

**Proposed Review of Consumer Protection Code**

**Consultation Paper CP47**

*Submission by J & E Davy*

10 January 2011

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Ms Bernie Mooney  
The Consumer Protection Code Department  
Central Bank of Ireland  
PO Box 559  
Dame Street  
Dublin 2

**Re: Proposed Review of Consumer Protection Code  
Consultation Paper CP47**

Dear Bernie

We are pleased to respond to the Consultation Paper CP47 in which the Central Bank ("CB") requested comments on its Review of the Consumer Protection Code ("CPC").

As a firm authorised under MiFID regulations, Davy would like to emphasise the importance of ensuring that the scope of the revised CPC accurately reflects the agreed position for MiFID authorised firms in relation to the application of the CPC. Prior to the implementation of MiFID in November 2007 the CB agreed with the Irish Association of Investment Managers (the 'IAIM') that the obligations for investment firms under the MiFID regulations satisfy compliance with the obligations under the CPC in relation to non-MiFID financial assets within a portfolio. Consequently the scope of the revised CPC should be amended to explicitly reflect this agreement.

Notwithstanding this, we have reviewed the consultation paper and have provided feedback and suggestions which are aimed at providing input into this consultation process.

Set out below are our key points:

**1. Consistency with other Legislation/ Regulations/ Codes**

It is important that any proposed changes to the CPC should be consistent with and promote the standard that has been extensively researched, developed and implemented in Ireland through the Markets in Financial Instruments Regulations 2007 (MiFID). In order to make the CPC operationally effective it needs to dovetail with MiFID along with other relevant regulatory requirements, for example the Investment Services Directive (the 'ISD') and the Insurance Mediation Directive (the 'IMD'), some or all of which may apply to regulated firms dependent on their individual regulatory authorisations.

In addition, where EU consultation is currently ongoing we consider that the CB should refrain from introducing any new CPC requirements until such time as the EU has finalised its review process. Again, this is to ensure consistency of application for firms.



## **2. Vulnerable Customers**

We believe the definition of a vulnerable consumer is extremely broad and needs to be revised. In fact many of the suggestions could be described as pejorative, incapable of presentation in a customer interaction and may themselves be regarded as discriminatory. We have more extensive commentary on this point in Appendix 1.

## **3. Cold Calling**

It is imperative in order to retain and legitimately build a healthy financial services business that firms are allowed, within clearly defined parameters, to cold call actual and/or potential customers. For this reason the existing provisions in relation to cold calling should be in our view re-instated. Under the current CPC these include permitting unsolicited calls to consumers who are not existing clients, that is, consumers that have given their consent and business customers if they are listed in the business listing section of a telephone directory.

In addition, it is important to take account of other legislation/regulation, for example, Section 46 of the Consumer Credit Act, which allows for calls to be made within certain times and days. Furthermore, protections are also afforded to consumers under the Data Protection Act, which regulated firms must adhere to.

## **4. Know your Customer and Suitability**

It is critical that the CPC is clear that the requirement to gather ‘Know your Customer’ (“KYC”) information only applies to those clients that receive an investment service, namely advice or portfolio management, and does not in any way apply to execution only customers where the regulated firm simply receives and implements a customer instruction and the consumer has not received any advice.

We do not consider that the CPC should focus on a target market or the risk profile of products as it is more important for client suitability purposes to be assessed at all times on an individual basis taking account of the individual’s overall portfolio. A product that is ‘high’ risk is not necessarily a ‘bad’ product. While it may be unsuitable for certain consumers the most important consideration is whether or not it is suited to a role in the portfolio of the consumer, taking into account their individual specific investment objectives, financial situation and knowledge and experience.

## **5. Reporting of Errors**

In respect to the reporting of errors to the CB we consider that the deficiencies noted in the consultation paper can be easily overcome by outlining certain criteria for determining whether or not the error should be reported to the CB, for example:

- Whether the error is reflective of a systemic issue; and/or
- Whether the error has affected more than 2% of the number of client accounts within the firm, with clients having been negatively impacted by more than €500 each, and/or the aggregate error has exceed €50,000.

## 6. Arrears Handling

We would caution against setting down a specific notice period to be given to consumers where a firm has in place the customer authority to offset credit balances in accounts for the customer in order to repay debts arising on other accounts for the same customer.

We question the legal exposure that might arise as a result of stipulating a specific time delay in setting off the credit balance against the loss as this may in fact result in a greater loss and net debit balance arising as a result of a fall in value of assets held in the credit account.

## 7. Non Regulated Products and Services

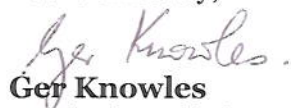
Finally, following a meeting with the CB in November, we separately provided the CB with feedback in response to the CB's industry letter of 26 August 2010 in relation to non-regulated products and services. As this response may have provided additional salient feedback in respect to any proposed changes to the CPC in this regard we would request that the CB also review this same as part of the consultation review process.

Set out in:

- **Appendix 1** is a response to the specific questions raised by the CB, and
- **Appendix 2** other additional comments in respect to certain specific proposed revisions of the CPC.

We trust that this submission letter provides some valuable input to this consultative process. We are happy to discuss the content of some or all of this submission in more detail with you if you consider that this would be beneficial.

Yours sincerely,



**Ger Knowles**

Head of Regulation & Compliance



## Appendix 1

### Response to specific questions asked in the Consultation Paper

#### Vulnerable consumers

1. Do you agree with the indicative list of circumstances that could render a consumer vulnerable that have been included in the definition of 'vulnerable consumer'?

We do not agree with the indicative list of circumstances that could render a consumer vulnerable as, in our view, it is too broad, vague and inconsistent with the definition of a vulnerable client used by the CB. There is a danger that by making the definition too wide the majority of a regulated firm's customers could be considered vulnerable rather than focusing on those consumers who are genuinely in need of additional protection.

We have noted below the challenges, practical implications and the burden the introduction of this proposed definition could have.

**Proposed Definition:** *“vulnerable consumer” means a consumer that is vulnerable because of mental or physical infirmity, age, circumstances or credulity.*

These can include, but are not limited to, the following:

- **those with a low level of educational attainment;**

MiFID Regulations require investment firms to obtain relevant information regarding a client's knowledge and experience, which includes level of education and profession. The MiFID working party noted to the CB in 2007 that educational background can be a very sensitive area for clients who may have 'life' experience as opposed to actual qualifications. We strongly disagree that those with a low level of educational attainment should be categorised as 'vulnerable' and that we should have to request specific details on educational background.

We suggest that the approach previously agreed by the CB<sup>1</sup> be adopted in that firms must establish the client's general level of investment experience, their understanding of the nature and extent of the service and the type of product or transaction envisaged.

- **those with a low income;**
- **those with a high level of indebtedness;**

'Low income' or 'high indebtedness' has not been defined and therefore is open to interpretation. Furthermore, a client who currently has a low level of income may hold many assets and similarly a client with a high level of indebtedness may also have a high income and a high net worth.

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<sup>1</sup> MiFID Feedback on Discussion of Conduct of Business Industry Working Group  
<http://www.financialregulator.ie/processes/consumer-protection-code/Documents/MiFID%20-%20Feedback%20on%20Discussions%20of%20Conduct%20of%20Business%20Industry%20Working%20Group.pdf>

As part of Suitability testing we are required to obtain information for our investment managed clients on their financial situation, including the source and extent of their regular income, their assets, real estate property and any other debts or financial commitments.

We see no reason why a client with a low net worth or high level of indebtedness should be categorised as a 'vulnerable' client but rather a client for whom certain investments may be 'unsuitable or inappropriate'.

- **those with a poor credit history;**

Only credit institutions who are members of the Irish Credit Bureau (the 'ICB') have access to a credit bureau to conduct credit checks. In Davy's case our business relates to managing assets for customers, as a consequence we do not agree that we should undertake credit checks on our clients. In addition, many clients will have had their credit rating impacted by events of the past three years for reasons beyond their control. This does not necessarily mean that they should be considered vulnerable.

- **those who do not have English as a first language;**

We believe that this question could be viewed by clients as being biased or unfair. Many people use English as a second language and have attained fluency in same, therefore they should not be categorised as 'vulnerable' on this basis. Where a client has little English they should ensure that there is a translator present at meetings.

- **those suffering from a long term illness or disability or episodic illness;**

The Data Protection Commissioner considers health information as sensitive personal data and imposes strict guidelines around its collection and storage. MiFID regulations do not require us to directly ask for this information however a client may mention their health to their Portfolio Manager if it impacts on their investment objectives. It would be an invasion of privacy and inappropriate to ask all our clients at an initial meeting questions about their health. There are many forms of disability and episodic illnesses and it is wrong to automatically consider this broad category as 'vulnerable'. We believe that the right to disclose health information should remain with the client and should not form part of a compulsory fact find by firms.

- **those whose mental capacity to make a decision is diminished;**

We agree that this category should be considered vulnerable. In instances where a client's mental capacity is diminished, another person should be appointed to manage the client's affairs and a power of attorney put in place.

- **those that are near, or over the statutory retirement age, are retired from their occupation or are retiring soon;**

In the last number of years the CB recently required firms to introduce an older client policy. While we do not consider these clients to be vulnerable we do acknowledge that a specific review process should be adopted and liquidity of their portfolio reassessed. It is important that the CPC is consistent with the older client definition already discussed with firms and the CB.



- **those who are recently bereaved;**

We agree that this category could be considered vulnerable, however the CPC would need to define what is meant by 'recently bereaved'.

- **those with a substantial sum to invest who have little or no investment experience.**

Vulnerability is not about how much an individual has to invest but could be influenced by their level of knowledge which is assessed as part of MifID suitability testing. For example, a consumer with €10k in savings and little knowledge or experience is as much if not more vulnerable than a lottery winner with €5m to invest who has little knowledge and experience.

Regardless of the amount of money a client has to invest, firms must assess a consumer's knowledge and experience.

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| <p>2. Do you think that the inclusion of a definition for a vulnerable consumer and the proposals and amendments outlined above will be effective in improving the level of care afforded to vulnerable consumers during the sales process? If not, please outline any further measures you think are necessary.</p> |
|--|

We believe that defining vulnerable consumers is useful, however, we believe that the above definition or categorisation is too wide and should be narrowed to those whose mental capacity to make decisions is diminished.

We agree with the inclusion of a provision requiring firms to obtain a certified copy of a power of attorney to protect the interests of consumers in situations where another person has been appointed to act on their behalf.

## Suitability of Mortgages

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|---|
| <p>3. Do you think the inclusion of these provisions will result in a greater level of responsible lending or is more needed? If you think more is needed, what additional requirements would be appropriate?</p> |
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No comment

- |  |
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| <p>4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?</p> |
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No comment



## Information about products

5. Do you think the proposed requirements in relation to the provision of information about products are adequate? If not, please set out how you think the requirements could be strengthened.

No comment

6. In light of the developments at European level, do you think we should introduce requirements in relation to the presentation of information on investment products in a short 'Key Facts' Document?

We believe it would be prudent to await the outcome from European consultations. The majority of the content of the Key Facts Document will already form part of the sales brochure which may result in duplication of information. It is difficult to be prescriptive on products as they tend to vary so much.

7. Is there any specific information that should be provided, either in a 'Key Facts' Document or otherwise, in respect of other types of product?

No comment

8. Do you have any ideas about how to disclose risk in the case of investment products in a way that would be consistent enough to be useful for consumers?

We consider that it is important to identify the specific risks that apply at individual product level. There is a danger if risks are written in a generic manner that they do not capture or provide adequate meaning to clients/potential clients reviewing product documentation in order to make a decision whether to invest or not in a particular product.

9. In a system such as a 'traffic light' system, how do you think the different categories of risk, i.e., red, amber and green, should be determined?

While this is a simplistic idea, we believe that it is very dangerous to appoint such general categories to a wide range of investments and it is important that suitability of products continues to be assessed on an individual level rather than by product category. What may be 'green' for one consumer may be 'amber' for another.

In addition, if such a traffic light system was introduced, how it is defined would be extremely important to ensure that it is not subject or open to interpretation, as it would be detrimental if it was applied inconsistently across firms.

There is a risk that the traffic light system would focus on a single definition of risk namely investment risk and would ignore the other, and equally relevant, aspects of risk including, but not limited to, liquidity risk and inflation risk.

## Personal Retirement Savings Accounts (PRSAs)

### 10. Do you think these requirements continue to be appropriate?

We do not disagree in principle with the provision of information on PRSAs (as outlined in Appendix B) however we do believe it is extremely important that the information provided should be unbiased and factual. The current wording could be considered biased towards a Standard PRSA and may not provide an objective analysis of the two types of product, for example:

- The standard PRSA is likely to meet the requirements of most people
- Charges on non-standard PRSAs are not capped and, in most cases, are higher than on standard PRSAs
- Beware of promises of better returns on non-standard PRSAs. Predicting investment performance is notoriously difficult.

The recommendation for standard versus non-standard is part of the sales process and should form part of the recommendation made to clients.

We would recommend the following changes to be noted in Appendix B.

#### ***What type of PRSA is best for you?***

*The standard PRSA is likely to meet the requirements of most people.*

It is our opinion that this line should be deleted as this is not always the case.

*Charges on non-standard PRSAs are not capped and, in most cases, are higher than non-standard PRSAs.*

It is our opinion that this line should be modified to charges on non-standard PRSAs may be higher or lower than charges on standard PRSAs

#### **Buyer Beware – What to look out for**

*Beware of promises of better returns on non-standard PRSAs. Predicting Investment performance is notoriously difficult.*

It is our opinion that these lines should be deleted as this does not present a balanced argument and non-standard PRSAs may meet the needs of certain individuals more appropriately than standard PRSAs.

#### **Statement of Suitability**

The Reasons Why letter should be provided by the agent responsible for recommending the product. This may or may not be the PRSA provider. To the extent that the PRSA provider is not responsible for the recommendation, the PRSA provider should not have to provide an independent assessment of suitability to the client. The PRSA provider should be able to rely on the intermediary declaration (Appendix C) that the intermediary has assessed the suitability of the product in making their recommendation.

Therefore we consider the Code should be amended Chapter 5 – clause 17 to state, “in recommending a product or service” only.



## Product Producer Responsibilities

11. In relation to identifying a target market of consumers for a product, what are the key consumer criteria that you believe should be used?

The target market is extremely difficult to define. It would encourage a product producer to use the broadest categorisation possible. We believe therefore that the focus should shift to the most important issue which is suitability of product to the individual consumer.

12. Is the consumer information listed in Chapter 4, Provision 32 useful when identifying a target market?

Chapter 4, Provision 32 outlines the risks of the investment which the product producer should disclose, however, this is different to identifying a target market.

13. Do you agree with the requirements outlined in Chapter 3, Provision 45? How often do you think that reviews of products should be undertaken?

This is unworkable and it is unclear as to what value is derived from carrying out a retrospective review of product. Investment decisions are made at a point in time, using information available at that time. Costs are often incurred which are likely to influence future investment decisions. It is also unclear what is meant by 'meeting the general needs of the target market'.

14. Should product producers be required to periodically review applications for their investment products, received through their direct sales force and through the intermediary channel, to ensure that actual sales are consistent with the targeted market? Do you foresee any hurdles to the implementation of this requirement in practice?

As noted above we believe suitability rather than target market is critical. The notion of target market is too generic and will lead to unsuitable products being recommended.

## Recommendations from the Review of the Intermediary Market

15. Do you agree with this proposal? If not, what specific issues arise in respect of appointments from entities other than insurance providers?

No comment.

## Remuneration disclosure

16. Do you agree with the proposal that a requirement to disclose remuneration from product producers should be imposed in circumstances where there are currently no requirements in place in this regard?

No comment.

## Errors Handling

17. Do you think this approach to errors handling will reduce the incidence of errors and lead to an improvement in the way in which regulated entities handle errors involving consumer detriment?

In our opinion the breath of this provision is too far reaching and reference in the Code to errors 'that may result' in consumer detriment should be removed. We would recommend that the Code be more prescriptive in that only actual errors in relation specifically to pricing and charging need to be reported. We strongly recommend a de minimis is set and reporting to CB is necessary only if the error is:

- reflective of a systemic issue; or
- affects more than 2% of the number of client accounts with the firm with clients having been negatively impacted by more than €500 each, and/or the aggregate error has exceed €50,000.

18. Do you think the proposals are adequate to prevent repeat errors from occurring?

No comment.

19. Do you think the six-month timeframe to rectify errors involving consumer detriment is appropriate?

No comment.

20. Do you think our proposal that only errors that cannot be resolved within one month should be reported is an improvement on the current situation? Is the one-month timeframe appropriate? If not, please suggest an alternative.

No comment.

## Unsolicited contact

21. Do you think that the proposed times for permitting unsolicited contact are appropriate?

As per our third point in the cover letter we consider that the existing provisions in relation to cold calling should be re-instated.

22. Do you think the restriction on the sale of products or services to protection policies only and the prohibition on the sale of protection policies on a first unsolicited contact will enhance consumer protection?

No comment

## Arrears Handling

23. Do you agree with the proposals in relation to arrears handling? If not, please set out your suggestions on appropriate measures.

We do not agree with the blanket provision to give the consumer three months notice where it is intended to offset credit balances in other accounts that are in credit in



order to repay debts arising. This discretion should be left to the individual firm and the client's personal circumstances. Given extremely volatile markets it may not be prudent or in the client's best interest to wait three months before taking action.

24. Do you agree with the proposal to prevent the closure of accounts in arrears cases?

No comment.

### **Small Print**

25. Do you agree with our definition of 'key information'?

Yes, we agree with the definition of key information as 'any information which will influence a consumer's decision with regard to purchasing or not purchasing a service or product'.

26. Do you think that we should go further than proposed? In particular, we would welcome your views with regard to the usefulness of small print in advertisements.

No comment

### **Review on the Transparency of Credit Card Statements**

27. Do you think this proposal will provide clear and useful information for consumers? Do you think the method of presentation is suitable?

No comment.

In addition to providing responses to your particular questions we would like to comment on particular sections of the Code. See Appendix 2 below.

## Appendix 2

## Additional comments on sections of the Code

Code Ref	Provision	Comments
1	Scope	We refer to our meeting with the Central Bank on 16 November in which we provided feedback on the importance of the regulation of the property market and whether the Consumer Protection Code should explore the possibility of making real property a regulated instrument.
3.2	A <b>regulated entity</b> must ensure that all instructions from or on behalf of a <b>consumer</b> are processed properly and promptly. Where an instruction cannot be acted on within two <b>business days</b> , the <b>regulated entity</b> must acknowledge in writing receipt of the instruction, outline the reason for the delay and confirm when it will be processed.	The timeframe suggested is not practical therefore we suggest the reference should be amended to read: 'A <b>regulated entity</b> must ensure that all instructions from or on behalf of a <b>consumer</b> are acted upon properly and promptly'.
3.7	A <b>regulated entity</b> must ensure that all warnings required by this Code are prominent, i.e. in bold type and of a font size that is larger than the normal font size used throughout the document or <b>advertisement</b> . The warning statement must be in a box separate to other information but must appear alongside the benefits of the product.	<p>This section should be moved to the advertising chapter for consistency and ease of reference in the new Code.</p> <p>The warnings should appear alongside the information to which they relate (eg performance, guarantees, etc), rather than alongside the benefits of the product.</p> <p>Warnings that are prominent, either bold, highlighted or in boxes should be sufficient. It is not necessary for the font of the warning to be of a larger size. Again, we would refer to MiFID, which is not prescriptive in relation to this point. Our preference would be to ensure consistency of regulation where possible.</p>
3.9	A <b>regulated entity</b> must have regard to the provisions of any relevant anti-money laundering guidance notes approved by the Minister for Justice, Equality and Law Reform under Section 107 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.	Anti-money laundering is dealt with under the Criminal Justice Legislation, therefore reference should not be included in the Code.
3.25	Where conflicts of interest arise and cannot be reasonably avoided, a	MiFID also prescribes how to identify and manage conflicts of interests and it is important that the two



Code Ref	Provision	Comments
	<p><b>regulated entity</b> must disclose the general nature and/or source of the conflicts of interest to the <b>consumer</b>. A <b>regulated entity</b> may only undertake business with or on behalf of a <b>consumer</b> where there is directly or indirectly a conflicting interest, where that <b>consumer</b> has acknowledged, in writing, that it is aware of the conflict of interest and still wants to proceed.</p>	<p>pieces of regulation are complementary. We would recommend that the original wording used in the current Code is retained.</p>
<p><b>3.29 &amp; 3.30</b></p>	<p>29. A <b>regulated entity</b> must not make an unsolicited personal visit or telephone call for the purpose of offering a product or service to a <b>consumer</b> except where the purpose of the contact is limited to offering a <b>protection policy</b>.</p> <p>30. A <b>regulated entity</b> may make an unsolicited personal visit or telephone call to a <b>consumer</b> who is an existing <b>customer</b> provided the contact is in relation to a product held by that <b>consumer</b>.</p>	<p>These changes effectively remove any opportunity to market to existing Consumers on products or services that they may be interested in, which is not in the consumer's best interests.</p> <p>Consumers have the protection of the Data Protection Acts and the National Directory Database where they can opt in or out of marketing.</p> <p>We strongly disagree with this revision to the Code and believe it is the consumer who should ultimately decide whether they want to receive information or not.</p>
<p><b>3.42</b></p>	<p>A product producer must not terminate a letter of appointment with an intermediary solely based on the volume of new business introduced by the intermediary.</p>	<p>Terminating an intermediary for producing little or no business should be permissible. Where an agent is producing little or no business the commercial reason for the relationship has ceased and there should be no reason why the agency should not be terminated.</p>
<p><b>3.43</b></p>	<p>When designing a new <b>investment product</b>, a product producer must identify the target market for the product, the nature and extent of the risks inherent in the product and the level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor. The target market must only comprise the types of <b>consumer</b> for which the product is likely to be suitable. The product producer must also identify the target market for which the product is not suitable.</p>	<p>As previously noted we do not believe target market is the right approach and believe focus should instead be on assessing suitability at the individual consumer level.</p>

Code Ref	Provision	Comments
3.45	<p>Within the first year of launching an <b>investment product</b>, and annually thereafter, a product producer must check whether the product is continuing to meet the general needs of the target market for which it was designed. Where the product producer establishes that a product no longer meets the general needs of the target market, the product producer must:</p> <p>a) reassess the product to identify the <b>consumer</b> type for which it is suitable;</p> <p>b) immediately update the information it provides under Provision 44 above; and</p> <p>c) notify the Central Bank</p>	<p>Suitability requirements should be assessed on an ongoing basis and not at points in time. We recommend that the same approach that applies in MiFID in assessing suitability should be applied. .</p>
4.3	<p>Where a <b>regulated entity</b> intends to amend or alter the range of services it provides, it must give notice to affected <b>consumers</b> at least two months in advance of the amendment being introduced.</p>	<p>We believe the existing timeframe of one month notice is more than sufficient and we also believe this clause should be applicable only where there is a reduction in service or increase in charges.</p>
4.12	<p>12. Where a <b>regulated entity</b> is licensed, authorised, or registered by, the Central Bank, the regulatory disclosure statement must take the following form:</p> <p>“*Full legal name of regulated entity (and trading name(s), if applicable)+ is regulated by the Central Bank of Ireland”.</p> <p>The regulatory disclosure statement must not include any additional information.</p>	<p>We are assuming that additional statements about other regulators can be added after the Central Bank regulatory statement.</p>
4.16g	<p>The <b>terms of business</b> must set out the basis on which the <b>regulated entity</b> provides its services and must include at least the following:</p> <p>g) if the <b>regulated entity</b> is tied for any of the services outlined in e) above, the name of each product/service and <b>regulated entity</b> to which it is tied;</p>	<p>We are assuming that generic terms can be used rather than specific products names e.g. ‘for pension business’ rather than ‘for XXX Insurance Co Standard PRSA’.</p>
4.29	<p>A <b>regulated entity</b> must inform each affected <b>consumer</b> in advance of acting on any term or condition</p>	<p>Firms must be allowed to exercise their rights under their Terms &amp; Conditions (T&amp;Cs). By giving consumers notice of the intention to act on a</p>



Code Ref	Provision	Comments
	attaching to a product or service purchased by the <b>consumer</b> .	particular term or condition, consumers may take action that could restrict the entity from applying the term or condition.
5.1b	<p>Before offering, arranging or recommending a product or service, a <b>regulated entity</b> must gather and record sufficient information from the <b>consumer</b> to enable it to provide a recommendation or a product or service appropriate to that <b>consumer</b>. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the <b>consumer</b>, but must be to a level that allows the <b>regulated entity</b> to provide a professional service and must include, where relevant, details of the <b>consumer's</b>:</p> <ul style="list-style-type: none"> <li>a) Needs and objectives (including, where relevant, the length of time for which the <b>consumer</b> wishes to hold a product, need for access to funds, need for emergency funds);</li> <li>b) Personal circumstances (including age, health, knowledge and experience of financial products, dependents, potential changes to his/her circumstances);</li> <li>c) Financial situation (including income, financial products and other assets, debts and financial commitments); and</li> <li>d) Attitude to risk (in particular, the importance of capital security to the <b>consumer</b>).</li> </ul>	Knowing the Consumer and Suitability information should not go beyond what is required under MiFID regulations, therefore we should not need to request health information, particularly as this is considered by the Data Protection Commissioner as sensitive personal data and we have no basis for requiring this information. Whether a consumer wishes to divulge this information should be at their discretion.
5.2	A <b>regulated entity</b> must gather and maintain a <b>record</b> of details of any material changes to a <b>consumer's</b> circumstances before providing that <b>consumer</b> with a subsequent product or service. Where there is no material change, this must be noted on a <b>consumer's records</b> .	This is extremely broad and we would have concerns regarding the operational feasibility of doing this. In addition the onus should be on the consumer to advise the firm of any material changes to their circumstances.
	When assessing the suitability of a product or service for a <b>consumer</b> , the <b>regulated entity</b> must, at a minimum, consider and document	This section should be aligned with MiFID requirements outlined below on suitability therefore section d) should be deleted

Code Ref	Provision	Comments
	<p>whether:</p> <p>a) the product/service meets that <b>consumer's</b> needs and objectives;</p> <p>b) the <b>consumer</b> is able to meet the financial commitment associated with the product on an ongoing basis and/or is financially able to bear any related risks consistent with their needs and objectives;</p> <p>c) the <b>consumer</b> has the necessary experience and knowledge in order to understand the risks involved; and,</p> <p>d) the <b>consumer</b> may be a <b>vulnerable consumer</b>, and as such, has particular needs and circumstances that require due consideration.</p>	<p><b>94</b> (1) Investment firms shall obtain from clients or potential clients such information as is necessary for the firm -</p> <p>(a) to understand the essential facts about the client, and</p> <p>(b) to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:</p> <p>(i) it meets the investment objectives of the client in question;</p> <p>(ii) it is such that the client is able financially to bear any related investment risks consistent with the client's investment objectives;</p> <p>(iii) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of the client's portfolio.</p> <p>It is assumed that suitability obligations would not apply in the context of an Execution Only service,</p>
5.20	<p>20. Provisions 1- 4, 10-11 and 17-19 (inclusive) do not apply where:</p> <p>a) the <b>consumer</b> has specified both the product and the product producer and has otherwise not engaged with the <b>regulated entity</b> in relation to that product; or</p> <p>b) the <b>consumer</b> is purchasing or selling foreign currency; or</p> <p>c) the <b>regulated entity</b> has established that the <b>consumer</b> is seeking a <b>basic banking product or service</b>; or</p> <p>d) the <b>consumer</b> is seeking credit that falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010.</p> <p>In relation to a) above, before providing the product or service the <b>regulated entity</b> must warn the <b>consumer</b> that the <b>regulated entity</b> does not have the information</p>	<p>The current CPC sets out that KYC and suitability do not apply where the consumer has specified both the product and product producer and where the consumer has not received any advice. It is critical that the Code ensures that execution only business falls outside the Scope of KYC requirements as the two concepts are mutually exclusive. We therefore recommend that the existing CPC wording continue to apply.</p>



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	<p>to determine the suitability of that product for the <b>consumer</b> and must obtain written confirmation from the <b>consumer</b> that such warning has been received.</p> <p>This exemption does not apply where the <b>consumer</b> is availing of a credit facility that falls outside the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 or is purchasing a <b>lifetime mortgage</b> or <b>home reversion agreement</b>.</p>	
6.2	A <b>regulated entity</b> must not use abbreviations, acronyms or numerical references to depict any of the items of information listed in a statement of transactions.	We would agree with ensuring Consumers have sufficient information about transactions on their statements however information for inclusion on statements comes from a number of sources and the detail is sometimes out of the entity's control.
6.3	Where the account is a joint account, the statement must be issued separately to each of the joint account holders.	<p>We would agree that sending statements to each person in a joint account where the parties have different correspondence addresses is appropriate; however where both parties live at the same address, providing exact copies of statements to each party at the same address is excessive.</p> <p>We would also highlight that with online accounts in joint names, it is common practice for there to be only one correspondence address, one set of log-in details and only one in-box for both parties to receive correspondence. We would not be in favour of issuing duplicates as a matter of course or multiple accesses to systems, which could potentially result in the initiation of simultaneous or erroneous transactions.</p> <p>In general, we believe that the industry should be encouraging more use of electronic methods of receiving correspondence.</p>
9.10	10. A <b>regulated entity</b> must give a <b>consumer</b> three months notice in writing where it intends to offset any credit balances in other accounts held by the <b>consumer</b> with that <b>regulated entity</b> , against any arrears outstanding.	We strongly object to this clause on the basis that it is not in the interests of the consumer and the right to offset credit balances for amounts owing should remain with the firm.
9.16	Each calendar month, a <b>regulated entity</b> , and/or any third party acting on its behalf, may not initiate more	This point should not be included if there is no point being made here.

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	<p>than three unsolicited communications, by whatever means, to a <b>consumer</b> in respect of an arrears situation. The three unsolicited communications do not include any communications to the <b>consumer</b> which are required by this Code.</p>	
<p><b>10.30 &amp; 10.31</b></p>	<p>30 An <b>advertisement</b> for a product where the promised 'return of capital' is only applicable on a specific date, must contain the following warning:  <b>Warning: If you cash in your investment before (specify the particular date) you may lose some or all of the money you put in.</b></p> <p>31 An <b>advertisement</b> for a product where there is no access to funds for the term of the product must contain the following warning:  <b>Warning: If you invest in this product you will not have any access to your money for (insert time required before the product matures).</b></p>	<p>It is unclear that the provisions can be used independently or together as appropriate.</p>
<p><b>11.3</b></p>	<p>A <b>regulated entity</b> must speedily, efficiently and fairly, correct an error that has resulted or may result in <b>consumer</b> detriment. All such errors must be fully resolved within six months of the date the error was first discovered, including:</p> <ul style="list-style-type: none"> <li>a) correcting any systems failures;</li> <li>b) making all reasonable efforts to effect a refund (with appropriate interest) to all <b>consumers</b> who have been affected by any error; and</li> <li>c) notifying all affected <b>consumers</b>, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided.</li> </ul>	<p>We consider the six month timeframe to be too restrictive to resolve issues and would support the inclusion of 'or as otherwise agreed with the Central Bank' to allow flexibility for errors that could take longer than six months to resolve.</p> <p>We recommend that the words 'or may result' are removed as it is difficult to ascertain whether an error may result in customer detriment. Furthermore, we consider that the word 'detriment' to be highly subjective, as what might be detrimental to one customer may not be to another, and recommend that this be removed and replaced with a more specific description.</p> <p>We would recommend the inclusion of 'making all reasonable efforts' is included in c.</p>



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11.5	A <b>regulated entity</b> must inform the Central Bank, in writing, of any errors that have resulted or may result in <b>consumer</b> detriment that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month.	<p>This clause should relate to errors in relation to pricing and charging only, rather than administrative errors.</p> <p>We would recommend the words 'or may result' are removed as it may be difficult to ascertain whether an error 'may result' in consumer detriment.</p>
11.10 e)	<p>A <b>regulated entity</b> must have in place a written procedure for the proper handling of <b>complaints</b>. This procedure need not apply where the <b>complaint</b> has been resolved to the complainant's satisfaction within five <b>business days</b>, provided however that a <b>record</b> of this fact is maintained. At a minimum this procedure must provide that:</p> <p>a) the <b>regulated entity</b> must acknowledge each <b>complaint</b> in writing within five <b>business days</b> of the <b>complaint</b> being received;</p> <p>b) the <b>regulated entity</b> must provide the complainant with the name one or more individuals appointed by the <b>regulated entity</b> to be the complainant's point of contact in relation to the <b>complaint</b> until the <b>complaint</b> is resolved or cannot be processed any further;</p> <p>c) the <b>regulated entity</b> must provide the complainant with a regular written update on the progress of the investigation of the <b>complaint</b> at intervals of not greater than 20 <b>business days</b>;</p> <p>d) the <b>regulated entity</b> must attempt to investigate and resolve a <b>complaint</b> within 40 <b>business days</b> of having received the <b>complaint</b>; where the 40 <b>business days</b> have elapsed and the <b>complaint</b> is not resolved, the <b>regulated entity</b> will inform the complainant of the anticipated timeframe within which the <b>regulated entity</b> hopes to resolve the <b>complaint</b> and of the <b>consumer's</b> right to refer the matter to the</p>	Under e) this section should be updated to remove the need to include the Ombudsman details where a complaint has been resolved.

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	<p>Financial Services Ombudsman or the Pensions Ombudsman, and will provide the <b>consumer</b> with the contact details of such Ombudsman; and</p> <p>e) within five <b>business days</b> of the completion of the investigation, the <b>regulated entity</b> must advise the <b>complaint in writing</b> of:</p> <ul style="list-style-type: none"> <li>i) the outcome of the investigation;</li> <li>ii) where applicable, the terms of any offer or settlement being made;</li> <li>iii) the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, and</li> <li>iv) the contact details of such Ombudsman.</li> </ul>	
12.1	<p>Where there is a verbal interaction with the <b>consumer</b> to assist the <b>consumer</b> in understanding the product or service on offer, a <b>regulated entity</b> must keep a contemporaneous <b>record</b> of the detail of such verbal interaction.</p>	<p>We would recommend that this provision is limited to discussions around the suitability of a product at the initial point of investment.</p>