the complaint;
	2.2.3 Members must have an appropriate whistleblower policy in place. Where a director (or CEO of the Member's asset based finance business) of a Member in good faith raises a matter with the ABFA about another Member, then such director and any employee connected with the complaint must be protected from possible reprisals, harassment or victimization;
	2.2.4 Members shall not knowingly misrepresent facts to clients, guarantors and others.

<b>Commitment 3: ABFA Members shall provide clients and guarantors with all appropriate information in a timely and transparent manner.</b>	
3.1 Providing information on fees and charges	3.1.1 All standard charges (e.g. any charge that is payable as a matter of course and does not relate to services requested by the client on an ad hoc basis) associated with a facility should be made clear in the offer of facilities and in the agreement signed by the client;
	3.1.2 Members should make a prospective client aware that charges additional to the standard charges may apply and, if requested, provide the prospective client with clear and concise details of all such charges which may be applicable



	<p>during the duration of the agreement, in a timely fashion, to allow the comparison of different quotations;</p> <p>3.1.3 Members should notify a client in advance of fees payable for services requested by the client on an ad hoc basis;</p> <p>3.1.4 Unless provided to the contrary in the legal documentation, any changes in fees and charges during the duration of the facility should be advised to the client with a reasonable period of advance notice before their implementation;</p> <p>3.1.5 If a client requests an early termination of the facility without wishing to serve the contracted full period of notice then, if the Member is prepared to accede to such request, any additional fees and charges which the Member will require should be clearly and comprehensively explained in order that a client may make a reasonable evaluation of whether to proceed with such termination;</p> <p>3.1.6 Any payments, charges or any increases (and, where applicable, their method of calculation) coming into effect upon breach of the agreement, whether or not the facility may be terminated, should be clearly stated or explained in the offer of facilities or the legal agreement;</p> <p>3.1.7 Where charges and fees are incurred then a breakdown of their calculation should be provided to the client upon request;</p> <p>3.1.8 Guarantors should be provided with clear and concise details of fees, charges and any information about the client's financial obligations to the Member at any time upon request. Members should ensure that clients give advance consent to such disclosure.</p>
<p>3.2 Providing information on services during the agreement, on notice periods and on what happens upon breach or at the ending of the agreement</p>	<p>3.2.1 Legal agreements with clients should clearly state the rights and duties of all parties to the arrangement particularly specifying:</p> <ul style="list-style-type: none"> <li>a. any minimum period of notice required in order for either the client or the Member to terminate the facility;</li> <li>b. any minimum period during which notice to terminate cannot expire;</li> <li>c. the events giving the Member the right to terminate the facility without any period of notice, even if termination does not take place, together with the financial and other consequences.</li> </ul> <p>3.2.2 It is advisable that Members' agreements which require a period of notice from a client to terminate the facility should not impose any other time restrictions in respect of such notice, such as:</p>



	<p>a. only to expire on an anniversary of the start date; or</p> <p>b. not permitting the client to give a longer notice than that specified in the agreement;</p> <p>However this advice does not preclude the use of such provisions or the inclusion of a minimum period from the start date during which a notice cannot expire;</p> <p>3.2.3 Where a client requests termination of a facility without the required or any period of notice, even though Members may not have any legal obligation to agree, they are encouraged to give reasonable consideration to such request, particularly where continuation of the facility may cause hardship to the client;</p> <p>3.2.4 Members' agreements should make it clear that breach thereof can give rise to a claim for damages by the Member, particularly where the client ceases to perform its obligations;</p> <p>3.2.5 Members' agreements should be clear about the consequences of any event giving a right to terminate the facility;</p> <p>3.2.6 Prospective guarantors and indemnifiers should be advised to take legal advice regarding any document which the Member may ask them to sign.</p>
3.3 Providing information on obligations relating to debts within the agreement	<p>3.3.1 The Client should be made aware that their legal responsibilities to the Member are significant and that if they are, in any way, unsure as to the extent of those responsibilities they should seek independent legal advice prior to the signing of the agreement. Where a Member believes it is likely that a guarantor may be called upon, in due course, to honour their obligations then Members should advise the guarantor of this fact.</p>

<b>Commitment 4: ABFA Members shall ensure that legal documentation issued by them is clearly and unambiguously written.</b>	
4.1 Clarity of documents	<p>4.1.1 Members shall provide clients and guarantors with legal documentation that is clearly written, simple to understand and does not obscure the client's or guarantor's obligations.</p>
4.2 Presentation of documents	<p>4.2.1 Members are encouraged to undertake regular reviews of their documentation in the light of the Code and this Guidance.</p>



<b>Commitment 5: ABFA Members shall provide effective and timely client services in accordance with their legal agreements.</b>	
5.1 Members shall provide an effective and professional service	<p>ABFA Members shall:</p> <p>5.1.1 have effective procedures in place for promptly responding to (and where appropriate investigating) client enquiries or requests;</p> <p>5.1.2 provide factoring services, that in a timely manner, pursue debts and promptly allocate funds;</p> <p>5.1.3 upon the completion of any requisite notice period facilitate a move from one financier to another, should a client wish to make such a change; the ABFA has an established set of procedures to facilitate the smooth transfer of clients between Members which should be used wherever possible;</p> <p>5.1.4 promptly settle any bad debt losses relating to credit approved debts, in accordance with the terms of their legal agreement with the client.</p>

<b>Commitment 6: ABFA Members shall operate their own appropriate internal complaints procedures and the ABFA may from time to time request details of such procedures and anonymised data as to outcomes.</b>	
6.1 Complaints procedures	<p>ABFA Members shall:</p> <p>6.1.1 have in place appropriate internal procedures for addressing complaints;</p> <p>6.1.2 provide details of the structure of their internal complaints handling procedures to the ABFA upon request;</p> <p>6.1.3 provide details of the ABFA Complaints Process to clients and guarantors at the commencement of the facility and whenever a complaint has not been resolved by the Member to the complainant's satisfaction;</p> <p>6.1.4 deal promptly and reasonably with disputes and complaints from clients and guarantors;</p> <p>6.1.5 maintain a log of complaints received and their resolution, making anonymised data from the log available to ABFA upon request. The ABFA will not require any information that is not in line with data protection obligations.</p>
6.2 Participation in the ABFA Complaints Process	<p>6.2.1 On receipt of a complaint referred from or via the ABFA, Members must instigate an investigation and provide an initial response within ten working days and thereafter investigate and report on the matter to the ABFA in a timely manner as to whether the matter has been resolved or remains unresolved. Members will be allowed a total of</p>



	twelve weeks to attempt to resolve a complaint failing which it will be escalated through the ABFA Complaints Process.
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