

Goodbody Stockbrokers

Review of Consumer Protection Code
Consultation Paper CP 47

We refer to your document, *Review of Consumer Protection Code – Consultation Paper CP 47*, in which submission and comments were sought and we set out below our comments relating to same.

Personal Retirement Savings Accounts

Question 10, Page 10, Provision 70 of Chapter 4

Paragraph 70 of Chapter 4, page 51, of the draft CPP contains two requirements which must be complied with before offering, arranging or recommending PRSAs to a consumer:

1. The provision of specified information about PRSAs, as set out in Appendix B.
2. The provision and signing (by the regulated entity and the consumer) of a Declaration as set out in Appendix C, when recommending a non Standard PRSA.

We wish to make a submission in relation to the question posed as to whether the above requirements in relation to sale of PRSAs *'continue to be appropriate'*.

We believe that the two requirements of providing Appendix B information to a consumer when recommending a PRSA to them, and the provision and signing of the Declaration (Appendix C) when recommending a non Standard PRSA to a consumer, do *not* continue to be appropriate and hence should be removed from the CPP for the following reasons:

1. The requirements are based on a false premise, i.e. that a consumer is *always* better off with a Standard PRSA than with a non Standard PRSA, particularly in relation to charges.
2. The requirements duplicate an already extensive regulatory sales process for PRSAs, as set out in the Pensions Act, 1990 and associated Regulations.
3. Other provisions of the CPP, such as General Principles 1,2,3 and 6, already provide adequate protection for consumers against the potential risk of being mis-sold a non Standard PRSA.
4. Not all PRSA providers offer both Standard and non Standard PRSAs; therefore there is not necessarily always a choice between recommending a Standard or Non Standard PRSA from the same PRSA provider.

Our detailed comments in relation to each of the above items 1-4 are set out below:

1. A false premise that a Standard PRSA is always superior to non Standard PRSA

Standard PRSAs differ from non Standard PRSAs in two main ways:

- Standard PRSA can only offer pooled funds which meet specific criteria set out in the Pensions Act 1990. These criteria prevent Standard PRSAs offering guaranteed/smoothed/with profit funds or a self directed fund option. Such fund options are *only* available on non Standard PRSAs. This therefore calls into serious question the PRSA Vendor statement in the Declaration : *'focused on the fact that ...investment risks are greater for this non Standard PRSA'*.
- Standard PRSAs have a maximum contribution charge of 5% and a maximum annual fund charge of 1% pa. Non Standard PRSAs are not subject to these maximum charges.

However while Standard PRSAs have maximum charges and non Standard PRSAs don't, this does not mean that Standard PRSAs will always have cheaper charges than non Standard PRSAs, for the following reasons:

- Many PRSA providers have a wide range of Standard and non Standard PRSA products, each with different charging structures. For example, (based on the Pensions Board current PRSA Providers and Products Register):
 - Irish Life have 20 Standard PRSA products and 11 Non Standard PRSAs
 - New Ireland/Bank of Ireland Life have 7 Standard PRSA products and 14 non Standard PRSAs.

There is therefore in the marketplace a very wide disparity in the range of charging structures both within Standard and non Standard PRSA categories, and between Standard and non Standard PRSAs.

- There are many non Standard PRSA products on the marketplace with *lower* charges than other Standard PRSA products. Some examples include:

Standard PRSA product	Non Standard PRSA product
PB Ref. No: APP/K/935/S 5% contribution charge + 1% pa fund charge (reducing for larger funds)	PB Ref. No: APP/J/634/NS 0% contribution charge + 1% pa fund charge

In any event, charges are just *one element* of many aspects of a PRSA product which must be considered when recommending a suitable PRSA to a consumer. As already pointed out, non Standard PRSAs typically offer a wider range of investment options than Standard PRSAs, including the self directed option.

Therefore there are many circumstances in which a non Standard PRSA may be a more appropriate product for a consumer than a Standard PRSA on grounds of :

- Investment options/risks and/or
- Charges.

2. Duplication of Pensions Act Regulatory Sales Process for PRSAs

The sale of PRSAs to consumers is already highly regulated by the Pensions Act and associated Regulations, with the following requirements applying:

- Provision of a *Preliminary Disclosure Certificate (PDC)* to the consumer at the point of sale (either in generic or specific format).

The PDC for a non Standard PRSA must, unlike for a Standard PRA, include a table of projected benefits both before and after the impact of charges, as well as a table showing projected intermediary remuneration.

- Where the sum being paid into the PRSA derives from the surrender of another PRSA or retirement annuity (i.e. a Personal Pension Plan) , the consumer must be provided with a '*Warning Declaration*' (to be signed by the consumer and the PRSA provider/intermediary) confirming that the consumer is aware of the financial consequences of replacing their existing PRSA or retirement annuity with the new PRSA.
- Where the sum being paid into the PRSA derives from a transfer value from an occupational pension scheme, the PRSA provider is required to provide the consumer with a *Certificate of Comparison* and a *Written Statement* setting out why the transfer is in the consumer's best interests.
- A new PRSA holder must be provided with a *Statement of Reasonable Projection* within 7 days of starting their PRSA. This shows projected benefits both before and after the impact of charges.

- The PRSA holder must be provided with an annual updated Statement of Reasonable Projection.
- The PRSA provider must give the PRSA holder at least two months notice of any proposed increases in charges, and where charges are increased the PRSA holder must be given a revised Statement of Reasonable Projection within 7 days, showing the impact of the increased charges on projected retirement benefits.
- The PRSA holder must be provided with a half yearly Statement of Account, showing contributions paid to the PRSA and the current value of the PRSA, as well as a half yearly Investment Report.

There are therefore significant consumer protection measures already built into the Pensions Act regulatory system, with enhanced charges and remuneration disclosure requirements applying to the Preliminary Disclosure Certificate provided to the consumer at the point of sale where a non Standard PRSA is being recommended to the consumer.

3. Other provisions of the CPP provide adequate protection

There are many provisions of the CPP which provide adequate consumer protection to the risk of a non Standard PRSA being recommended to a consumer instead of a more appropriate Standard PRSA, without the additional requirements in provision 70 of Chapter 4:

- General Principles 1,2,3,6 and 12
- Common Rule 23
- Product Producer Responsibilities 43 and 44
- Provision of Information 1
- Information about Products 27,28,29 and 32
- Information about Remuneration 74
- Knowing the Consumer 1
- Suitability 10, 11 and 17

4. Not all PRSA providers offer a choice of Standard and non Standard PRSAs

Where a PRSA provider offers only a non Standard PRSA, the Declaration in Appendix C still requires the Vendor to declare that they have fully explained to the consumer the differences between Standard and non Standard PRSAs. This seems incongruous in a situation where the Vendor is not in a position to sell or recommend a Standard PRSA.

Chapter 5, Knowing the Consumer and Suitability, Statement of Suitability, Provision 17, Page 56

We also do not believe that there is a need for the specific (iv) requirement of a statement of suitability, i.e. the statement must *'demonstrate why the non Standard PRSA is more appropriate than a relevant Standard PRSA'* for the following reasons:

- The reasons already outlined above in relation to provision 70 of Chapter 4, page 51,
- The Statement of suitability is already required to state how the product is suitable for the consumer.
- It is unclear what a *'relevant'* Standard PRSA means or could mean. Against which particular Standard PRSA should the comparison be made, where some PRSA providers offer a wide range of different Standard PRSAs (with different charging structures) or some do not offer a Standard PRSA at all?

We therefore submit that:

- The provisions of provision 70 of Chapter 4, page 51 of the draft Code are no longer appropriate or required as sufficient other regulatory measures protect the consumer adequately against the risk of being mis-sold a non Standard PRSA.

- The specific requirement in the Statement of Suitability (para (iv) of provision 17, page 56) comparing the non Standard PRSA with a 'relevant' Standard PRSA should be removed as there are already sufficient protections for consumers in relation to this risk, and the proposed comparison may not be feasible in many instances.

Vulnerable Consumers, Page 7

Q1. No. We believe that the list is too extensive and that a firm can only source this information directly from the consumer. Our experience is that consumers are already reluctant to provide us with the information which we currently seek relating to income, borrowings, assets, relevant experience and qualifications and we believe that requesting details specifically relating to level of education attainment, mental capacity, recent bereavements and illnesses may present further difficulties and consumers will view this as overly intrusive.

Recommendations from the Review of the Intermediary Market, Page 16

Q16. We agree with the proposal that a requirement to disclose remuneration from product producers should be imposed.

Chapter 3, Common Rules

General Requirements, 2, Page 31

2. In relation to the provision of tracker products there are certain circumstances which can arise which may give rise to the fact that within two business days of the strike date we may not be in a position to confirm the exact strike date to the consumer.

Chapter 3, Common Rules

General Requirements, 4, Page 31

4 d) Purpose of payment

Not all funds received are for a specific product, some can be for a portfolio of investments or alternatively for us to hold pending receipt of the client's investment instructions, which may be at a later stage depending on market conditions. It is not possible therefore to include on the receipt the "purpose of the payment" and we do not believe that the inclusion of this specific information provides any additional information to the consumer.

Chapter 3, Common Rules

Product Producers Responsibilities, 41, Page 38

41. We believe that it is an unfair assumption that the intermediary is not acting in the best interests of consumers. They have a duty to do so. We do not believe that product producers should be required to periodically review applications for their investment products sold by an intermediary, to ensure that actual sales are consistent with the targeted market. Refers to Question 14 page 12.

Chapter 3, Common Rules

Product Producers Responsibilities, 45, Page 38

45. Where there are changes in legislation and or regulatory requirements, which require a firm to reassess the product suitability for certain client types and change relevant disclosures, we would not consider it necessary to notify the Central Bank of such situations.

Chapter 6, Statements, 3, Page 58

3. In situations where the account holders share the same address we do not believe that this proposal is of any added benefit to them. The feedback we receive from our existing clients is that they are already receiving too much information from us.

The implementation of this proposed requirement to send statements to each joint account holder would involve IT development and therefore we request that consideration be given to this in the roll out of the new Code.

Chapter 11, Errors Handling, Page 16

Q17. No.

Q18. No.

Q19. No.

Q20. No. We believe that the current regime of reporting of material items is appropriate.

Other Items: Provision of Non-Regulated Products and Services by Authorised Firms¹

Relevant to Chapter 4 Provision of Information

Information about Regulatory Status and other related matters, Page 41

We are firmly of the view that the critical time to advise clients of the distinction between regulated and non-regulated products is up to the point of sale. We have sold a number of non-regulated products in the past and these are currently held by clients in their portfolio which also consist of regulated products. These investments are generally held in certificated format and therefore the issue of co-mingling with regulated products is not relevant. These investments are included in the clients' valuations and safe custody statements which are issued to clients on a regular basis. Clients expect to see these investments included in their valuations as they form part of the overall portfolio which clients hold with the firm.

There are instances where private client executives correspond with clients in respect of both regulated and non-regulated products. This is particularly relevant for new clients who are constructing a portfolio or existing clients either re-structuring their portfolio or considering introducing new money into the portfolio. In these instances, it is not feasible for an investment firm to write to the client on separate stationery with different disclosures on the firm's status². This issue is also relevant for email correspondence. We are of the view that in these instances the inclusion of the disclaimer, as set out in the letter issued by the Central Bank of Ireland on 26 August 2010, in a prominent location in the letter or email should satisfy the requirement of transparency around the sale of non-regulated products. This issue would be further exacerbated by the introduction of legislation stipulating that the provision of non-regulated products and services could only be made through entities other than the authorised firm.

Another difficulty arises where clients invest in products or investments promoted by other service providers at the request of the client. In these instances, the firm is not in a position to determine whether these investments are regulated or not as the clients have sourced the products themselves. The firm is often then requested by the client to hold the investment in the firm's nominee name on their behalf. In these instances, the firm generally has no visibility as to the nature of the asset and are simply holding the asset to facilitate the client.

¹ Refer to letter issued to firms on 26 August 2010 by the Head of Governance & Accounting Policy, Central Bank of Ireland.

² Stockbroking firms operate under the European Communities (Markets in Financial Instruments) Regulations 2007 for the significant majority of their business and hence Common Rule 40 of the existing Consumer Protection Code would not apply.