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**By email: consumerprotectionpolicy@centralbank.ie**

27 June 2018

**Response to CP118 Review of the Consumer Protection Code for Licensed Moneylenders**

Dear Sir/Madam

Shop Direct Ireland Ltd, trading as Littlewoods Ireland ("SDI"), welcomes the opportunity to respond to the review of the Consumer Protection Code for Licensed Moneylenders, and to the proposals and draft regulations set out in CP118.

SDI is appreciative of having had the opportunity to meet the Central Bank to assist it in formulating this response, and would welcome further discussions with the Central Bank once the Bank has considered this response to clarify or expand on any issues the Central Bank believes would be helpful.

As the Central Bank is aware, SDI was formerly a mail order catalogue company, but now operates as an online, digital integrated retailer and credit provider, purely online, supported by a contact centre. It has not distributed a traditional mail order catalogue since 2015. It provides running account credit purely to facilitate the purchase of the retail goods which it also supplies, within an integrated business model. It does not provide credit in cash form, nor for the purchase of goods or services from anyone other than SDI. Additionally, moneylending is only part of its business, with retailing activities also forming a substantial part through the sale of goods to consumers who purchase without opening a credit account with SDI, using debit or credit cards to purchase goods. However, as the Central Bank has referred to SDI's business model as a catalogue business model in the consultation paper ("CP"), for the sake of consistency in this response we will continue to refer to the firm as a 'catalogue' firm, but with the understanding that we no longer produce or distribute catalogues.

As requested, SDI has responded in detail to each of the questions in the CP with the addition of some observations at a more macro level, both of which are outlined in the attached appendix, and expanded on in response to questions 28 and 29.

In our 2007 CP33 submission we argued that there were compelling reasons for treating catalogue firms differently to all others in the sector. We still hold that view and we would wish to engage further with the Central Bank with a view to seeing whether it is possible to address the areas of CP118 that are likely to create the adverse unintended consequences we describe in the attached appendix.

Yours faithfully

Geoff Scully
Managing Director

CONSUMER PROTECTION CODE CONSULTATION PAPER CP118
RESPONSE BY SHOP DIRECT IRELAND LIMITED, TRADING AS
LITTLEWOODS IRELAND
JUNE 2018

## 1. Macro Level Comments:

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| **i.** | **Vast differences in business models in the moneylending sector, leading to unintended consequences.** |
| | As is apparent from the consultation itself, the two catalogue firms in the sector together account for a very substantial proportion of the total number of customers in the sector. However, their business models are very different from the overwhelming majority of businesses operating in the sector, which provide credit in the form of short term, fixed sum cash loans, typically arranged and repaid on a face to face home collected credit basis.<br><br>SDI appreciates the challenges this presents, in terms of the risk of measures introduced to address perceived risks in relation to one business model having unintended consequences in other business models. SDI is concerned that a number of the proposals aimed primarily at risks perceived to exist in relation to "traditional" moneylending has significant adverse consequences for SDI and its customers, which SDI believes must be unintended.<br><br>To avoid these serious unintended consequences SDI believes the measures to be introduced should recognise the different business models and credit products, and different risks and benefits they entail for consumers. They should also be tailored to apply appropriately for each model, rather than apply generically to all moneylenders and all products. In many cases SDI believes this can be achieved through greater granularity and detail in the wording of the draft regulations so as to apply them more precisely, rather than through generic exceptions for specific types of firms, and SDI has suggested amendments where this is the case. |
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| **ii.** | **Regulatory framework for point of sale retail credit** |
| | Whilst in the short-term SDI believes the potential unintended consequences can be addressed through appropriate drafting, SDI believes that in the medium to longer term, as both the moneylending sector and the point of sale retail credit sector evolve, the challenges of regulating point of sale retail credit and traditional moneylending within the same framework will continue to increase. SDI has therefore responded to Questions 28 and 29 with some observations on possible changes to the regulatory framework for credit providers with business models similar to the model operated by SDI. |
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| **Section 4: Responsible lending and acting in the best interests of consumers** | |
| **Section 4.1 Prohibiting Targeted Advertising Reg 8(4).** | |
| **Q1** | **Do you agree with our proposal to prohibit moneylenders from engaging in targeted advertising?** |
| | SDI strongly disagrees with the proposals as currently framed and drafted, and believes there are very serious unintended consequences which would flow from them. |

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| **Q2** | **Do you have any views on the proposed definition of "targeted advertising?** |
| | Whilst SDI agrees that targeting or selection of customers or prospects for purposes that are likely to result in consumer detriment should be prohibited, the proposal as drafted goes much further than this, and appears to take the view that <u>any</u> form of targeting or selection is inherently wrong, regardless of its purpose. This is not the case and indeed selection and targeting is a necessary part of any responsible lending policy.<br><br>SDI is particularly concerned at the breadth of the definition of "targeted advertising", and particularly the interpretation of targeted advertising in the draft moneylending regulations as "[any advertisement that] contains a consumer's name or personal details". At its most basic level this would prevent a catalogue firm sending to its customers any form of mailing (including a catalogue) that contained any details of how to purchase on credit. This cannot be the intent. It effectively prohibits any form of direct marketing of credit via any channel, regardless of the consumer's consent to receive such marketing.<br><br>SDI's integrated business model includes the advertising of credit offers, such as buy now pay later, interest free and other promotional, discounted interest rates, in support of its retail sales. These are personalised to individual customers through both direct marketing (traditional and in digital form) and through the online customer journey when a customer visits the website. However, from a responsible lending perspective, these offers are only available to customers meeting certain criteria in terms of credit worthiness or good account management history. As drafted these proposals would prevent SDI selecting customers for these offers, and communicating those offers to those customers. This is fundamental to SDI's business model. If SDI is unable to select customers who would meet the eligibility criteria for these offers or communicate the offer to the eligible customers, those customers would lose the benefit of buy now pay later, interest free and other discounted rates that would otherwise have been available to them.<br><br>Similarly, when promoting specific retail offers, SDI will consider the customer's available credit they have between their existing balance and their existing credit limit. SDI would wish to exclude from these offers customers who have insufficient headroom, for both responsible lending and customer experience reasons. SDI would not wish to promote an offer that a customer may not be able to afford, or be eligible for. Whilst this is essentially excluding certain customers from offers, it could also be viewed as selecting and targeting the offer at the customers for whom it is appropriate. As drafted the regulations would prevent this.<br><br>These offers can be promoted both by direct channels, and by the personalization of the customer journey for customers who visit SDI's website with offers based on the data SDI holds, such as their account history. We would reiterate that the ability to promote offers such as interest free, buy now pay later and discounted rates to customers who meet SDI's eligibility criteria is critical both to SDI's customer proposition and to our approach to responsible lending. |

SDI is also concerned as to how sub-section (b) of the definition of "targeted advertising" would be interpreted in the context of a running account. This sub-section refers to an advertisement that "*is tailored or delivered in such a manner as to target consumers who have recently made full repayment of a moneylending agreement or who have a moneylending agreement nearing full repayment;"*. SDI understands the concerns within the context of fixed sum cash loans if consumers are being targeted for refinancing or for roll over loans, but this is very different to a customer having a running account facility which they use to purchase retail goods within an overall credit limit. SDI asks that the Central Bank confirm that if a customer has a running account with a reducing balance, (for example, where the customer is making regular payments but has not used it to make a new purchase for some months) the account would not be regarded as nearing full repayment, or as being fully repaid if the balance reduces to zero.

Whilst SDI supports what it understands to be the intent of parts (c) and (d) of the definition of "targeted advertising" (*advertising to consumers with low incomes and those for whom a moneylending agreement may not be in their best interests*) in terms of advertising to particularly susceptible consumers or consumers for whom a moneylending loan is not suitable, SDI believes these should be drafted so-as to be more specific.

As noted in CP118, incomes of consumers in the moneylending sector are typically below the national average, and therefore in many cases could be described as "low". There is therefore the risk that any advertising of moneylending products could be said to be "targeted" at low income consumers. For instance, advertising in media such as newspapers, magazines or TV advertising would typically be placed in publications or programmes that are regarded as having the widest circulation or greatest appeal to the customer demographic. It would be very helpful if the Central Bank could confirm that the choice of particular media (such as specific newspapers, magazines or TV programmes) based on their appeal to a particular demographic, which may typically have a lower than average income, would not be regarded as "targeted advertising" (by virtue of the definition in sub section (c) of "targeted advertising").

Additionally, targeting of advertising requires positive selection based on known criteria, and this is not reflected in the current drafting of sub section (d) of the definition ("*is tailored or delivered in such a manner as to target consumers for whom, due to their circumstances, availing of credit from a moneylender may not be in their best interests;"*), in that there is no requirement for the moneylender to actually know that the loan may not be in the consumer's best interests. SDI would suggest that greater clarity could be produced by amending the draft regulations to reflect this.

In summary, on this point SDI believes that:

- Part (a) of the definition of "targeted advertising" should be removed entirely, so that any form of direct mail or personalisation of in the customer journey is not prohibited per se, regardless of purpose or potential benefit to the consumer;

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| | • The wording of parts (b), (c) and (d) should be made more precise, to address the specific case of running account credit, and to define more precisely the harm that the Central Bank has identified and wishes to address. |
| **Section 4.2 Prohibiting unsolicited contact on foot of referrals from consumers – Reg 20(1) & (2)** | |
| **Q3** | **Do you see any reason why unsolicited contact with a new customer, on foot of a referral from an existing consumer, should not be prohibited?** |
| | "Unsolicited contact" is defined as contact with a consumer without prior written agreement by way of personal visit or telephone call, but not including written contact with the consumer. Whilst this type of referral is referred to in CP118 as being commonplace in the moneylending sector, it does not form part of SDI's business model. SDI trades purely on a distance basis, and does not engage in personal visits, and does not carry out unsolicited cold calling to non-customers via telemarketing. Therefore, this prohibition will have no impact on SDI and SDI has no detailed comments on this proposal. |
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| **Section 4.3 Prohibiting unsolicited contact with existing customers for the purposes of sales and marketing– Reg 20(4)** | |
| **Q4** | **Do you foresee any practical difficulties with our proposal to prohibit unsolicited contact with existing consumers for the purposes of sales and marketing?** |
| | As with the response to Q3, unsolicited contact with existing customers does not form part of the SDI business model and this proposal would not impact SDI. SDI would note that contact via telephone for the purpose of sales and marketing would require consent/opt in under the E-Privacy and Electronic Communications regime in any event. |
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| **Section 4.4 Removing the exception to the unsolicited contact rules for non-cash customers. Reg 20.** | |
| **Q5** | **Do you have any views on the proposal to remove the existing exception from the unsolicited contact rules for moneylenders providing non-cash credit?** |
| | Although SDI only provides non-cash credit and would therefore in theory be able to rely on this exception, for the reasons given in response to Q3, the SDI business model does not include unsolicited contact via personal visit or telephone call, and this proposal would not impact SDI. |
| **Section 4.5 Preventing catalogue firms providing discounts predicated on availing of credit – Reg 22** | |
| **Q6** | **Do you agree with the proposal outlined above in relation to the additional rules specifically targeted at discounts which are predicated on availing of credit?** |

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| | As the Central Bank is aware, SDI's running account includes inherent opportunities for customers using the credit account to avoid paying any interest. These include the ability to avoid any interest by paying off the balance in full each statement period on or before the payment due date (similar to credit cards or store cards), and buy now pay later options. SDI appreciates that this is not typical of traditional moneylending agreements. A substantial proportion of SDI's customers take advantage of these options so that they do not pay interest. These customers can secure a significant discount by purchasing using their credit agreement and then paying in full, thereby avoiding any interest. If SDI were to cease offering discounts to credit customers as a result of this proposal, this benefit to consumers would be lost. |
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| **Q7** | **Do you have any views on what, if any, unintended consequences may arise in implementing this proposal?** |
| | SDI understands that there is no intention to prohibit the offering of discounts linked purely to retail purchases, provided they are not dependent on opening a credit account or purchasing using a credit account; i.e. the discount on the retail item is available regardless of whether the purchase is made using the moneylenders own credit, or by other means such as a third-party credit or debit card. It would be helpful if the Central Bank could confirm this as it is pertinent within an integrated FS and retail business such as SDI's. |
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| **Section 5.1 Enhancing the existing high-cost credit warning statement – Reg 8.5 (advertisements) and 9 (documentation).** | |
| **Q8** | **Do you see any reason why the existing warning statement should not be enhanced in manner [set out above].** |
| | With regard to the principle of "enhancing" the existing warning, SDI would observe that increasing the content of a "warning notice" does not necessarily make it more impactful. SDI would also note that for a substantial number of consumers, "cheaper" alternatives may not be available from other regulated lenders – CP118 comments that the Bank's own market research indicates that 23% of moneylender customers have been declined by credit unions or banks. |
| **Q9** | **Do you agree that the enhanced warning statement should be included in all moneylending advertisements** |
| | SDI would note that as drafted the wording of the proposed warning for advertisements is directed at new applicants for credit, in that it encourages shopping around before applying for credit. SDI believes that if an enhanced warning is regarded as likely to have an impact, this is sensible. Those applicants will then be reminded of the high cost nature of the loan through the warnings required on pre-contract information by regulation 9. However, as drafted, regulation 8(5) requires the use of the warning on all advertisements. SDI would suggest that an advertisement to customers with existing credit accounts, such as a customer with a running account), who have already seen the warnings at account opening and (in future) on pre-contract advertisements, should not need to repeat the warning again. This would also be consistent with the proposed wording of the warning, which, as currently drafted, does not contemplate the position of a consumer using an |

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| | existing credit facility to make a purchase<br><br>SDI notes that the formatting and presentation requirements for warning notices in regulation 12 assume that the notices will be in print format, and, in particular, do not make any reference to requirements in other media formats, such as radio advertising. |
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| **Section 5.2 Requiring Moneylenders to prompt consumers to consider alternatives and shop around for credit. Form of wording in Annex 2. Reg 14** | |
| **Q10** | **Do you have any views on the proposal to require moneylenders to provide consumers with an Information Notice at pre-contract points?** |
| | In relation to the requirement to have the warning on the homepage of the moneylender, SDI would welcome clarity as to how this would apply in the context of a business such as SDI's where the landing page may be purely retail content. Given that the wording of the warning assumes it is presented at application stage, SDI would ask that the requirement for positioning is that it be included at the commencement of the credit application process – this would avoid presenting it to customers who wish to shop without applying for credit, using their credit or debit card, who may be confused by a message which is not relevant to them. |
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| **Q11** | **Do you have any suggestions in relation to the format and content of the enhanced warning statement (section 5.1) or the Information Notice to enhance the quality, relevance or impact of the information provided?** |
| | In relation to the content of the enhanced warning SDI would repeat its observations set out in the previous section, with regard to (i) the risk that lengthier notices have less impact than shorter ones; and (ii) the proportion of moneylending customers who in practice may not be able to obtain cheaper credit elsewhere, despite the content of the warnings. |
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| **Section 5.3 Heightened protection for consumers using moneylending loans to pay for immediate basic needs – Reg 10 and Annex 1.** | |
| **Q12** | **A: Do you agree with these proposals?**<br>**B: Do you foresee any practical difficulties arising from the implementation of these proposals?** |
| | SDI is concerned that, as drafted, this rule would apply to all moneylending loans. However, SDI does not provide credit in the form of cash or any other form which could be used to pay for basic needs such as heating, electricity, accommodation or food.<br>SDI believes that including a question in the application process that explicitly suggests the credit could be used to pay for such basic needs when in fact it cannot is misleading and confusing to consumers. It would also add unnecessary and irrelevant information |

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| | into a consumer journey that is already heavy with prescribed (and not always consumer friendly) information, such as the SECCI, increasing the risk that consumers miss some information that is genuinely relevant to them.<br><br>SDI would therefore ask that, in the same way that the proposed ban on discounts for retail purchases made on credit is tailored to a specific risk and products, this proposal should be limited to those types of credit which could be used to pay for the basic needs, and should not apply if the credit cannot be used by the consumer in that way. |
| **Q13** | **What do you suggest being included within the concept of "immediate basic needs" to which these proposals would apply?** |
| | SDI agrees with the proposal to describe basic needs by reference to accommodation, food, electricity, heating or other similar costs, which appear to be the immediate and urgent needs which could be relevant if the intention is to identify true "last resort" borrowing and need for social and welfare help. |
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| **Section 5.4 Aggregate information to consumers with more than one moneylending agreement – Reg 18** | |
| **Q14** | **A: Do you see any reason why the Central Bank should not prevent moneylenders from providing a second or further loan to a consumer unless the consumer is provided with the aggregate loan information set out above?**<br>**B: Is there any other information that a moneylender should provide to the consumer at the same time?** |
| | SDI does not have any specific comments on this proposal in principle, but would welcome greater clarity. SDI notes that CP 118 refers to running account credit as a "special case" in the context of this proposal, but then does not comment further. SDI presumes that the intention is that ongoing drawdowns under a running account would not be impacted by this proposal, but that if a consumer with an existing running account that still had a balance applied for a second, concurrent account this proposal would apply. SDI would ask that the Central Bank clarifies this application to running account credit.<br><br>From a drafting point of view, SDI notes that whilst the commentary in section 5.4 refers to the new rule applying when a second or subsequent loan is applied for "*prior to an earlier loan being repaid in full*", this is not reflected in the drafting of the actual regulation. As drafted the regulation would apply to any second or subsequent loan regardless of whether the original loan has been paid off in full.<br><br>Additionally, if the original agreement still has a balance but will be refinanced by the second or subsequent agreement (so that there will only be single agreement in force at any time), SDI assumes the intent is that the regulation should not apply. For instance, if an account in arrears is being rescheduled as part of forbearance measures.<br><br>Regulation 18(1) should be amended to include these additional points. SDI notes that the Central Bank has requested at Q27 comments on the draft regulations, together with |

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| | suggestions for alternative drafting or solutions. SDI would suggest amending regulation 18(1) to read:<br>*"A moneylender shall not enter into a second or subsequent moneylending agreement with a consumer* ***whilst there is any sum owing from that consumer to the moneylender on an existing moneylending agreement that will continue in force after the commencement of the second or subsequent moneylending agreement*** *unless the moneylender has provided the consumer ……."* |
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| **Section 6 Debt Servicing Ratio - Reg 26.** | |
| **Q15** | **Are you in favour of the introduction of a debt servicing ratio restriction as outlined?** |
| | SDI has serious concerns about this proposal, both as a matter of principle, and operationally. In particular, we have concerns as to how this could work in practice in the context of a running account. |
| | **Concerns as to Principle:**<br><br>The principle behind the proposal appears to be that it is an accumulation of high cost moneylending debt that tips consumers into financial difficulties, as opposed to other debt or other factors. However, this appears to be contrary to the findings of the Central Bank's own research.<br><br>The Financial Regulator's report on the licensed moneylending industry in 2007 found that "the main reason for struggling with repayments is a drop in income due to work, benefit changes or personal circumstances" (page 4). This is reinforced by the Central Bank's 2013 Report on the Licensed Moneylending Industry which found that, of those customers having difficulty with repayments, 63% cited a drop in household income as the main reason for struggling with repayments. Additionally, 27% cited increases in household expenses (14%) or an unexpected bill (13%) as reasons for having difficulty (page 10).<br><br>This research strongly suggests that a drop in income is the main cause of financial difficulties in the overwhelming majority of cases. The proposed measure focusses on the affordability of the level of outgoings under a moneylending agreement at a particular point in time, and would not protect against a future drop in income. It is therefore difficult to see, based on the Central Bank's own research on reasons for financial difficulty amongst moneylending customers, how the proposed measure will make any material improvement to the number of customers having difficulty with repayments. This is particularly concerning given the significant impact on the sector which the Central Bank acknowledge this proposal could have, and the fact that this is a relatively radical approach, which goes beyond the model already implemented in Australia in a number of ways, including the proposal to extend the restriction to running account agreements, which we understand would not be covered by the Australian model.<br><br>Additionally, the level of borrowings in real terms under moneylending agreements is relatively low (typically under €500), and whilst acknowledging that interest rates may |

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| | be higher than mainstream borrowing, weekly repayments will therefore also typically be relatively low in absolute terms. To the extent that the Central Bank's research indicates increases in expenditure as a reason for financial difficulty, it is increases in household expenditure and unexpected bills that are cited as the reasons. Whilst it may be that some customers faced with such difficulties seek moneylending loans to assist with such problems, it is the underlying household expenditure increase or unexpected bill that is the root cause of the problem. The proposal may prevent customers who would otherwise have been able to obtain credit from moneylenders to assist with such difficulties from doing so. SDI believes a great deal more research should be carried out to understand what wider consequences there may be if access to moneylending loans is restricted in this way, so that consumers are unable to obtain short term credit to assist with increases in other outgoings, such as rent or mortgage repayments, mobile phone bills, and utilities, meaning they default on their repayments elsewhere. The materiality of potentially higher repayments on items such as car loans and credit card debt should also be considered as part of a much wider affordability picture.<br><br>It seems to SDI that this focus on moneylending agreements as a primary issue in the wider affordability picture is at odds with the principles underpinning the new Central Credit Register (CCR). The obligation to submit data to the CCR only applies to credit of €500 or more, suggesting that loans below that limit are not regarded as being sufficiently material to warrant submission, let alone to require a search of the register under section 14 of the Credit Reporting Act 2013 (CRA).<br><br>Furthermore, this disconnect between the requirements under the CRA and the proposals in CP118 will impact the ability of moneylenders to gather data on their customers, or to verify it externally. For loans of €500 and above, moneylenders which are subject to the CRA requirements will be obliged to submit data, but not for loans under €500. Furthermore, as those moneylenders who also supply the goods they finance, such as SDI, are not currently within scope of the CRA (albeit expect to be brought within scope) the data held at the CCR on moneylending agreements is incomplete and inconsistent.<br><br>As a matter of principle, SDI believes that the concept of a debt service ratio based purely on moneylending agreements is only part of a bigger affordability picture. The opening of the CCR to moneylenders in September, with retail firms such as SDI now confirmed as following later, will substantially alter the landscape for credit assessments and affordability. SDI would suggest that any measures as radical as the debt service restriction, which the Central Bank acknowledges could have a significant impact on firms and the sector, be considered only when the full impact of the CCR starts to become clear. SDI would also suggest that any proposals be aligned with the requirements under the CRA, so that, for example, if the figure of €500 is regarded as the materiality threshold for the CCR, it is also taken as the materiality threshold for any assessments under a new debt service ratio requirement. |
| | **<u>Concerns Operationally:</u>**<br><br>Firstly, in a pure online credit application process such as is used by SDI, SDI is concerned as to how it could establish what other moneylending agreements the consumer |

has. At a very practical level, SDI would question how it could even explain to the consumer what a moneylending agreement is. Should SDI include a link to the definitions in the CCA? If SDI tries to explain in less legalistic terms what a moneylending agreement is, it risks being seen as misrepresenting some of the detail, Given the breadth of agreement types within the definition of moneylending agreements, and the complexity of the legal definition, SDI believes the process of asking consumers whether they have any existing moneylending agreements will in practical terms be extremely problematic.

One approach may be for the Central Bank to provide a link which moneylenders could use to explain to consumers what moneylending agreements are, and potentially to check whether theirs are moneylending agreements. In seeking to gauge the effectiveness of this proposal SDI believes the Central Bank should carry out research into the completeness and accuracy of consumer understanding as to whether their loans are moneylending loans or not, and therefore on whether the data they would provide on their level of outgoings on existing moneylending agreements would be reliable?

Secondly, it will not be possible for any moneylender to establish what the outgoings are on any other running account moneylending agreement. For instance, if an applicant to SDI already has an account with a catalogue company, SDI will need to establish their weekly payment with that catalogue company. However, their repayments will change every month as they make purchases and repay their balance. Their balance and repayments may have been zero two days ago, but they may just have bought a €1000 iPhone for which they will start payment next month. Or they may have bought an item four months ago on buy now pay later, and their repayments for that item may not have commenced yet. Even if they make no further purchases, if the minimum payment calculation is based on a fixed percentage of a reducing balance, as is the case on SDI's account, it means the repayment will reduce each month. How can weekly payment under such a running account be established?

Conversely, how will other moneylenders establish what a customer's weekly payment is with SDI when doing their own checks? They would be faced with all the challenges set out above.

With regard to working out repayments under a running account, the Central Bank has suggested using the credit limit as a basis for the calculation. SDI believes this has serious practical difficulties. For example, SDI does not know the repayment terms for any other catalogue company agreements, and cannot calculate what a weekly repayment would be based on notional full drawdown of credit limit. Nor would SDI know what the repayments under its own agreement would be, because they would depend on utilization. They would also depend on type of purchase made – for instance a customer may purchase using buy now pay later, in which case they would have a balance owing but have no repayments for 6 months. Other moneylenders would therefore be unable to work out the weekly repayment under SDI's agreement.

Furthermore, if SDI were to be required to assume that the repayments to it would be based on full immediate drawdown of the credit limit, this will create artificial distortions. As the Central Bank is aware, typical credit utilization is substantially below typical credit

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| | limits, and consumers tend to manage their balances well below their limits. Assuming full drawdown of credit limit would ignore this behaviour. Whilst protecting against maximum potential repayment, it would not reflect reality, and would distort the calculation of repayments on a moneylending agreement as a percentage of income -i.e. in reality a consumer who has only borrowed to 40% of their credit limit and has no intention of borrowing more would be treated as if they had borrowed 100% of their credit limit.<br><br>The proposal also raises the question as to when the assessment must be made on a running account facility. Would it just be at account opening? Or at opening then at any subsequent credit limit increase request? Requiring it at each new purchase would be completely unworkable, and contrary to whole essence of a running account agreement, in which the customer knows they have an approved line of credit. |
| **Q16** | **Do you have any views on what percentage of income the restriction should be set at and whether it should be based on gross or net income (gross income meaning the income, before tax or other deductions, of the consumer and net income meaning the income, after tax or other deductions, of the consumer)? Please provide any data or analysis you have to support your response.** |
| | With regard to the proposals requiring income and repayments to be worked out on a weekly basis, it is possible that income and some repayments may be calculated monthly. A direct weekly equivalent to a monthly payment is not easy to calculate. Do the Central Bank envisage that, for this purpose, monthly payments will be treated as if they were 4 weekly? i.e. there is no need to recalculate monthly payments into accurate weekly equivalents?<br><br>With regard to gross income or net income, we believe there are competing arguments. Gross income is a figure which we believe more consumers would be able to cite readily and reliably. Consumers are less likely to be able to cite their net income with certainty. However, net income is potentially the more useful figure from an affordability assessment point of view, provided it is accurate and stable.<br><br>It is also important that, whichever figure is preferred, household income can be used, not just individual income. A large proportion of SDI’s customer base is female, and bringing up a family, and therefore potentially within a household in which she will be buying for the family as a whole, but may not be the main financial contributor. If only her income is taken into account, access to credit for this demographic may be severely reduced.<br><br>On both these points SDI believes substantial further research is required to obtain a full understanding of the impacts in terms of access to credit. |
| **Q17** | **Should such a restriction also apply to forbearance arrangements for moneylending consumers in arrears? Do you have any views on how it should apply in an arrears** |

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| | **case (e.g., do you consider that different factors also need to be taken into account in such a case)?** |
| | SDI is unsure how this proposal would work in the context of forbearance and arrears. As drafted the proposal would prohibit a moneylender from advancing new credit if the ratio would be exceeded. In an arrears/forbearance situation the credit has already been advanced. Is it envisaged that this would be a cap on repayments, so that total repayments could not exceed the designated percentage of income, split pro rata between all moneylenders with whom the consumer has an agreement – i.e. thereby capping the maximum total payment and extending the period over which arrears would be repaid? |
| **Q18** | **Do you have views on the potential impact the introduction of a debt servicing ratio restriction, as outlined above, might have on consumers and the licensed moneylending sector?** |
| | Please refer to our comments in response to Question 15. We would stress again the apparent disconnect between the sole focus of these proposals on the level of outgoings under moneylending agreements, and the Central Bank's own research into the causes of financial difficulty amongst consumers with moneylending loans. This creates a high risk that radical and far reaching changes, with potentially unknown consequences, will actually bring little or no consumer benefit. Furthermore, there is a disconnect between these proposals and the wider affordability picture, especially the requirements under the CRA. SDI believes much more research must be carried out to establish the impact of these proposals within that wider picture, including the impact of the CRR, and that the proposal should be aligned with of the requirements of the CRR. |
| **Q19** | **Are there any circumstances which you consider should be exempted from such a debt servicing ratio restriction?** |
| | We have commented in detail in response to Q15 on a number of difficulties which we see with the proposed restriction in general. A number of these are specific to running accounts, and for the reasons described above we believe it is not practicable to include running accounts within the scope of the proposals. As we understand it, the Australian model referenced in CP118 applies only to fixed term loans of a duration of up to one year, and therefore running account agreements would be excluded. If the proposal is adopted, we believe it should be introduced on a similar basis. |
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| **Q20** | **How would a restriction operate in the case of running account credit? For example, would it operate on the basis of the consumer's credit limit for the account** |
| | We refer to our comments in response to Q15 for our deep concerns over the practical application of this proposal to running accounts. |
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| **Section 7 – Enhancing the professionalism of the sector** | |
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| **Q21** | **Do you agree with the proposal to introduce an explicit requirement that moneylenders provide on-going training to staff and agents in respect of the firms lending policies and procedures? Reg 7** |
| | SDI agrees with the proposal to make the requirement for ongoing training explicit. |

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| **Q22** | **A: Do you agree with the proposal to require moneylenders to have written lending policies and procedures in place? Reg 27** |
| | SDI agrees with the principle of requiring moneylenders to have written lending policies and procedures, and to monitor adherence to them as part of their overall governance and internal control framework. However, SDI notes that the requirements for the policies as set out in draft regulation 27(6) is very prescriptive in terms of what must be covered by the policies, and in particular in prescribing actual wording for an internal policy document as required by 27(6)(d). Given that the core objectives are set out in 27(5) it seems to be unnecessarily prescriptive to require the policies themselves to contain prescribed wording repeating the statutory objective. |
| | **B. If you agree, should moneylenders be required to address any other matters in their lending policies/procedures?** |
| | As drafted the requirements are both prescriptive as to minimum requirements, and widely drawn. SDI does not believe there are other matters requiring specific mention. |
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| **Q23** | **Do you have any comments on the proposal to require moneylenders to retain records of income and expenditure relied on to assess creditworthiness? Reg 30(e)** |
| | SDI agrees with this proposal. |
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| **Q24** | **Do you have any comments on the proposal to introduce explicit obligations on moneylenders to engage with third parties acting on behalf of borrowers. Reg 32/33** |
| | SDI agrees in principle that firms must engage with third parties acting on behalf of borrower, however the requirement to *"furnish third parties with all consumer records referred to in the request within 10 working days of a written request"* must be aligned with other regulations for the requests/disclosure of information, in particular data subject access requests. This could have the unintended consequence that consumers use this as a mechanism to enforce their right to information within a shorter statutory timescale. |
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| **Q25** | **Do you agree with the proposals on additional rules specifically targeted at tightening the rules around repayment books and collections – Reg 35** |
| | As the Central Bank is aware, SDI issues regular statements to its customers rather than traditional repayment books, and has no comment on this proposal. |
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| **Section 8 – Additional enhancements to the ML code of Conduct** | |
| **Q26** | **A: Do you have any comments on changes** |
| | SDI does not currently offer credit limits below €200 so would not be directly impacted by this proposal. In practice, if SDI were to change this policy in future it would not wish to operate dual regimes depending on whether the credit limit was above €200 or not, and would wish to apply the same policies and procedures in any event. |
| | **B: Introducing specific protection for vulnerable consumers – Reg 24** |

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| | SDI notes that the definition of vulnerable consumer is consistent with the 2012 CPC, and agrees with this approach. SDI also agrees with the adoption of the wording in CPC 2012 3.1 in relation to the steps that a firm must take when it has identified that a consumer is a vulnerable consumer, whilst noting that these are very general.<br>However, SDI is unclear on why draft regulation 24(1) apparently goes further than any provision in the CPC 2012 in requiring firms to take reasonable steps to identify consumers who are vulnerable, and wonders what is contemplated by this in the context of a purely online credit application process. Whilst SDI already operates a specialist vulnerable consumer team in relation to collections and arrears, where telephone contact is regularly used, SDI is unsure of what would be expected in relation to pro-active identification of vulnerable consumers in a purely online context with no personal interaction.<br>In relation to the detailed drafting of regulation 24(3) in respect of maintaining lists, SDI is conscious that records of "vulnerable" status could potentially be "sensitive personal data" for data protection purposes, as well as being sensitive or emotive in a more general sense. Rather than referring to firms being obliged to keep "a list of its vulnerable consumers" SDI suggests that the obligation be amended so that it is drafted in terms of firms being obliged to maintain records of any consumer who has been identified as a vulnerable consumer for so long as they remain a customer of the firm and in a vulnerable state, so that they receive appropriate arrangements and assistance as required by regulation 24(2). |
| | **C: Introducing strengthened requirements for communicating with consumers. Reg 21.** |
| | SDI agrees with the proposals. |
| | **D: Requiring that consumers in arrears are signposted to MABS earlier. Reg 34(4)** |
| | SDI agrees with the proposal |
| | **E: Aligning requirements with wording in the full CPC 2012 where appropriate** |
| | SDI agrees with this is principle, provided the substance is reflective of the business models in the moneylending sector rather than a copy out of the CPC. For example, as stated above, SDI operates an integrated retail and financial services business model, involving the provision of credit under moneylending agreements to purchase retail items. It also operates as a retailer. The integrated nature of the offer means that there is no clear division between its regulated financial services activities and its non-regulated retail activities, so it is impractical for it to have entirely separate sections of its website, as envisaged by the CPC and the new regulation 13(3). Similarly, distinguishing between regulated and non-regulated activities for the purposes of the regulatory disclosure statement is not clear cut in such an integrated business model. SDI fully recognises the requirement for transparency as to the nature of its activities, and for avoiding consumer confusion as to the nature of its products and services, but would ask that this is recognised in regulation 13. Indeed, as drafted regulation 13(2) in particular would suggest that regulatory disclosure is not required unless the relevant activities are <u>solely</u> moneylending, and therefore in an integrated model such as SDI's, entailing a mix of |

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| | retail and financial services, disclosure should not be made.<br>SDI would suggest that this could be addressed if the Central Bank could confirm in its response, or by amending regulation 13, that in the context of a business which consists of an integrated moneylending and retail activity, regulation 13 does not require a complete separation of activities, and that when moneylending and retail activity are presented together and in association with each other, use of the disclosure statement will not breach regulation 13. |
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| **Q27** | **Do you have comments on the draft regulations? Quote the specific provision and if possible provide alternative drafting or solution** |
| | SDI has commented on specific regulations and suggested alternatives in response to individual questions. |
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| **Q28** | **Do you have any suggestions for further reform in the moneylending sector – e.g. are there any gaps or omissions from the protections proposed?** |
| | As indicated in the macro level comments earlier in this response, SDI believes that the challenges of regulating a retail point of sale business model within a regulatory framework primarily created for an entirely different home collected credit model will only increase, particularly as digitalisation increases and new entrants look to develop their business models.<br>Whilst SDI recognises that moneylending is defined in primary legislation, in the medium term, we would query the viability of maintaining a definition of "moneylending" that operates not just by business model, but includes any form of product or model that entails lending over a specified interest rate. This has resulted in a regulatory framework that was designed for the traditional home collected credit industry of 20 years ago being applied to completely different business models, purely on interest rate. It has also created the anomaly that any firm lending on "store card" type agreements (that do not provide credit in the form of cash) at an interest rate of 22.9% or lower would not need to be authorised, licensed or registered with the Central Bank for the purposes of those agreements. Effectively they would amount to an unregulated credit product. SDI has no desire to operate on an unregulated basis, and believes all such lenders should be regulated, both from a consumer protection point of view, and from a competition perspective. SDI therefore believes it is appropriate for the Central Bank to consider whether the current anomaly of a potential regulatory vacuum for retail point of sale credit below 23% interest rates should be addressed, and a new category of regulated business be introduced to fill this gap. This category should apply irrespective of interest rate, so that if a firm fell into this category but was lending at rates above 23%, it would still be regulated as this new type of firm, not as a moneylender. This would also have the benefit of removing from the "moneylending" category a small number of firms with disproportionately large customer bases whose business models are not typical of the sector; are not reflective of the risks at which the regulatory framework was aimed; and who create anomalies and a much higher risk of unintended consequences for the Regulator. SDI stresses again that it does not wish to avoid regulation, but believes that |

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| | it, its customers and the Central Bank as Regulator would all be better served were it to be regulated by a framework that was designed to reflect its business model and the risks and benefits perceived as being entailed in that model.<br>SDI notes that the evolution of the traditional moneylending market from weekly door-to-door collected credit was recognised by the Financial Regulator in 2008 in its public response to CP33, together with the need to differentiate between different types of moneylending. That paper referenced the need to modernise the regulatory framework in financial services regulation, particularly consumer credit legislation. However, in practice the primary legislation was not substantively amended in respect of moneylenders. SDI would ask that this be looked at again. |
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| **Q29** | **Do you have any other views on the overall function and risks of the ML sector?** |
| | SDI has no additional comments, other than to observe that, as the Central Bank has itself noted, a number of the proposals in CP118 are consciously far reaching. For reasons set out above, a number of other proposals would have far reaching impacts on SDI and other firms that SDI believe are unintended. Given that the demographic served by the moneylending sector generally, and to a certain but lesser extent, the catalogue credit sector in particular, may have fewer alternatives than higher consumer demographics, SDI would urge the need for care in introducing any material changes, so that all impacts are fully understood and intended. |