Vestiver Limited

Response to the Central Bank of Ireland Consultation Paper 141 on Crowdfunding Marketing Requirements

Question 1
Do you support the proposal to apply national marketing requirements to CSPs, as foreseen by the Crowdfunding Regulation?

Vestiver Limited supports the proposal to apply national marketing requirements to Crowdfunding Service Providers (CSPs), as foreseen by the EU Regulation 2020/1503 on European crowdfunding service providers for business (the Regulation). The proposal marks a welcome development in a previously unregulated area. The application of national marketing requirements creates a minimum standard of protection for both experienced, professional investors and non-professional investors. It further creates a uniform standard of marketing rules that apply equally to all regulated financial services in Ireland.

The new regulation enables the continued expansion of the crowdfunding market, allowing platforms to apply for an EU passport based on a single set of rules. This replaces the previously fragmented regulatory framework at national level in each Member State. The effect of harmonising crowdfunding regulation puts in place reasonable controls for investor protection on a pan-European basis. This in turn creates an alternative method of financing for companies, which is particularly significant following the pandemic as struggling SMEs search for new methods of financing.

The anticipated positive effects of introducing national marketing requirements for CSPs can be measured against the success of the regulation of the crowdfunding market in the UK. The implementation of regulation in the UK allowed for significant growth of the crowdfunding market, with the UK market comprising of at least half of the European crowdfunding market valued at €20 billion in total. The UK FCA has also recently considered the importance of marketing regulations for activities such as crowdfunding, publishing a Discussion Paper in April 2021 on ‘Strengthening financial promotion rules for high-risk investments and firms approving financial promotions.’ The Paper aims to strike a balance between protecting consumers who invest, and consumers taking responsibility for their own actions, which can be harnessed by effective marketing restrictions. It is our opinion that the Consumer Protection Code 2012 (the Code) will provide a similar, streamlined approach to protect investors in relation to marketing requirements, with the aim of enhancing transparency and growing the sector throughout Europe.

Question 2
Do you consider all of the proposed advertising requirements for CSPs are appropriate to the business model of CSPs. If not, please specify:
1. which provision is not appropriate and why; and
2. whether the entire provision should not apply, or whether it could be amended to fit with the CSP business model.

Vestiver Limited considers that all of the proposed advertising requirements for CSPs are appropriate to the business model of CSPs.

A concern has been raised by members of the crowdfunding community in Ireland that while the provisions of the Code are easily applied to traditional forms of media, they might not be as effective for contemporary digital platforms. We believe that this concern is resolved by the Consumer Protection Code Guidance Paper 2012 published by the Central Bank of Ireland (the Central Bank), which has at its objective that consumers should receive balanced information in relation to advertised products or services. Regulated entities are expected to bear this in mind when designing their advertisements that should include a regulatory disclosure statement.

As a consequence, where a web banner advertisement or Google Ad is of a size that renders the regulatory disclosure statement required by provision 9.1 of the Code impractical, it is acceptable to link the web advertisement to a page on the regulated entity's website on which the regulatory disclosure statement is clearly displayed. In line with the Central Bank's Guidance, we believe that this solves the practical problem of applying the Code to marketing on digital media platforms, which are regularly used to promote crowdfunding activities.

One particular provision of the Code which is particularly useful for marketing of crowdfunding activities is the Code Provision 9.13, which states that any recommendations or commendations quoted within an advertisement are fair, accurate and not misleading and attributed to its source. This is important due to the nature of crowdfunding platforms, where numerous campaigns may run simultaneously, and the need to provide verifiable information to investors in relation to their potential investments. It aligns with the EU Regulation's objective that marketing communications should be fair, clear and not misleading, and shall be consistent with the information contained in the key investment information sheet (KIIS).

Question 3:
Do you consider that there should be additional advertising requirements for CSPs, appropriate to their business model, in addition to those proposed here? If so, please provide details.

Vestiver Limited does not consider that there should be any additional advertising requirements for CSPs. The challenge of implementing marketing requirements for CSPs is to strike the correct balance between creating minimum thresholds for investors, and to maintain a standardised level of protection across all regulated financial services in Ireland.

Prior to the EU regulatory developments, the Department of Finance published a Feedback Paper on the Regulation of Crowdfunding in 2018. The response generated was that crowdfunding should be regulated in Ireland, but that it should be proportionate and facilitate the development of growth in the industry, rather than stifling it. Thus, the uniform application of the Consumer Protection Code 2012 acts as an effective tool for both sophisticated and non-sophisticated investors without imposing restrictions that will hamper the development of the crowdfunding space in Ireland.

The UK FCA has identified that protection of investors is managed not only by risk warnings, but also by categorising retail investors based on their net worth and their investment experience, and by adding positive friction to the consumer journey when making high risk investments. It is clear that imposing marketing requirements alone will not act as an all-encompassing safeguard against investors making inappropriate investment decisions. The proposed marketing requirements in the Code are reasonably sufficient to protect investors from potential harm, which are bolstered by the additional non-marketing protections included in the Regulation. These include the provisions that all information from CSPs to clients should be fair, clear and not misleading (Article 19), the entry knowledge test and simulation of ability to bear loss for non-sophisticated investors (Article 21), a pre-contractual reflection period for non-sophisticated investors (Article 22) and the provision of the key investment information sheet (Article 23). Thus, it is clear that marketing requirements are only one aspect of investor protection envisaged by the Regulation, which lays down uniform and proportionate requirements that will promote the smooth functioning of cross-border crowdfunding services within Europe.

Question 4:
Do you prefer Option A or Option B as the proposed warning to be required in advertisements? Please explain your reasons for this preference.

Vestiver Limited prefers Option A as the proposed warning to be required in advertisements. The existing warning for other regulated financial services under the Code is considered unsuitable for CSPs, and the new warnings proposed are suggested to support the Key Investment Information Sheet (KIIS) required by the Regulation.

One of the key intended outcomes for consumers as a result of implementing the Regulation is to provide an equivalent level of protection in relation to marketing communications for crowdfunding as are in place for other regulated financial services. It follows that the warning should align as much as possible with the existing warning that '*the value of your investment may go down as well as up.*' As no other investment product is required to state in a warning that the investment is not covered by a deposit guarantee scheme or by an investor compensation scheme, then CSPs should not have to give this additional warning. It is our opinion that Option A is a more appropriate diversion from the existing warning, drawing attention solely to the risk of partial or entire loss of money. We believe this is more effective in striving to achieve an equal level of protection across all regulated financial services in Ireland.

On a more practical level, it is possible that the shorter version of the warning might be preferable from a consumer perspective. This is evidenced by the UK FCA's research on marketing requirements, which found that the most preferred option was that a risk warning should be 'shorter, sharper and written in plain English.' Additionally, the Central Bank of Ireland Guidance in 2012 noted that where the key information is prominent, the advertisement is more understandable and therefore likely to be of greater interest. It was observed that the focus should be on not overburdening the consumer with excessive information that can potentially cause more confusion than providing insufficient information. A shorter warning ensures that the risks will effectively be brought to the attention of the investor, and allows them to understand the potential risks of their investment.

It is important to also bear in mind that the lengthier warning required by the KIIS will still be retained, and it is only in a CSP advertisement that the shorter warning should be used. Thus, a shorter warning would not be considered to be a weakening or a dilution of the standard of protection afforded to investors. This is particularly relevant in the context of online advertisements, where the CSP has only limited space in which to both promote their platform and notify the consumer of any potential risks.