

Financial Services Consultative Consumer Panel

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Policy Unit

International Credit Institutions

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Dear Sir/Madam,

We refer to the Consultation Document CP 43 dealing with related party loans. A new dispensation exists in regulation and this should mean that codes should provide a template as to the behaviours and actions of suppliers and regulators from the initial launch of a regulatory initiative through to the enactment of regulation by the regulated parties and the institutions of the State. Our comments below reflect this perspective.

The Panel has previously responded to a consultation on aspects of this issue. Observations we made in 2009 remain pertinent. The current consultation document makes no reference that such a consultation was undertaken and the CBFSAI should clarify what status the submissions made at that time from all parties have in the present process.

The Panel welcomes the thrust of the proposed regulation in this area. We note that it is not proposed to deal with this issue by way of statutory instrument. This is regrettable as it diminishes the status of the obligation, notwithstanding any marginal inflexibility it might introduce to the process. A statutory instrument ensures alignment between the CBFSAI, the Department of Finance and the Oireachtas and this cohesiveness was never more necessary from a consumer perspective.

The proposed obligation does not indicate which officer will be responsible for making the returns to the Financial Regulator. The draft code makes reference to the licence held by the credit institutions and links obligations under the code with the terms of the licence. As this issue is essentially a governance matter that concerns the Board, we recommend that these returns be submitted by the Company Secretary or his/.her nominee. This way responsibility is crystallised at an appropriate level with an individual charged with compliance with respect to the conduct of Board business in a financial institution.

In addition to the matters referred to in paragraph 1.5, we believe that it is incumbent on the CBFSAI to factor in to its design of policy in this area the record of credit institutions with respect to compliance. In the last decade, how many executive directors and past executive directors have had to stand aside in one way or another from governance roles as result of matters emerging with respect to roles and disclosures in credit institutions? The CBFSAI has far more information than is in the public arena on this issue, but even what is known to the public gives cause for concern. Thus the design of the method and manner of enforcement will be particularly relevant to this code on a prospective basis

The Panel commends the explicit provision, regarding efforts that might be made to circumvent the rules in this area. The Panel also appreciates the manner in which exposures to entities controlled by related parties are brought into the draft code. It seems evident that there is a tipping point for credit beyond which the rewards for lending are outweighed by the institutional risk such exposure brings. The CBFSAI does need to be satisfied that any off balance financing vehicles, derivative instruments and the spectrum of letters of comfort through to specific guarantees are properly covered within the terms of the code. In the event of a credit institution being uncertain regarding the treatment of a transaction with respect to returns, there should be an obligation on the institution to make full disclosure regarding the transaction to the CBFSAI with a view to seeking clarification on its treatment. This should only arise in exceptional cases and if a pattern emerges, the CBFSAI should update this code to reflect the appropriate treatment. An underlying principle in this domain should be that economic substance takes priority over legal form.

The position of cross border institutions operating in Ireland that are exempt from the code is worthy of comment. The CBFSAI should give a commitment to work towards a policy goal at a European level to have similar protections adopted by its peers through the Committee of European Banking Supervisors. It is not sufficient for Irish policymakers to adopt a purely passive stance on this if they wish to protect Irish or indeed European consumers. In the latter case, reputation issues are significant for the financial services sector here and require active public policy management. Finally, the CBFSAI needs to answer the question with clarity whether Irish customers transacting with overseas regulated institutions are protected to the same degree as those that are subject to this code.

In paragraph 4.5 there is reference to the credit granting processes in credit institutions. Irish consumers have been alarmed that there has been difficulty establishing in certain institutions the proportion of performing loans among those transferred to the National Asset Management Agency. Recent authoritative reports also found that good lending practice was absent to an unwelcome degree in credit institutions operating here. The CBFSAI needs to demonstrate how this code serves to secure compliance with its provisions for related parry loans and indeed include a commitment to address this issue in its inspection regime. It is no longer sufficient to issue codes that are not matched by an explicit assurance of this nature against which the CBFSAI's performance can be judged. Elegance in the design of the codes must be matched by elegance in their execution. The Panel has made reference previously to the concept of *end to end regulation* being adopted. This means that those responsible in the CBFSAI for this regulatory object conduct a scenario analyses regarding substantive compliance. They then need to ensure there exists a set of regulatory tools and responses necessary to tackle whatever unfolds in a timely, proportionate, behaviour changing, and risk reducing manner.

At an aggregate level, the CBFSAI should report externally on the substance of the returns received from credit institutions so that there is transparency with respect this dimension of governance. Such a report would represent an indicator with respect to the conduct of the affairs of credit institutions that is relevant to the customers of these institutions and to policy makers

If you wish to clarify any aspect of this submission please do not hesitate to contact us. Kindly acknowledge receipt

Yours sincerely,

Handwritten signature of Raymond J. Bourke in blue ink, with a horizontal line underneath the name.