Consumer Protection Codes Department
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

10 January 2011

**Consultation Paper 47: Review of Consumer Protection Code**

Dear Sir/Madam

We support the Central Bank's current review of the Consumer Protection Code (CPC) and welcome the opportunity to participate in the consultation process. The original CPC, issued in 2006, brought about significant change in the manner in which regulated entities engage with consumers. The Code introduced valuable protections for consumers and has also been of benefit to industry. It is timely to now review the Code given that it has been in operation for over four years, with many useful lessons learnt on all sides over that period. We understand that the Central Bank now wishes to use the experience gained with the original CPC to enhance and refine the consumer protection measures in place. We fully support this objective.

In our analysis of the proposed revisions to the Code, we have focussed on areas where we feel that the proposal may not in fact have the desired effect of increasing consumer protection or where there might be unintended consequences arising. We have tried to set out some practical examples of these difficulties and, where possible, we have suggested alternative solutions.

In relation to future consultation papers, we feel that it would be helpful if the Central Bank could outline the background to the more significant changes to existing rules and also set out the regulatory objectives for the changes. This would assist us in formulating a response and also allow us to work with the Central Bank is order to examine whether a different approach could be used to achieve the regulatory objectives.

We set out below some of the key high level issues arising from our review of the Code. The schedule attached provides greater detail on specific rules.

**General**

We currently have a situation in Ireland where regulated entities must have regard to a number of different but overlapping pieces of legislation and Codes of Conduct when carrying out business with consumers. For example, a bank selling a personal loan must have regard to the Consumer Credit Act, 1995, the Consumer Protection Code, the European Communities (Consumer Credit Agreements) Regulations, 2010 and, where relevant, the European Communities (Distance Marketing of Consumer

Financial Services) Regulations 2004. We believe that, looking to the future, a project should be initiated to consolidate these rules and requirements into a single rulebook.

In addition, it is critically important that any domestic regulatory initiatives be consistent with developments at EU level. There are currently a number of active consultations of the European Commission in relation to the Markets in Financial Instruments Directive (MIFID), Packaged Retail Investment Products and insurance mediation. There are a number of issues being addressed by these consultation papers that are also the subject of revisions to the Code. There is a danger that by imposing regulatory requirements in Ireland that go beyond those required by the European Commission, the attractiveness of Ireland as a place to do business for overseas financial institutions will be reduced. The impact of this will be reduced choice for consumers.

**Remuneration Disclosure**

This section of the Code proposes the disclosure of all commissions and fees received or to be received from a product producer. The issue of payment of commission to intermediaries is a complex one. We acknowledge that this issue was discussed during the Review of the Intermediary Market. However, banking and investment products did not come within the scope of that Review. This proposal has potentially far reaching consequences for the financial services market in Ireland and should ideally form part of a separate consultation.

**Execution Only Business (Chapter 5)**

CP 47 proposes a change to the circumstances in which execution-only business is permitted. While we do not believe that it was the Central Bank's intention, the impact of the change in wording is that execution-only business may now be banned outright. The wording in this rule has changed from that set out in the existing CPC so that the definition of execution-only business now requires that a financial institution has "not engaged with" the consumer. Under the previous definition, the requirement was that the consumer had to specify the product and the provider and had not received any advice. We believe that this rule worked well in that the term "advice" is defined in legislation and so offers certainty to both the financial institution and the consumer. There is a danger with the current wording that the phrase "not engaged with" could be widely construed thus preventing any execution-only business.

We would be grateful for confirmation that the Central Bank does not intend to prohibit all execution-only business. Such a prohibition would result in a significant structural change in the market. We would support a reversal to the original definition of execution-only under the current CPC (Rules 2.24 i) and 2.30 i)).

**Knowing the Consumer/Suitability Rules for Vulnerable Customers (Chapter 5)**

We understand the concerns of the Central Bank in relation to the protection of vulnerable customers and agree that regulated entities should take particular care when dealing with these customers. However the wording of the definition of vulnerable customer will give rise to significant practical issues in the implementation of the Code. In particular, the list of specific factors rendering a consumer vulnerable

could result in what consumers might consider intrusive and insensitive questioning by regulated entities.

We suggest that, rather than setting out a prescriptive list, the Code should contain a 'reasonableness' test so that where the regulated entity is aware or ought reasonably to be aware of circumstances that designate a consumer as vulnerable, then additional care must be taken when providing a service or product to the customer.

Data relating to vulnerable conditions (as defined in the Code) relating to ethnicity, physical or mental health, or mental capacity constitutes Sensitive Personal Data under the Data Protection Acts and would require to be very carefully and specifically processed. We have a concern that the retention of such Sensitive Personal Data might be contrary to the principles set out in the Data Protection Acts. It would be helpful if the Central Bank could engage with the Office of the Data Protection Commissioner on this issue. It would also be helpful if perhaps the Central Bank and/or the DPC could issue guidance on the issue of striking the appropriate balance between meeting the requirements of CPC and not requesting and/or recording excessive information.

**Unsolicited Communications (Chapter 3)**

The existing consumer protection regime includes provisions regulating unsolicited communication to both existing and potential consumers. We believe that this regime has worked well and provides adequate controls to prevent consumers receiving unnecessary and/or unwanted calls. The proposed changes to the Code in relation to Unsolicited Contact will ban unsolicited calls to any potential consumer, including small business consumers, and those consumers who have consented to such contact. The new rules will prevent regulated entities from engaging their consumers on products or services that can be of benefit to the consumer. Furthermore, the revised time and day restrictions will work against those consumers who cannot deal with their personal financial affairs during a traditional working day.

Consumers already have the protection of the National Directory Database whereby they can opt in or out of direct marketing calls. AIB check this Database in respect of non-customers before making marketing calls. The Database may already achieve some of the desired objectives of the Central Bank in this area while leaving those consumers who are happy to receive marketing calls free to do so. In addition, AIB consumers have the opportunity to indicate their marketing preferences to regulated entities, both at the start of the banking relationship and each time they take out a new product.

**Restrictions on Arrears Handling (Chapter 9)**

Given the challenging economic climate, a number of consumers are finding it difficult to meet their various financial commitments. We are working with these consumers to help them to find a solution. The recently revised Code of Conduct on Mortgage Arrears addresses situations where consumers find themselves in arrears on their primary residence. That Code sets out some pragmatic steps that can be taken by the regulated entity and consumers in order to manage the arrears problem. One of the preconditions of that Code is that the consumer is co-operating reasonably and honestly with the lender. We believe that this condition should also apply to non-

mortgage arrears so that the restrictions set out in this Chapter do not apply where the consumer is not co-operating reasonably and honestly with the lender.

**Errors Handling (Chapter 11)**

As currently drafted, Chapter 11 will apply to all errors occurring within a regulated entity including those which do not impact on customers. We believe that this scope is too wide and that only those errors with a negative financial impact on consumers should be caught.

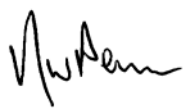
This Chapter also introduces a requirement that errors be fully resolved within six months of the date of discovery. We acknowledge the importance of resolving errors speedily and reimbursing consumers in a timely manner where necessary. However, situations will arise where it is not possible to implement all IT systems changes required to fully resolve an issue within this six month period. We suggest, therefore, that the provision whereby the regulated entity and the Central Bank may agree an extension to the six month period, as set out in your industry-wide letter of 11/06/2010, be included in this rule.

**Timetable for Implementation**

Many of the proposals in CP 47 will require detailed internal process and operational changes as well as significant IT development. Given the current pace of regulatory change, our IT departments already have a very heavy workload. We would request that the Central Bank take this into account when deciding on the implementation date for the new Code. The revision of CPC is just one of a series of regulatory initiatives driven by the Central Bank and European bodies, most of which require significant IT development. This creates a huge challenge for regulated entities in meeting implementation deadlines. We suggest that the Central Bank liaise with relevant industry bodies to fully assess the scale and implications of all the requirements now being introduced and to try to co-ordinate regulatory changes.

Furthermore, we would welcome an opportunity to meet with you to discuss those areas of the Code that will pose the most significant challenges from an implementation perspective. We would, of course, also be happy to discuss this submission with you.

Yours sincerely



Philip Brennan

Group General Manager

# Schedule

## Questions

Where relevant, we address the questions posed at the start of the Consultation Paper in our specific comments below.

## Chapter 1: Scope

The Code does not apply to "bureau de change business". The wording has changed from that set out in the existing CPC i.e. "This Code does not apply to regulated entities when carrying on the business of a 'bureaux de change' … within the meaning of Part V of the Central Bank Act, 1997". We would be grateful for clarification that the new reference to bureau de change business has the same meaning as that set out in the 1997 Act, i.e., "a business that comprises or includes providing members of the public with a service that involves buying or selling foreign currency".

## Chapter 3: Common Rules

General Requirements

3.2 AIB supports the view that all instructions received from consumers should be acted on promptly. However, it will not always be possible for a consumer's instruction to be processed completely within two days. This would not, for example, be possible where the consumer requests duplicate statements. We recommend that the phrase 'acted upon' replaces 'processed' so that the first sentence of this rule reads "A regulated entity must ensure that all instructions from or on behalf of a consumer are acted upon properly and promptly."

The word instruction will not be appropriate in all situations. For example, a consumer cannot "instruct" the regulated entity to give him/her a mortgage or to do anything that the regulated entity is not obliged to do or has discretion in respect of.

3.4 We note that receipts are already issued in the case of payments by an insurance intermediary in accordance with Section 30 of the Investment Intermediaries Act, 1995. Please confirm that these receipts meet the requirements set out in Rule 3.4.

3.7 We support the application of this Rule for documentation such as product brochures. However, we feel that the suggested Rule would compromise the effectiveness of advertisements as a communication medium to consumers. The requirement for warnings to be separate to other information and alongside the benefits of the product will show a disproportionate amount of text beside the benefits and would make it difficult for a consumer to distinguish key messages. It would also be difficult to apply to differing media formats e.g. television. We propose that Rule 2.6 in the existing CPC should be retained.

3.8 This Rule should clarify that it only applies to situations where the regulated entity has been made aware of the existence of the power of attorney.

Tying and Bundling

3.13 It should be clarified that the feeder accounts falling under Rule 3.14 are not subject to the restrictions on tying in this Rule.

3.14 This Rule should apply to feeder accounts that are opened solely for the purpose of availing of another product.

However, feeder accounts are often current accounts that are already in operation for the consumer. A separate rule should apply to these types of accounts so that transactions for the purpose of "feeding" the other product should be exempt from fees. Other transactions on the current account should be subject to normal banking charges. In addition, where the feeder account is already in operation, the regulated entity should not be required to seek the request of the consumer for the additional facilities (3.14 (c)). We suggest amending (c) to read "Where the feeder account is opened solely in order to avail of another product and where additional facilities are available…"

3.15 We propose that this rule should be amended to read as follows: "A regulated entity is prohibited from bundling except where it can be shown that there is no adverse cost impact for the consumer."

3.17 If a consumer is allowed to exit a bundle and retain any product in that bundle without the imposition of a charge or penalty, this could encourage inappropriate customer practices. For example, if a consumer has purchased car insurance, and at some later point, during a promotion, is offered home insurance at a discounted rate, by virtue of already holding the car insurance, it would appear inequitable for the consumer to purchase home insurance at the discounted rate, cancel the car insurance, and retain the home insurance at that rate.

This rule could also act against consumer interests in that it will limit the amount of special offers that regulated entities can make.

Payment Protection Insurance

3.19 We agree with the view that a consumer should be aware that he is buying a separate product. However, the impact of having two separate application forms is that the consumer will be asked to provide the same information twice. This may be considered by the consumer as not adding value and being consumer unfriendly from a service perspective.

We suggest that a common document could be used to collect static data. A separate form could be used on which the consumer can sign to purchase the payment protection insurance and to indicate their understanding of the insurance product.

Conflicts of Interest

3.23 We agree with the need for regulatory requirements to address conflicts of interest. However, for larger financial services organisations, this Rule could result in a very lengthy conflicts of interest policy. We suggest, therefore, that the words "or supporting procedures" be inserted after "The conflicts of interest policy" in the second sentence.

3.24 It is not uncommon for situations to arise in normal banking business where a bank may be providing credit to two consumers seeking to purchase the same

asset or where a bank may be dealing with both the seller of an asset and the potential buyer. This Rule seems to be saying that these situations are not permitted. We believe that the management and disclosure of conflicts of interest is already adequately dealt with in Rule 3.25 and, therefore, Rule 3.24 is unnecessary.

Unsolicited Contact (Coldcalling)

We understand that problems with financial institutions making sales visits to the homes of personal consumers may have prompted some of the proposed changes to the unsolicited contact rules. We agree that such visits are inappropriate. As an alternative to the proposals currently set out in this Chapter, we suggest that the Central Bank examine whether it might be possible to restrict the making of personal visits to personal consumers while allowing these to continue in a controlled manner for business consumers. Businesses already have sales representatives from various industries calling to them on a regular basis.

Many telephone calls to consumers do not involve the conclusion of a sale of a product or service. The call simply results in the consumer making an appointment with the regulated entity to meet to discuss a product/service or to carry out an assessment of the consumer's financial needs. We do not believe that these types of telephone calls need to be subject to the unsolicited contact restrictions.

3.29 We agree with the principle that consumers should not be harassed by nuisance telephone calls. To guard against such calls, there are already a number of consumer protection measures in place. These include:

- National Directory Database;
- Customer marketing preferences as provided to the regulated entity; and
- Cooling off periods provided in the Distance Marketing of Consumer Financial Services Regulations

We believe that the restrictions proposed in CP 47 have the potential to work against the interests of consumers by severely limiting the situations in which a regulated entity can contact a consumer. Regulated entities will be restricted from contacting consumers in order to discuss with them products that might be beneficial for the consumer.

We note that the proposed Code, unlike the existing rules, does not allow any telephone contact by the regulated entity with potential customers. We do not agree with this proposal. As set out above, we believe that there are already adequate consumer protection measures in place.

3.30 Clarity is required regarding the definition of 'product' in this Rule, e.g. if a consumer holds a savings account, may they only be contacted about another savings product? The existing Code uses the wording "where the regulated entity has, within the previous twelve months, provided that consumer with a product or service similar to the purpose of the unsolicited contact". We believe that this wording should be reinstated. As currently worded, the Rule seems to prevent us from contacting a customer who has surplus funds in a non-interest

bearing current account to suggest that they open a deposit account and could operate to the disadvantage of the consumer.

3.31 We do not believe that the proposal to reduce customer contact time to 9.00a.m. – 7.00p.m. Monday to Friday is appropriate. It is our belief that limiting the cut-off time to 7.00p.m. will disadvantage consumers as they may be less likely to have the time to discuss their financial affairs before and up to that time. The existing rules allow calls until 9.00pm. We believe that this is reasonable and takes into account travel, work, family and other commitments. Many consumers, such as SMEs (e.g. small retailers, garages), do not work regular hours and may prefer to conduct business later in the day. In addition, many consumers have indicated to us that they would like to discuss their financial affairs on a Saturday.

3.33 The proposed prohibition on concluding a sale of a protection policy on the basis of a first telephone call may be detrimental to consumers. For example, if a consumer was contacted and determined a requirement for travel insurance because of imminent travel plans, that sale could not be concluded for a further 5 days, thus potentially leaving a consumer exposed for that period. The consumer is already protected by the cooling-off period in these situations.

Product Producer Responsibilities

3.41 The Code does not contain a definition of a product producer. We suggest that such a definition be included.

3.42 We do not agree with the proposal to ban the termination of a letter of appointment solely based on the volume of new business introduced by the intermediary. Where little or no business is being introduced by an intermediary, it will not make commercial sense to continue the arrangement. Furthermore, there is a danger that an intermediary who is not selling a sufficient volume of the products of a product producer may not be sufficiently familiar with the products.

3.45 We recommend that this rule should only apply to open-ended products and those products which are currently available for sale. For example, the rule should not apply to one-off products with a short fixed term to maturity e.g. a 3 year tracker bond where these products are no longer available for purchase by consumers. A suitability assessment will have been carried out on these consumers before they purchased the product.

## Chapter 4: Provision of Information

Information about Regulatory Status

4.10 We understand the concern of the Central Bank in relation to certain types of investment products that do not fall within the relevant definitions in the Investment Intermediaries Act, 1995 or MiFID. These are typically property related products structured in such a way that they do not fall within the definition of an investment instrument. We agree that consumers should be aware that these products are not subject to the protections of the Code or MiFID.

However, there are many other 'financial products and services' offered by credit institutions which, while not specifically regulated by the Central Bank, do fall under other legislation e.g. cash management and spot FX (which is excluded from the definition of investment instrument in both IIA and MiFID). These are core services offered by credit institutions. We believe that there are unintended consequences for these products and services arising from this Rule and we do not believe that it would improve consumer protection to use separate business stationery and electronic communications in relation to these products and services or to maintain a separate section of the website.

The Central Bank should be more explicit in specifying the products they wish to be treated as unregulated under this Rule.

Information about the Firm and its Services

4.15 It is sometimes unclear when a "relationship" with a consumer commences. For example, does the provision of an insurance quote to a consumer constitute a relationship? We suggest that the wording in the existing Code be re-instated i.e. that a regulated entity provides consumers with a copy of its terms of business "prior to providing the first service to that consumer".

4.20 We do not understand the rationale for Rule 4.20(a) and do not see how it would add to consumer protection. There are many regulated entities in a financial services group such as AIB Group. The largest regulated entity, Allied Irish Banks p.l.c., owns other regulated entities both in Ireland and overseas. It is unclear how the disclosure of these shareholdings in all consumer interactions will be of benefit to Irish consumers.

We suggest that where the Central Bank may be concerned about possible conflicts of interest, that these are adequately dealt with under the relevant rules in Chapter 3.

In addition, in relation to 4.20 (b), while we believe that it is helpful for subsidiaries to disclose their parent regulated entity, we believe the threshold of a 10% shareholding to trigger disclosure is too low.

Finally, we suggest that the requirement to disclose should be limited to a regulated entity's terms of business.

Information about Products

4.27 We believe that this rule may be more appropriate for investment products than other banking products. For example, the rule would require the provision of information in relation to the Deposit Guarantee Scheme as well as the Government Guarantee before the provision of any deposit product to a consumer. The rule, should, therefore, exclude basic banking products and services.

4.29 The regulated entity's terms and conditions will have been provided to consumers before the first service is provided. Consumers should, therefore, have had the opportunity to read and understand these terms including situations where the regulated entity may act on a term or condition. The rule will be difficult, if not impossible to apply in situations where systems are automated. For example, if a consumer reaches a limit on a debit or credit card, their

transaction will be denied. The regulated entity will not be in a position to advise the consumer in advance of denying the transaction.

In addition, the rule would preclude us from acting on a term or condition that may be of benefit to the consumer e.g. stopping a credit card where fraud is suspected.

4.30 Rates on certain money market related loan and deposit facilities are linked directly to prevailing market rates. For example, money market related loans can be rolled for any period at the discretion of the client. Also, in the case of currency call deposit accounts, the account opening letter sets out the method for calculating currency call deposit rates which are set on a weekly basis. Given the broad definition of a consumer in the Code, a significant proportion of these facilities are provided to consumers. Rates on the facilities are not published or pre-advised. Under the existing code, our understanding is that these facilities are exempt. We propose that these market-related facilities be excluded from the scope of 4.30.

Investment Products

4.32 Currently, the requirement is to provide a key features document with Tracker Bonds and we have no difficulty with the extension of this provision to other packaged investment products.

We support the proposal to introduce a traffic light system of risk disclosures. However, it would be critical that clear advice be provided on the system by the Central Bank. Such guidance could be drawn up in conjunction with industry. This would help to ensure uniformity of approach across industry and ease understanding and the ability for consumers to compare products. (Question 9)

Banking products

4.37 This rule should be amended to exclude references to limits applying to payment instruments covered by the European Communities (Payment Services) Regulations, as this issue is already covered in Regulation 69 of those Regulations. This would then be consistent with the exclusions for payment services set out on page 29 of the Consultation Paper.

4.38 This rule should only apply to deposits with a fixed term greater than one year as is set out in the existing CPC. It will not be possible to comply with the rule where the fixed term is shorter than 10 days. It may also be impractical where the consumer has already given reinvestment instructions.

Credit

4.41 We afford consumers every opportunity to engage with the bank in order to bring their accounts into line. These engagements may be extensive and protracted. Placing a requirement to advise the guarantor in writing when the account goes into arrears amounts to an immediate escalation of the issue and so prevents the borrower from containing and making good the situation in advance of escalation. Consideration should be given to advising the guarantor after a predefined period of arrears. We suggest a 90 day period as appropriate.

In the event that a guarantee is called upon, 4.41(c) would appear to place the guarantor at a disadvantage in that three months' notice must be given and the

account may be further in arrears at that point. We suggest that a 30 day period would be more appropriate.

4.42 We note the requirement to advise consumers of interest rate changes and, in particular, the impact on repayments. We suggest that this is relevant to those accounts with a repayment schedule and that notification on other forms of a credit facility e.g. overdrafts, can be achieved by press notification and inclusion on the consumer statement in line with current obligations.

We also suggest that this clause is not applied to loans that are linked to or derived from a market based rate e.g. Euribor, which may change on a weekly basis and where this arrangement is clearly set out in a consumer agreement. In these situations, we propose that the notification of interest rate changes be communicated by press notification and that these rate changes are also displayed on consumer statements in line with current arrangements.

Information about Charges

4.74 The issue of payment of commission to intermediaries is a complex issue. We note that this issue was discussed during the Review of the Intermediary Market. However, banking and investment products did not come within the scope of that Review. This proposal has potentially far reaching consequences for the financial services market in Ireland and should ideally form part of a separate consultation. (Question 16)

## Chapter 5: Knowing the Consumer and Suitability

5.1 We understand the importance of ensuring that relevant information is obtained about the consumer's personal and financial circumstances before recommending a product or service. We are concerned, however, about the prescriptive nature of the information set out in Rule 5.1 (a) to (d).

In addition, we are concerned about the proposed use of the Standard Financial Statement (SFS) for all mortgage applications. The SFS requires very detailed financial information about an individual. The information required by the SFS is more extensive than that currently required from mortgage applicants. It was designed to assist consumers in arrears and therefore requires information that would not normally be required in a mortgage assessment situation.

We are also concerned about a possible conflict between the Code and data protection legislation. There is a possibility that the information requested under the SFS could be considered excessive from a data protection perspective.

5.3 A regulated entity must currently simply note the refusal by a consumer to provide information. Under the revised proposals, if a consumer refuses to provide information, the regulated entity is prohibited from making any product/service offer. We propose the retention of the existing wording of this rule. We propose that the regulated entity be in a position to make a determination as to adequacy of the information provided by the consumer during the course of the engagement. Where the information withheld does not detract from making a determination regarding the suitability of a product, we propose that a sale in that scenario may proceed at the discretion of the regulated entity.

5.10 When assessing the suitability of a product or service we believe that the considerations should be proportionate and relevant to the product or service. Accordingly, we suggest that the wording "at a minimum" be amended to "where appropriate and relevant".

Conclusions regarding a consumer's ability to "meet the financial commitments associated with the product on an ongoing basis" can only be based on current expectations of what is likely to happen in the future. It involves a point in time assessment of the consumer's personal circumstances as well as general economic conditions. In the context of a mortgage, for example, given that circumstances may radically change during the term of a mortgage it would be very difficult for a regulated entity to determine with certainty at the outset that a consumer will be able to repay the principal amount at the end of the term. A bank cannot predict whether a consumer could, for example, become unemployed or where one of the parties to a mortgage decides to voluntarily take up a role as a home-maker. We suggest, therefore, that the wording of this rule be amended as follows:

"When assessing the suitability of a product or service for a consumer, the regulated entity must, where appropriate and relevant, consider and document whether:

(b) the consumer is able to meet the financial commitment and/or bear any related risks associated with the product on an ongoing basis, based on the information available to the regulated entity at that point in time and the consumer's circumstances at the time the product or service is arranged or recommended".

In relation to Rule 5.10(d) and Question 1, AIB supports the principle that some consumers may need additional protections when entering into financial commitments. However, the list of circumstances in which a consumer might be deemed to be 'vulnerable' is quite extensive, and in some cases, the vulnerability may be difficult to assess e.g. episodic illness, mental capacity. This may lead to inconsistent assessments of the same individual by different institutions. Consideration may also need to be given to the period of time within which a consumer may be considered 'vulnerable' i.e. for a defined period following a specific event or following a particular series of events. Due to the subjective nature of determining vulnerability, it will be necessary to assess every customer by seeking personal information which some consumers may feel is inappropriate. The need to safeguard personal information in line with data protection legislation is also a consideration.

We suggest that, rather than setting out a prescriptive list, the Code should contain a 'reasonableness' test so that where the regulated entity is aware or ought reasonably to be aware of circumstances that designate a consumer as vulnerable, then additional care must be taken when providing a service or product to the consumer.

5.14 Similar to Rule 5.10, a regulated entity can only make a point in time judgement as to the consumer's ability to meet increased mortgage repayments at the end of the interest only period, and ability to repay the principal at the end of the mortgage term, based on current expectations of the future. There is no guarantee that unforeseen events will not arise. The Rule should clarify that the

regulated entity is making a judgement based on information obtained at a particular point in time. This comment also applies to Rule 5.15.

5.15 We propose that this rule should make clear that it does not relate to interest only periods for existing mortgages. This can be achieved by inserting the word 'new' as follows: "Before offering, arranging or recommending a **new** mortgage…." If existing mortgage consumers are caught by this Rule, it could be inconsistent with the Code of Conduct on Mortgage Arrears.

5.16 This rule seeks to prevent churning and we do not believe it is applicable to many banking products. We suggest, therefore, that this rule be restricted to investment products as is the case under existing CPC.

5.18 We suggest that in the interests of consistency, the standard statement format identified as required for "personal, motor and home insurance" be broadened to apply to all general insurance products (including travel, health and payment protection insurances).

5.20 The wording in this rule has changed from that set out in the existing CPC so that the definition of 'execution-only' business now requires that a regulated entity has 'not engaged' with the consumer. Under the previous definition, the requirement was that the consumer had to specify the product and the provider and had not received any advice. We believe that this rule worked well in that the term 'advice' is defined in legislation and so offers certainty to both the regulated entity and the consumer. There is a danger with the current wording that the phrase 'not engaged' could be widely construed thus preventing any execution-only business.

We would be grateful for confirmation that the Central Bank does not intend to prohibit all execution-only business. Such a prohibition would result in a significant structural change in the market. We would support a reversal to the original definition of execution-only under the current CPC (Chapter 2.24 i) and 2.30 i)).

## Chapter 6: Statements

We agree with the objective of ensuring that consumers have sufficient information about their accounts. It is, however, important to ensure that this information is desired by the consumer as well as being useful. It is important to avoid information overload and duplication of information, and to align with:

(a) The "Green" environmental agenda; and

(b) The current Central Bank Transparency initiatives (reducing the use of abbreviations and acronyms).

6.2 Under the Transparency Agenda, we are working to reduce the use of abbreviations and acronyms contained on account statements where possible.

There are however a number of limitations, as follows:

(a) We cannot change narratives on certain payment types e.g. Incoming International Payments from foreign banks, Direct Debit Originators, merchant information on Point of Sale (POS) etc; Customers keying in narratives when using Internet Banking.

(b) There are technical limitations on the number of characters that can be included on a statement. The limit is usually 18 characters per line, including spaces. If acronyms are not permitted, it could extend the narrative to two lines. This would be difficult to achieve from an IT perspective.

(c) We suggest that we do not change abbreviations that are part of everyday language e.g. ATM versus Automated Teller Machine, etc.

(d) There is a requirement to use numerical reference numbers in certain instances to facilitate tracing the origin of transactions, to facilitate customer reconciliation of their accounts e.g. cheque numbers etc.

Where acronyms, abbreviations or numerical references are used, it may be possible to refer the reader to a glossary of commonly used terms.

Finally, on this point, the European Communities (Payment Services) Regulations (58 and 59) require that certain information is made available to the payer and the payee on individual payment transactions. We use statement narratives as a means of making this information available. Examples include the posting of point of sale, standing orders, direct debits and any subsequent unpaid items. Notwithstanding the exclusion on page 29 of the Consultation Paper, Rule 6.2 does impact on aspects of compliance with the Regulations by defining the content (i.e. excluding acronyms) of information required under a framework contract.

6.3 We suggest that the Code stipulate that consumers be given the option to choose whether they each wish to obtain separate statements for joint accounts. We believe that many consumers would not wish multiple statements to be issued without the choice being given to them.

There is also the consideration that increasing the volume of statements issued may lead to a greater risk of identity theft.

We understand that the desire to help to protect vulnerable elderly consumers may be the objective of this proposal. While, as stated above, we agree with the need to protect these consumers, we do not believe that this objective will be met by the proposal to issue statements to each of the joint account holders. As an alternative, we suggest that greater focus be placed on sufficient warnings being provided to consumers at account opening stage and when adding signatories to joint accounts.

6.5 We believe that the proposal that consumers be provided with up to three years duplicate paper statements free of charge is excessive on the basis that the consumer will have been provided with an initial statement free of charge. Regulated entities should be allowed to charge in line with existing regulatory approvals.

6.6 We propose that the requirement set out in 6(6)(b) to issue stand-alone annual statements of total interest earned is unnecessary and adds little value for the consumer who already receives annual (Rule 6.4) deposit account statements which display interest earned.

6.7 We believe this provision is unnecessary given that this information is already provided through a series of fee, charge and interest advices. In our view there

is a risk of information overload and duplication. We propose that the information be provided in a stand alone statement to consumers on request.

The level of IT development that would be required to implement this Rule is very significant and would be enormously expensive. There would also be the additional costs of delivering these statements to consumers. We do not believe that there is any appreciable benefit to the consumer that would justify these costs.

6.9 Clarification is required on the "summary box" content. We propose that in order to assist consumer understanding, the "charges applied to the account" and the "final payment dates" are shown as static data rather than as dynamic information. Dynamic information is likely to change from month to month and may create consumer confusion.

We also believe that as long as the information is clearly displayed on the statement, there should be no need for a specific text box format which, in itself, would be challenging from an IT implementation perspective.

6.10 The proposed language of the warning in 6.10(a) assumes that, for any given monthly statement no interest will be charged on purchases if the balance is paid in full. This will not, however, be the case in all circumstances. We propose a revised wording as follows:

"No interest will be charged on purchases if you always pay the full amount shown on your statement by the due date. If the balance is not cleared in full, you will be charged interest on the full amount".

## Chapter 7: Transfer of Residential Mortgages

We note that this Chapter involves an amendment to the existing Code of Practice on the Transfer of Mortgages. The new Code proposes that consumers be given a three month period to decide whether to permit the transfer of their housing loan. This is a significant change to current practice whereby borrowers give consent to such a transfer as part of the mortgage application process. There is a real danger with the current proposal that borrowers will simply not respond either way.

The proposal to require a further consent and the affording of a three month period to give or decline such further consent seems inappropriate and would most likely frustrate the commerciality of any securitisation of a portfolio of mortgage assets. This could lead to funding difficulties for banks and would bring into question banks' capacity to write new business. This is particularly relevant given the liquidity difficulties currently being experienced.

There are a number of different ways to transfer a mortgage. The most common methods used by banks are (i) securitisation, (ii) the issuing of covered bonds and (iii) the use of mortgage backed promissory notes (in conjunction with the Central Bank). We do not believe that these methods of mortgage transfer disadvantage the consumer as they do not impact on either arrears policy or interest rate policy. AIB Mortgage Bank customer documentation includes a clause which stipulates that the lender, not the transferee, remains responsible for all matters relating to the administration of the loan including, but not limited to the setting of interest rates and the handling of any arrears in respect of the loan. In regard to the setting of interest rates and the handling of arrears, the policy of any transferee must be the same as that of the lender.

The consumer is adequately protected by the existing Code of Practice on the Transfer of Mortgages and the requirements of the Asset Covered Securities legislation. In addition, any proposed transfers by a designated credit institution would be subject to the prior approval of the Central Bank as well as any conditions imposed by the Bank.

We suggest, therefore, that the existing requirements set out in the Code of Practice on the Transfer of Mortgages continue to apply.

## Chapter 9: Arrears Handling

We believe that this chapter should only apply to those consumers that are individuals. It should not apply to those consumers that fall within categories (b) and (c) of the definition of a consumer.

9.2(a) We suggest that the phrase 'reasonable time' used in this rule would need to be clearly defined in order to ensure consistency across the industry.

9.3 We note the requirement to advise consumers when in arrears situations. The definition of "as soon as it becomes aware" must, in our view however, allow tolerance for late payments. The issuance of a communication immediately without allowing for a tolerance period will cause confusion and unnecessary stress to the consumer as they may already have addressed the arrears situation in advance of receiving the communication.

We believe the systems development effort to deliver this information initially and on a monthly basis will be significant and a reasonable lead in time should be provided to regulated entities.

9.4 As currently worded, this rule would require monthly arrears information to be provided to consumers in arrears for an indefinite period. We propose that this obligation should only continue for the first year of constant arrears.

9.10 We believe that the provision of three months' notice of intention to offset credit balances against arrears outstanding is inappropriate and could operate against the legitimate business interests of the lender by allowing the consumer to remove funds which would otherwise be available to limit the debt. We propose that an advice in writing to the consumer of the regulated entity's intention to offset be regarded as sufficient.

9.11 We propose that this rule should only be applicable if the arrears consumer is engaging with the regulated entity in a *bona fide* effort to clear the arrears. We believe that a condition that the borrower is co-operating reasonably and honestly should be applied in this Code as is the case under the Code of Conduct on Mortgage Arrears.

9.12 We do not support this Rule. Arrears cannot apply in an overdraft situation so the Central Bank's intent here is unclear. If the consumer is in excess in relation to his/her overdraft, the bank should be entitled to close the account.

9.13 Where a consumer is neither engaging nor cooperating with the regulated entity, we suggest that it is inappropriate to afford such a consumer a minimum of three months' notice in writing of an intention to place restrictions on the operation of the account.

## Chapter 10: Advertising

We agree with the need for regulated entities to be responsible and transparent in advertising. However, there is a risk that increasing amounts of mandatory information on advertisements may be counter-productive (Question 26).

Where a lot of detailed information is contained in an advertisement, there is a real danger that consumers will not be able to absorb all of that information. The more information that is included in an advertisement, the greater the possibility that consumers will simply ignore it. We acknowledge the importance of ensuring that consumers receive all of the terms and conditions and warnings relevant to a product or service. However, we do not believe that the advertisement is the most appropriate place/medium to obtain this information.

We would welcome the agreement of a standard industry approach to font size to be used, and on the use of 'small print/footnotes' to communicate information in an advertisement.

10.6 The information provided in an advertisement should be as targeted and relevant as possible to what is being advertised but should also take into account the medium in which it is being advertised. It will not be possible to display all Key Information, as currently defined, in all advertising media e.g. radio, television and poster ads.

10.16 This rule should also allow for the exclusion of "key information" from advertisements which do not refer to the features or benefits of a product.

10.17 This new provision could potentially lead to different definitions of an acronym being used for deposit products. Unlike the situation with an APR, there is no prescribed, standard formula for the mathematical calculation of an AER, CAR or EAR. This results in a lack of consistency across regulated entities. It is, therefore, likely that regulated entities will use different definitions in advertisements which will cause further confusion for consumers. We suggest that the Central Bank should use the opportunity of the revision of CPC to issue standard definitions for each of these terms. This would assist consumers in comparing products being offered by different regulated entities.

Given the above and the fact that a definition could take up to 2 lines of an advertisement, we believe that it would be more appropriate to require written advertisements to refer consumers to a source such as the www.itsyourmoney.ie website where a glossary of definitions could be set out. In addition, the definition should be included in product documentation/brochures rather than advertisements.

Finally, requiring the inclusion of a definition would prevent certain media formats being used for financial services advertising. For example, radio advertisements typically have a time limit of 30 seconds.

10.26 We suggest the following alternative wording which we think would be clearer:
"An advertisement must not describe a product or service as free where only a ~~proportion~~ part of the ~~charges for the~~ service or product ~~are~~ <u>is</u> free of charge."

10.29 The wording of this Rule is confusing and we suggest changing the wording as follows:

"An ***advertisement*** for a product where the minimum ~~promised~~ return is known but is less than the initial 100% invested must contain the following warning:
**Warning: If you invest in this product you could lose xx% of the money you put in."**

## Chapter 11: Errors and Complaints

As a general point, we believe that the scope of this Chapter should be limited to errors that have or could have a detrimental financial impact on consumers. We suggest that wording to this effect should be included at the start of Chapter 11 so as to define its scope.

11.3 This Rule requires errors to be fully resolved within six months of the date of discovery. We understand and support the desire of the Central Bank to have errors resolved speedily with consumers reimbursed in a timely manner where necessary. However, situations will arise where it is not possible to implement all IT systems changes required to fully resolve an issue within this six month period. We suggest, therefore, that the provision whereby the regulated entity and the Central Bank may agree an extension to the six month period, as set out in your letter of 11/06/2010 relating to how pricing and charging errors were dealt with under CPC be included in this rule.

11.5 Our understanding of this Rule is that where an error has not been resolved within one month, that error must then be reported to the Central Bank. The wording "or are not likely to be resolved" is confusing and we suggest that it should be deleted.

## Chapter 12: Records and Compliance

12.1 We understand the purpose of this rule to be to protect the consumer in the event of a subsequent dispute with the regulated entity in relation to a product/service sold. In this regard, we believe that the rule should be restricted to the Suitability/KYC provisions of the Code. The rule as it stands could capture all inquiries made by a customer in relation to a product or service, e.g. those relating to a brochure request or a simple inquiry about the minimum balance required for a deposit product. We do not believe that this would increase consumer protection but could instead lead to a significant increase in bureaucracy.

## Definitions

A definition of "product producer" needs to be included.

We believe that the definition of "bundling" should exclude situations where a marketing communication to a specific consumer segment includes a number of products but where the consumer can select all or a subset of the products available. For example, student consumers are offered a bundle of products but they do not need to choose all of the products in the bundle.

## Code of Conduct on the Switching of Current Accounts with Credit Institutions

We do not support the proposed extension of the statutory Switching Code to include demand deposit accounts and savings accounts. These accounts may be the subject of formal security arrangements which would not enable them to be switched to another institution. In addition, there would be a difficulty in including term deposits in the scope of the Code as these accounts, by their nature, would attract funding costs if broken during the term. We would, therefore, advocate that the Code applies only to stand alone current accounts held by consumers. The Code should not apply to current accounts where the following situations apply:

- where a lien is held on the funds as security; or
- where the funds have been pledged to cover a guarantee; or
- where the current account is grouped to other accounts that are not being switched.