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Consumer Protection Codes Department
Central Bank of Ireland
PO Box 9559
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10th January 2011

Re: Consultation Paper CP47 – Review of Consumer Protection Code

Dear Sir/Madam,

Further to your request for views on Consultation Paper CP47, please find enclosed Bank of Ireland's comments and observations. In addition to this letter, our response comprises three sections as follows:

1. Summary with Bank of Ireland's comments on a number of key items in the draft Code.
2. Responses to the 27 questions raised by the Central Bank of Ireland and the items raised under Sectoral Commitments.
3. Detailed comments on the new and amended provisions.

Bank of Ireland welcomes the review of the code and is fully supportive of proposals that will genuinely increase consumer protection and awareness in respect of financial products and services.

We endorse the intentions of the proposed code and the attachments to this letter set out detailed comments on individual sections that we believe would benefit from clarification or amendment to further enhance consumer protection, without creating undue administration, correspondence or complexity for the consumer.

However, there are a number of the provisions over which we would have major concerns. These include provisions that appear to be in conflict with existing legislation, that run contrary to the basic principles of banking, that could have very serious consequences for the delivery of banking services for both institutions and consumer alike or could inhibit competition. In this context we would raise the following points:

- CP47 is a proposed statutory code of conduct for practice and procedure concerning dealings with customers. Our understanding of Supreme Court authority on this question is that the code must address itself to details to give effect to principles and procedures set out by the Oireachtas in statute law. We believe that CP47 (like any statutory code) must respect the statutory, regulatory and common law framework and not attempt to amend them or promulgate policies contrary to them. For example:-
  - the common law position on set off and guarantees
  - statutory law on assignments (e.g., as it underpins securitisations)
  - Equal Status Acts
  - Data Protection Acts
  - Distance marketing (EU directives, Irish regulations)
- Bank of Ireland understands that the IBF has Senior Counsel's opinion that would support our view that a number of the provisions in the Code are in all probability *ultra vires* the Central Bank.

- We believe that Chapter 7 as drafted appears to be contrary to the existing law concerning the assignment of debts and mortgages and has the potential to put an end to securitisations and similar transaction types, with consequential implications for funding. For example, if a loan agreement permits assignment or transfer by the lender, the borrower's prior written consent to assignment of debt is not necessary under the present law; the assignment becomes absolute once the borrower is notified of it (see, e.g., Section 28(6) of the Judicature Act (Ireland) 1877).
- Bank of Ireland is deeply concerned at the potentially very damaging proposal to give three months notice before offsetting credit balances in other accounts (9.10) and before calling in a guarantee (4.41). It is our view that these requirements will diminish, if not eliminate, the effectiveness of guarantees and contracts of set off, particularly in respect of business accounts. The provision will have an unacceptable retrospective effect on the value of existing guarantees and set off contracts for security.
- Bank of Ireland appreciates the intent of the new vulnerable customer definition but questions the feasibility of applying what is currently set out in the code in practice. We would note that even in defining a customer as vulnerable, the degree or level is open to interpretation and may involve offending consumers who do not deem themselves in the category for such treatment. We believe that the question of "vulnerable consumer" and the related examples should be replaced with an issue-specific and time-specific assessment of a person's mental capacity to make a decision in alignment with best international practice and the preferences of the Law Reform Commission.
- Bank of Ireland acknowledges the intention to strengthen the Code to provide increased consumer protection but we believe the new provisions need to be proportionate to the benefits to the consumer and should not unduly increase the cost base of the financial sector as ultimately, incremental costs will have to be passed on to consumers by way of increased fees and charges. Our initial estimate suggests ongoing annual operating costs of between €11m & €16m. Included in our submission are a number of suggestions as to how increased consumer protection and access to information could be achieved, while reducing the implementation cost – these suggestions include the introduction of materiality dimensions on certain provisions and the provision of certain information on request by those parties who wish for same, rather than on a blanket basis.
- Bank of Ireland has concerns that some of the provisions in the code may inadvertently inhibit competition in the market place – for example the restrictions on cold calling, particularly the proposed prohibition on personal visits to consumers type (b & c) who are not already customers of an institution.
- The requirement to communicate with customers prior to acting on any Term or Condition (4.29), is far too widely and uncertainly drafted, in our view. For example, it is impractical to require banks to contact consumers prior to acting on the many terms and conditions that are essential to the smooth day to day operation of personal current accounts. The provision (as drafted) could be interpreted to require daily (and largely unwelcome) interaction with tens of thousands of consumers. Additionally, in the many cases where such interaction was not possible, the default obligation would appear to be not to act, and that would frequently not be in the customer's interests. Provision 4.29 is one of the provisions we believe is probably *ultra vires* and it is also one of the provisions that we feel would have an unacceptable retrospective effect on existing contracts (e.g., product terms and conditions).
- The requirement to record all verbal interactions with consumers concerning the understanding of a product or service is we believe excessive. Many of these queries are from non-customers who simply want some basic information. Under the proposals in the code, we would be required to seek identification from the consumer, source their record (if one exists) or create a new record and update the record in full. To ensure compliance a scripted interaction would be necessary. This would inevitably be a lot more time consuming from the customers perspective, something that is unlikely to be welcomed where simple enquiries are concerned.

  We would suggest that this provision be restricted to situations where there is a clear intention to purchase, which situations will be adequately covered by suitability discussions.

- While recognising the need to be supportive and reasonable with customers that fall into arrears, Bank of Ireland is concerned that the proposals regarding arrears as outlined in Chapter 9 will limit the ability of our institution to deal prudently with an arrears situation and may indeed again be in conflict with settled law. We would be concerned that the restrictions on arrears management proposed in the code will result in more restricted access to credit facilities, to the ultimate detriment of consumers. We would suggest that the arrears management provisions of the CCMA be considered in the revision of this section of CP47.
- In overall terms, the revised Code would require Financial Institutions to generate a wide range of additional correspondence to consumers. While we are supportive of ensuring that customers are fully informed, it is our view that many consumers will find much of the additional correspondence irksome and of little added value, fostering complaints of waste, both in the context of cost and in the context of the environmental impact. Given that on-line and telephone banking make much of this information readily available, we would question the necessity of some of the provisions (other than on a consumer request basis) from the perspective of information duplication and overload.
- Bank of Ireland believes that some of the new provisions may run contrary to the objectives of the Central Bank of Ireland to promote financial stability and increase the efficiency and effectiveness of the financial sector, with significant unintended consequences for consumers. Indeed we believe that some of the provisions may in fact disadvantage and/or frustrate consumers seeking to access banking / credit facilities rather than affording additional protection – our views in this respect are set out in the attachments to this letter.
- In terms of format, the previous code made it relatively straightforward for those implementing the Code to understand which sections were specific to individual products (e.g. Investment Products) and which were generic. We believe that a similar approach in the new Code covering savings, investments, protection and lending products would greatly facilitate implementation and understanding by both Consumers and Financial Institutions.
- The new provisions are very extensive will require very significant systems development. We therefore request that an appropriate implementation timeframe of the order of 12 months from the date the Code is finalised be allowed, as work cannot commence until the final provisions are known.

We would wish to meet with the Central Bank of Ireland to discuss the proposals in more detail in due course.

Yours sincerely

Peter Morris
Chief Governance Risk Officer

Encl.

Appendix 1:- BOI Executive Summary

Appendix 2:- BOI responses to the Central Bank of Ireland's 27 questions

Appendix 3:- BOI detailed comments on the new and amended provisions

Appendix 1

Summary of Bank of Ireland's main comments and observations on the draft Code

1. Increased volume of customer contact:

A significant increase in customer communications will arise as a result of the provisions outlined in the CP47 consultation document. Some of these will be appreciated by customers in that they welcome and expect proactive contact in certain circumstances. However, we believe that certain of the provisions of CP47 will deliver minimal customer benefit and indeed will not be welcomed by customers, while at the same time incurring significant costs in implementation. These include:

- Decline letters (4:49) - based on our experience, most customers are satisfied with a verbal refusal and will not wish to be reminded of the refusal through a subsequent letter. We believe that the Business Lending Code adequately covers off the requirement to notify customers of a decline and a similar approach should be adopted in CP47
- Duplicate joint account statements (6:3) – most joint account holders reside at the same address and this would represent significant unnecessary duplication
- Requirement to write to a customer if an instruction cannot be acted on within 2 business days (3:2) – in most cases the instruction will have been processed before the advice letter is received with a real danger of major customer confusion
- Statements on current accounts with a balance less than €20 (6:4) – where these accounts have been dormant for an extended period, annual communication may well be to an address that is no longer valid opening up a fraud risk.
- Pre-notification of charges (4:71c) in excess of €10 (down from €12.70 currently) - this is a very low materiality threshold that we believe will result in significant ongoing and unnecessary incremental cost without any real value add for consumers. Given the level of inflation since the €12.70 figure was set in the mid 90s, we would recommend that at a minimum, the pre-notification threshold be increased to €15, if not €20.
- Requirement to pre-notify customers in writing of interest rate changes (4:42). Impractical in the context of market related lending. Also the recently introduced Consumer Credit Regulations permit the use of Press notifications where the interest rate is set in the context of a reference rate.
- Separate annual fees and interest statements - particularly where customers already receive quarterly pre-notification statements for interest and fees.

We would suggest that, at a minimum, the above new requirements should only apply where requested by the customer. By this action, we can avoid creating a large volume of unnecessary duplicate communication, which in many cases will irritate rather than benefit the consumer. In addition, the operational costs on undertaking these mailings (which ultimately will have to be recovered from customers) can be kept to a reasonable level.

2. Restrictions on acting commercially:

There are a number of new provisions which would limit a regulated entity's ability to act commercially and indeed would place a regulated entity at a significant disadvantage in exercising its rights under law. This could in turn see the withdrawal from future offer of certain propositions that are currently enjoyed by consumers.

- The requirement to give three months notice before offsetting credit balances in other accounts (9:10) and the requirement to notify guarantors three months in advance of calling in a guarantee (4:41), particularly in respect of business accounts, will we believe diminish, if not eliminate, the effectiveness of guarantees and set off contracts. For example, a depositor could withdraw his funds if the bank notified him / her of its intent to set off at a future date (or the Revenue Commissioners or other creditors could attach the funds). A guarantor could place assets which support his credit beyond the practical reach of a creditor in a 3 month notice period. The provision will have an unacceptable retrospective effect for security and Basel II purposes on existing guarantees and set off contracts. Good banking practice (and, by implication, the requirements for readily realisable credit risk mitigants under Basel II) means that guarantees are designed to be called on demand and letters of set off to be operated without notice. Furthermore, the proposed provision on guarantees may prompt the premature calling of a guarantee, with potentially devastating consequences for a business that is relying on the guarantee for its continued existence It is likely that Financial Institutions will be less willing, in future, to accept guarantees or set off contracts as forms of security, which will be very much to the detriment of customers seeking facilities and who wish to propose such items as credit enhancements. Examples would include a student seeking a loan where a parental guarantee is often the key to their being able to source finance – similarly those seeking facilities to start up a Limited company.
- The requirement to give notice before acting on a term or condition (4:29) would place Banks in an impossible position with respect to the operation of transactional accounts such as current accounts, credit cards and demand deposit accounts. This provision would require banks to make daily contact with tens of thousands of customers before processing basic transactions. Aside from the practical difficulties of making contact, this will be highly intrusive and irritating for customers who expect us to act in accordance with the agreed terms and conditions without further contact. In practice banks would not be able to return an item unpaid without first contacting the customer, nor would they be able to pay the item if it placed the customer in an overdrawn position – an impasse that could not be resolved if customer was un-contactable.

3. Unsolicited communications (3:29 – 3:34)

It is our view that the new provisions relating to unsolicited contact will restrict the market and hinder rather than foster competition, particularly in respect of type (b) & (c) consumers as defined in the code. Personal visits by institutions other than their current provider often result in business customers obtaining better pricing on their financial dealings. We believe these provisions should not apply to consumers type (b) & (c).

We would also recommend that the existing contact times in the current Consumer Protection Code should be retained in the new Code. Our customers frequently express dissatisfaction that Bank of Ireland does not contact them to discuss their finances, something we are continually striving to address.

Trends in society point to longer working hours and increased shift working, with many consumers not getting home before 7pm and being un-contactable during the daytime. The limiting of the contact period to 9am to 7pm will severely limit the opportunity for a bank to make contact with its customers, something the vast majority of our customers wish us to do. In addition it is our experience that many customers, including shift workers, have a preference to be contacted on a Saturday when they have time to engage.

We also believe that the dual contact requirement for the sale of basic protection products such as car, travel and home insurance will be to the significant detriment of consumers. The EU Distance Marketing directive allows for the conclusion of a sale on first contact and includes a well developed (and obviously EU-wide) set of customer protections designed precisely for that.. Many consumers require spontaneous sale when dealing with basic protection products. A consumer who is contacted about car insurance may want immediate cover and be happy to pay for it there and then, knowing they can subsequently avail of the statutory cooling off period. The provisions as currently stated will disadvantage customers in this situation and in similar situations relating to home and car insurance.

We would suggest (if CBI insists that some form of prohibition on sale by one phone call remain) that a distinction be drawn between low risk, low complexity protection products such as those mentioned above and other riskier/more complex protection products.

4. Arrears management

While recognising the need to be supportive and reasonable with customers that fall into arrears, Bank of Ireland is concerned that the proposals regarding arrears as outlined in Chapter 9 will limit the ability of an institution to deal prudently with an arrears situation and may indeed be in conflict with settled law.

Should all the provisions, as currently worded come into force, the net effect will be to limit the value of some currently available security instruments and debt management processes. We have already commented on our concerns on guarantees and set off contracts.

We would also be concerned that as the provisions on arrears management place restrictions on an institutions in the pursuit of arrears and other forms of indebtedness that have arisen as a consequence of a breach of terms and conditions by a consumer, will restrict access to credit facilities, to the ultimate detriment of consumers.

Under the proposed provisions on indebtedness, customers who fail to engage and cooperate with their bank in respect of a debt will be allowed three months unrestricted operation of their account. Bank of Ireland does not believe that it is equitable that a customer who has breached their terms and conditions and refuses to engage in dialogue with the institution, should benefit in this way. The recently implemented CCMA makes customer cooperation central to any such arrangements and we believe this should also be reflected in the CP47 proposals.

Bank of Ireland is of the view that the two month notice period afforded under the Payment Services Regulations is more than adequate for consumers to make alternative arrangements and that CP47 should be aligned with this notice period. We would suggest that this two month period commence from the time a financial institution calls on a customer to address their indebtedness.

5. Errors (Chapter 11)

Bank of Ireland welcomes the new provisions in relation to error handling and the clarity and consistency this will bring to the industry. However the provisions as

currently worded are extremely wide in that they are not limited to pricing and charging errors and there are no materiality thresholds.

The absence of any materiality provisions will, in our view, create an unnecessary administrative burden for both the Central Bank and regulated entities, as regulated entities will be required to routinely inform the Central Bank of all errors, even those where the monetary impact is small and/or the number of customers affected is not material.

Bank of Ireland strongly supports the requirement to rectify errors in a timely manner and absolutely believes that this should apply regardless of materiality or number of customers affected. We are not suggesting that less material errors would be given less priority but that there would be a different reporting mechanism (for example reporting quarterly or half yearly in arrears) in order that the reporting process does not unduly burden or deflect effort from the rectification process itself.

We would also recommend that the new provisions should be limited to errors that result in financial detriment to the customer (i.e. pricing and charging errors).

While every effort will always be made to fully resolve issues within a six month timeframe, this may not always be possible due to system complexity. We suggest that Code should facilitate the granting of an extension to the proposed 6 month timeframe, by the Central Bank, should exceptional circumstances arise.

6. Vulnerable customers

Bank of Ireland appreciates the intent of the new vulnerable customer definition but questions the feasibility of applying what is currently set out in the code in practice (5:10). We would note that even in defining a customer as vulnerable, the degree or level is open to interpretation and may involve offending customers who do not deem themselves in the category for such treatment.

We believe that the examples of vulnerability are unhelpful, possibly misleading and likely to be considered offensive by many consumers. For example:

- It would likely be socially divisive if regulated entities questioned potential customers as to their educational achievements as we believe the current wording would require.
- Those of retiring age are often far better informed financially than other age groups and would resent the suggestion of ageism in the proposed code
- Many of the examples of vulnerability are more to do with credit worthiness and nothing to do with vulnerability per se
- Bank of Ireland also has concerns that the examples will lead to conflict with Equality and Data Protection legislation

If the examples are included as currently proposed, we believe it will lead to institutions seeking to protect themselves against future complaints by extensive questioning of consumers, questions that are likely to be considered overly intrusive. Inevitably it will result in certain categories of consumer being denied access to financial services they desire (or experiencing delays in gaining access to financial services they desire), through institutions being required by CP47 to undertake excessive levels of enquiry across all potential vulnerabilities.

We believe that the question of “vulnerable consumer” and the related examples should be replaced with an issue-specific and time-specific assessment of a person’s mental capacity to make a decision in alignment with best international practice and the preferences of the Law Reform Commission.

It is our view that CP47 should set out how an institution is expected to assess whether the mental capacity of a consumer to make a decision is diminished during the suitability process, bearing in mind that the complex nature of the issue and the fact that employees of financial institutions will not have medical or legal qualifications.

In addition to the above suggestions, we believe that any provisions in relation to mental capacity should be limited to consumers who are natural persons acting outside their trade, business or profession.

7. Co-existence with existing legislation:

CP47 is a statutory code of conduct for practice and procedure in dealings with customers under Section 117 of the Central Bank Act 1989. We believe that CP47 (like any statutory code) must (under Irish law as stated by the Supreme Court) respect the statutory, regulatory and common law framework and not attempt to amend them or promulgate policies contrary to them. For example:-

- the common law position on set off and guarantees
- statutory law on assignments
- Equal Status Acts
- Data Protection Acts
- Distance marketing (EU directives, Irish regulations).

Our concerns with potential conflict with the established legal framework (and the consequence that might flow from that) are detailed in our commentary on the chapters of CP47.

8. Securitisation

We believe that Chapter 7 as drafted appears to be contrary to the existing law concerning the assignment of debts and mortgages which now underpin securitisations and similar transaction types. For example, if a loan agreement permits assignment or transfer by the lender, the borrower's prior written consent to assignment of debt is not necessary under the present law; the assignment becomes absolute once the borrower is notified of it (see, e.g., Section 26(6) of the Judicature Act (Ireland) 1877).

If proposals in relation to Transfer of Residential Mortgages are implemented, it is not an overstatement to say that they are likely to eliminate securitisations as a funding mechanism for regulated entities. Securitisation has no effect on the terms and conditions of a customer's mortgage (e.g. arrears policy, interest rate policy etc). The elimination of securitisation as funding mechanism will in our view deliver no consumer benefit while placing a significant restriction on the ability of a bank to raise funds to make further credit available.

We recommend that the existing CBI code of Practice on the Transfer of Mortgages be retained and restated in chapter 7.

9. Correlation with other regulation and codes

There are a number of other codes and regulations in existence that cover matters similar to those covered by CP47. These include the Code on Business Lending, Life Assurance disclosure regulations and the PRSA disclosure regulations. The coexistence of these codes will inevitably give rise to consumer and institutional confusion if there is not full alignment of provisions. Bank of Ireland is strongly of the view that the opportunity afforded by the revision of the CPC should be taken to ensure alignment of all relevant codes and to avoid potentially conflicting requirements and ultimately consumer confusion.

In this context, consumers purchasing an investment product will be faced with very different information on what is essentially the same proposition, depending whether the product is sourced from a Life Assurance Company or another type of Financial Institution.

10. Contemporaneous records (12:1)

Bank of Ireland supports the retention of appropriate records of customer interactions where those interactions involve advice and/or the provision of information that leads to the sale of a product or service. However, we deal daily with numerous enquiries on product features from customers and non-customers, many of which are not associated with an intention to purchase at that time.

Were we to be required to record each one of these interactions, we would no longer be able to deal quickly and efficiently with such enquires as is desired by our customers. Each such interaction would require us to seek identification from the consumer, source their record (if one exists) and update the record in full. To ensure compliance a scripted interaction would be necessary. This would inevitably be significantly more time consuming from the customers perspective, something that is unlikely to be welcomed where simple enquiries are concerned.

We would suggest that this provision be restricted to situations where there is a clear intention to purchase.

11. Cost implications of proposed changes:

The preliminary assessment possible within the timeframe allowed for reverting with comments on CP 47 suggests that the system development costs associated with the implementation of the proposed changes will be between €12m and €18m. This is based on an assumption that system solutions could be found for the more complex provisions of CPC. Should this not prove possible, then significant additional staff costs will arise to implement manual solutions

Assuming the system changes are made, we project that additional incremental operating costs of between €11m and €16m per annum will arise. Bank of Ireland would regrettably have no option but to seek to recoup these incremental costs through increased fees and charges on these products and services

A significant element of this ongoing operational cost would be associated with the very substantial increase in customer communications required and which we referred to under section 1 of this paper. Four of these elements alone - duplicate statements to joint account holders (6.3), letters to advise of not acting within 2 days (3.2), decline letters (4.49), and separate fees statements (6.7), the incremental annual print and postage costs alone would over €2m.

As per the costs above, many of the provisions would require extensive system developments to achieve compliance. For example, aside from the practical difficulties with the implementation of a “no abbreviations or acronyms on statements” policy in section 6.2, (many of these are set by the customer or another third party and are outside our control) a major redevelopment of our statement and core bookkeeping systems would be required. We believe that the cost involved would be totally disproportionate to the intended customer benefit and that a legend explaining key abbreviations and acronyms, with an accompanying enquiry telephone number (as per the current practice) adequately meets customer needs.

12. Customer Responsibilities

Many of the provisions in the code are predicated upon customers being up-front and honest in their disclosure of information to regulated entities in respect of their financial position. While accepting that the provisions in the code primarily relate to the activities of Financial Institutions, we believe that the code should also set out the responsibilities of the consumer in being upfront, open and honest in their disclosures and dealings with a Financial Institution.

13. Business Imperative

We recommend that the Central Bank includes a general provision similar to the one in the Business Lending Code which states that:

Nothing in this code prohibits a regulated entity from acting with all necessary speed in the case of a liquidation, receivership, examinership or similar insolvency event, or where there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation.

14. Definition of Consumer

In a number of provisions, the applicability of the provisions to consumers who are other than natural persons acting outside their trade, business or profession is questionable. We believe that the Central Bank should make it clear in their revision of the code as to which proposals relate to all consumers including businesses and which relate specifically to consumers who are natural persons acting outside their trade, business or profession.

Appendix 2

Bank of Ireland response to CP47 Questions 1-27

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'?***

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.***

Answer to Question 1: No. Please see point 7 of explanation of Bank of Ireland Position on Vulnerable Consumer proposal that follows.

Answer to Question 2: No. Bank of Ireland believes the proposals should be focused on the recognition of point in time lack of decision making capacity of a potential consumer. Please see explanation below.

Explanation of Bank of Ireland Position on Proposals for Vulnerable Consumers in CP47.

1. The business type consumer who comes within parts b) and c) of the definition of 'consumer' should clearly be excluded from the definition of 'vulnerable consumer'.
2. The full meaning of vulnerability is unclear to Bank of Ireland. We suggest that the concept of a "vulnerable consumer" should be replaced by what we understand to be the best practice approach, namely an issue-specific and time-specific assessment of a person's decision-making ability. In other words, the concept of a consumer "whose mental capacity to make a decision is diminished" should be developed as the core concept as it is closest to the best practice approach noted above (it is currently only alluded to incidentally at bullet point 7 of the definition of 'vulnerable consumer').
3. This approach which we suggest at point 2 above seems to Bank of Ireland to be consistent with the approach favoured by the Law Reform Commission (i.e. the "functional approach") as stated in their Report "Vulnerable Adults and the Law (LRC 83-2006)". This Report was issued following consultation with numerous interested parties and a comprehensive review of other jurisdictions' approach (including Scotland, England and Wales, New Zealand, Germany, Canada and Australia). In the Report, the LRC extensively analyses this complex area and observed that "there is no one single criterion to determine whether or not a person has legal capacity". Indeed in the Report it was further stated that it is important that a capacity assessment is approached in an objective manner and does not rely on making a judgement based on personal appearance. This contrasts with the approach of CP47 and so, we suggest factors such as age and infirmity be excluded from the definition of vulnerable consumer.
4. There should be guidance in CP47 on how a regulated entity is to be expected to assess the mental incapacity of a potential consumer in the suitability process given the complex nature of the issue and that an employee of a regulated entity will not have any medical or legal qualification.

5. If a consumer has not the point in time capacity to conclude the purchase of a financial service, the implication of that appears to Bank of Ireland to be that the service should not be sold to the consumer. CP47 should be clear on that point. As now drafted CP47 (e.g. Provision 5.17(i)) could be read as implying that the financial product is suitable despite the lack of decision making capacity and that it is, therefore, legitimate to conclude the transaction. We presume that is not intended. We suggest, in cases where there is a lack of decision making capacity, CP47 makes clear that the sale of the product not be concluded or that the regulated entity must deal with an appropriately authorised person (e.g., a donee of an enduring power of attorney or the Wards of Court Office).
6. On the question of "credulity" in the definition of 'vulnerable consumer', there has been recent case law in England which clearly separates the concepts of credulity (or gullibility) from the lack of mental capacity. "*The mere fact that a person may display a lack of wisdom or gullibility does not of itself demonstrate an inability to manage his or her own affairs*" (Morley v Hunt & Co (a firm) [2005] All ER (D) 41 (Jan) as quoted by the LRC). The LRC also quoted with approval the finding that the matter for concern is "*the quality of the decision-making and not the wisdom of a decision*" (Bailey v Warren [2006] EWCA Civ 51).
7. It is important that the guidance in CP47 would (a) provide an objective test (again in accordance with the LRC recommendations in the Report referred to above) to identify such consumers and further guidance on assisting such consumers and (b) be clear and easy to follow for employees of the regulated entities, consumers and those having medical charge of consumers.
8. The list of examples in the current definition of 'vulnerable consumer' is unhelpful and possibly misleading or even offensive. For example:
    a. It would likely be socially divisive if regulated entities questioned potential consumers as to their educational achievements in a suitability process (the definition implies such a thing would be needed);
    b. Those at retiring age may well be better informed financially than members of other age groups; there is a suggestion of ageism in picking out this sector;
    c. People from the Gaeltacht or those who have immigrated are not, in Bank of Ireland's view, likely to be happy to be characterised as possibly vulnerable merely by reason of having a mother tongue other than English;
    d. There are many things in the examples that have to do with creditworthiness and suitability generally and nothing to do with "vulnerability" per se in Bank of Ireland's view (for example, low income, high level of indebtedness, poor credit rating); and
    e. Bank of Ireland has concern that including the examples would lead to conflict with the Equal Status Acts 2000 to 2004 or the Data Protection Acts 1988 and 2002 (e.g. discrimination in terms of access to financial services on the grounds of age, disability or nationality or ethnicity, or gathering excessive personal data in a suitability process). Furthermore the draft definition of vulnerable consumer in its current state may result in conflict with General Principle 11 of CP47 (access to basic financial services).
9. Chapter 5, Provision 10(d) offers no tangible guidance on how a vulnerable consumer is to be identified or treated. See our above comment on replacing the current definition with the concept of a consumer lacking mental capacity at the time to make a financial decision (and the need for a workable test on this issue to be included in CP47).
10. Chapter 5, Provision 17(i) as drafted, considered with the present definition of "vulnerable consumer" is unworkable. For example, it would appear to oblige a regulated entity to include its belief that a consumer was credulous in its suitability statement. That would clearly be unacceptable.

Bank of Ireland response to CP47 Questions 1-27

SUITABILITY OF MORTGAGES

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?

Bank of Ireland supports the new provisions in Chapter 5 in relation to mortgage lending. However it is our view that the new provisions are not appropriate to business lending and it is appropriate in these new provisions should distinguish between residential mortgage lending to a consumer who falls within part a) of the definition of consumer and other mortgage lending (e.g. commercial mortgages, chattel mortgages etc.) to consumers who fall within parts b) and c) of the definition of consumer. We further note that it is important that these new provisions are compatible with the new Code of Conduct on Mortgage Arrears and in particular mortgage restructuring in cases where a mortgage is in arrears.

4. Do you agree with our proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer?

No, Bank of Ireland does not agree with the proposal that the SFS should be used when assessing whether a mortgage is affordable for a consumer.

The SFS as it is currently being drafted is designed for budgeting purposes to assist consumers (who fall within part a) of the definition of consumer) in financial difficulties. It is not an appropriate method to capture data for the purpose of assessing new mortgage lending as it would not provide a mortgage lender with the data or comprehensive information it would require for the assessment of a mortgage.

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.

We note Provision 27 of Chapter 4 seems to apply to financial products which are not regulated by the EC (Consumer Credit Agreements) Regulations 2010 and, therefore could apply to business loans or mortgage loans. Is that intentional? Bank of Ireland believes Provision 27 should be expressed to apply to investment products only for the following reasons:-

1. The paragraphs under the heading “information about products” on pages 8 and 9 of CP47 indicate that the Central Bank envisaged this provision as applying to investment products.
2. The wording of Provision 27 itself points to its relevance to investment products only (the provision would oblige a regulated entity to”…provide information about the main features and restrictions of the product… including… the risks inherent in the product and the level, nature and limitations of any guarantee attaching to the product and the name of guarantor.”).
3. There are other more relevant requirements which apply to consumer mortgage lending and to the different risks which a mortgage borrower can assume (see, e.g., Part IX of the Consumer Credit Act 1995 as amended and Provisions 44-48 of CP47 Chapter 4 itself).

In relation to investment products we believe provision of information to consumers needs to be standardised across the various investment product types and product providers. For example where a life assurance company issues an investment policy, it must provide specific disclosure information in accordance with the Life Assurance (Provision of Information) Regulations 2001. However these regulations do not apply to investment products issued by a bank or other non-life assurance company. As a consequence, the information a consumer receives when dealing with different entities on similar products may be neither consistent nor easily comparable.

With regard to the "simplifying" of information supplied, the life disclosure regulation documents are prepared in conjunction with the Society of Actuaries and contain detailed figures/calculations and other prescribed information - as they are essentially a legal document they may not be easily read by a consumer. In our view the contents could be simplified to make them more easily read and understood by a consumer. This same point applies to other products that are governed by similar regulations e.g. PRSAs.

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?

Given the likelihood that the EU will require the production of a "Key Facts" documents for investment products, we believe that the definition of said "Key Facts" documents under CP 47 should be held off until the EU position is clear, so as to ensure alignment and avoid rework.

As per comments under Question (5) above, information requirements under CP47 should be looked at in the context of other disclosure requirements/obligations so as to avoid a proliferation of information that might serve to confuse rather than inform a consumer.

For life assurance, PRSA and pension (investment) products there are existing disclosure obligations and it will be important any additional documentation (e.g. Key Facts documents) would complement rather than duplicate the current information that an investor in one of those products receives.

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, Bank of Ireland does not believe the concept has relevance for other types of products. For mortgage lending, there is an existing regime for the provision of Key Facts (for example, see other provisions of CP47 and Part IX of the Consumer Credit Act 1995 as amended). A "Key Facts" document would not, in Bank of Ireland's view, have any relevance (or be appropriate) in the context of products other than investment products.

However we suggest that information provided should be consistent across all types of investment products irrespective of the nature of the product producer - this is to ensure that a consumer can easily compare the respective features and benefits, regardless of whether the product producer is a Life Company or another form of Financial Institution.

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?

Bank of Ireland has spent considerable time in designing and developing a risk classification system for its investment products. We would suggest that while it is possible to assign a risk category to a product or fund, this is not of value unless

- the risk categories are clearly defined, and
- the consumer's attitude to risk has been comprehensively determined which should reflect the consumer's individual circumstances including age, net assets, net disposable income, emergency fund requirement, investment experience, access requirements, dependants etc.

In addition the number of risk sub-categories in the market is subjective with ranges varying from a simple red/amber/green to a nine-point scale.

See also our comments on a "traffic light" system below.

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?

We believe that the inherent difficulty with a traffic light system is the wide variation in risk appetite across consumers, the number of parameters that need be considered by a consumer when making an investment and the different types of products to which it would be applied. To be understandable to the full cross section of consumers, a traffic light system would have to be extremely simple and as a consequence could lead to very inappropriate decisions being made by a consumer.

For example if an equity based fund was classified as Red (high risk) and a cash fund as Green (low risk) then in the case of a pensions investor (with an investment time frame of maybe 25 to 30 years or more) it is unlikely to be appropriate for that individual to invest in a low risk fund. However, the "Red" classification on an equity fund might very well lead to inappropriate investment choice by the consumer, to the significant detriment of the value of their pension fund on retirement.

As a consequence, we would not favour a "traffic" light system.

PERSONAL RETIREMENT SAVINGS ACCOUNTS (PRSAs)

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

When launched, PRSAs were intended to be simple straightforward pension products that would encourage consumers and employers to make private pension provision. However, the sales process and related documentation required to be issued for PRSAs (under various legislative provisions) has resulted in a product and process that is anything but straightforward and simple. (See also Pensions Act requirements)

We believe that PRSAs and their related processes are currently over-complicated and do not serve to encourage consumers to save for their retirement. It is our view that the requirements covering the sale of PRSAs set by both the Pensions Board and the

Revenue Commissioners are already comprehensive and we would not see the necessity for further requirements under CP47.

In the event that the sale of PRSAs is to be covered under CP47, there should be full alignment with other legislation and regulation in this area as otherwise there is a very definite risk that the amount and variety of information being made available to a consumer will serve to confuse rather than inform.

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 question could be interpreted as suggesting that products are designed and then a target market is sought. It would be more normal for a product provider to identify the needs (both personal and financial) of a particular segment of the market and to design a product to meet those needs. In assessing consumer needs, consideration would be given to consumers' goals, personal financial circumstances, the investment timeframe and consumers' appetite for risk, amongst other factors.

We question the requirement for a product producer to identify groups of consumers for whom a product would be unsuitable. The KYC and suitability process is designed to address this at individual consumer level. We believe that this is sufficient protection for a consumer.

Defining unsuitable consumers for a particular product would have to be high level. This could constrain a financial advisor from offering a product that in broad target market terms is deemed unsuitable for the consumer but in the context of a detailed financial review would be ideal, to the detriment of the consumer.

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

The information included under provision 4:32 is comprehensive in the context of the provision of information when offering, arranging or recommending an investment product. However, we believe it is far too low level in the context of defining the target market for a product. These are all factors that should and will be considered in recommending whether a particular product is suitable for an individual consumer's needs but it suggests a level of target market definition that is far and away beyond reality.

Virtually every consumer's circumstances differ and it is the degree to which the features listed are relevant to an individual consumer's circumstances that matters when determining a product's suitability for that particular consumer.

To have to design products to meet every variation or every variable listed would result in massive product proliferation, proliferation that would be unsustainable as effectively it would mean the design of bespoke products for every consumer. However, it is a useful checklist to consider from an informational perspective rather than being prescriptive.

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?

Our answer to this question should be read in the context of our comments on target markets under Question 12 above.

We agree that product providers should periodically review their investment product portfolio to ensure that each product continues to afford a relevant investment opportunity for consumers in the context of a broad target market definition. Indeed this would be normal business practice, with products being withdrawn from further sale where they are unlikely to be relevant to the future needs of potential purchasers.

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?

Product Producers should (and do) regularly review applications received through their direct sales force as they are responsible for the actions of their employees.

Intermediaries are separately regulated entities (by the Central Bank) and a Product Producer should not be required to review applications submitted by intermediaries. Indeed a product producer is unlikely to have sufficient information available to them to correctly review applications submitted by intermediaries as the Product Producer will not have access to the fact find or other relevant information on the intermediary's file that may be required to complete a meaningful review.

RECOMMENDATIONS FROM THE REVIEW OF THE INTERMEDIARY MARKET

TERMINATION OF APPOINTMENTS

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

Bank of Ireland fully endorses the need to ensure that an intermediary is not put under undue pressure to sell a product producer’s products.

We agree that a product provider should not terminate the appointment of an independent intermediary based solely on target levels of business.

However we believe that a product provider should be permitted to terminate the appointment of a tied agent in this regard and that a distinction should be made between the two types of intermediaries.

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?

It is our view that these provisions are not relevant or appropriate in situations where the regulated entity and the product producer are part of the same group of companies.

Bank of Ireland response to CP47 Questions 1-27

ERRORS HANDLING (Chapter 11, Provisions 1 to 7)

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?

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

Bank of Ireland welcomes the new provisions in the Code in so far as they will drive consistency in the rectification of charging and pricing errors across the financial services industry. However, it is our view that the provisions, as currently outlined in the consultation paper, will not adequately achieve the desired effect. The primary areas of concern are:

- There is a lack of clarity in relation to the term "consumer detriment". A tight definition is required to ensure that the effort required to meet the increased obligations is directed to those errors that are likely to cause the most consumer distress/upset. It is our view that "consumer detriment" should be restricted to charging and pricing errors, which would be consistent with the Central Bank of Ireland letter to the industry dated 11th June 2010.
- Provision 5 - Requirement to report all errors that cannot be resolved within one month – see our response to Question 20 below for an outline of our concerns in relation to this.
- Provision 6 – Maintenance of a log of all errors identified. Bank of Ireland fully endorses the requirement to maintain a log for all systemic or recurring charging and pricing errors that have been identified. By systemic or recurring errors, we are referring to those charging and pricing errors that will be or have been the subject of a rectification or refund project. While there is a definite requirement to record and track all other pricing and charging errors (once-off errors), it would neither be practical nor beneficial to include these on the type of log outlined in this provision 11.6 (a)-(h).
- Provision 7 – Record of all steps taken to resolve an error. Bank of Ireland supports this provision but seeks clarification that the record required under this Provision 7 relates to the errors that are logged under Provision 6.

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

Bank of Ireland supports the approach being taken by the Central Bank and in general we believe the new six-month timeframe is appropriate.

However we note that it will not always feasible or possible to develop, test and implement system changes within 6 months of issue identification and, at times, interim manual controls are appropriate pending a final systems fix. We therefore suggest that it would be appropriate to include a proviso within Provision 11.3 that other timeframes may be agreed by the Central Bank to accommodate exceptional circumstances.

We also refer to our comments under Question 19 above in relation to the term "consumer detriment".

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. Bank of Ireland notes the absence of any materiality provisions in Provision 11.5. It is our view that this will create an unnecessary administrative reporting burden for both the Central Bank and regulated entities where the monetary impact of the error is small and/or the number of consumers affected is not material. In addition Bank of Ireland notes that regulated entities will no longer be required to notify the Central Bank of a material error if it is capable of being rectified within one month. This could result in significant consumer refunds being issued by a regulated entity without the knowledge of the Central Bank.

Bank of Ireland strongly recommends that a materiality threshold, which would ensure consistency of reporting of errors to the Central Bank, be included in the new Code. Alternatively we suggest that the Central Bank could issue periodic guidance in relation to materiality thresholds. This would facilitate differing threshold levels depending on the size and industry sector of the regulated entity and/or specific thresholds for individual regulated entities where the Central Bank deems that to be appropriate or necessary. Errors that fall below the materiality thresholds could be reported to the Central Bank on a retrospective basis, say on a semi-annually basis.

UNSOLICITED CONTACT (Chapter 3)

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

The change from 9pm to 7pm will severely limit the opportunity for a regulated entity to market to consumers. Trends in society point to longer and different shift hours. A significant proportion of consumers do not get home before 7pm and are not contactable during the day. In addition it is our experience that many consumers, including shift workers, have a preference to be contacted on a Saturday. We therefore recommend that the contact times existing in the current Consumer Protection Code should be retained in the new Code.

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?

Bank of Ireland believes this protection is unnecessary and the proposal to prohibit the conclusion of a sale of a financial product or service by telephone runs contrary to the Distance Marketing Regulations (SI 833/2004 as amended). Regulation 7 of the Distance Marketing Directive gives explicit recognition to the sale of financial services by telephone. The Distance Marketing Regulations contain a complete scheme for consumer protection including the provision of information, terms and conditions and a cooling off period. The Distance Marketing Regulations, of course, derive from the EU Distance Marketing Directives and it seems to Bank of Ireland undesirable to introduce a scheme differing from EU norms in this area.

Bank of Ireland believes, quite apart from the issue of uniformity with the Distance Marketing Regulations/Directives, that in the case of low risk products additional protection is not necessary and the proposed provisions will disadvantage consumers.

For example, under the new provisions a regulated entity will not be able to offer and conclude the sale of a low risk general insurance product to a consumer even if this is the wish of the consumer e.g. the consumer receives an unsolicited phone call in relation to motor insurance, is given an attractive quote and wishes to pay for and be put on protection immediately – this will no longer be permitted and will be to the disadvantage of the consumer (particularly bearing in mind that the consumer will nevertheless have the benefit of the regulatory cooling off period). Note, for example, that the Distance Marketing Regulations (Regulation 12) specifically recognise some contracts that must commence spontaneously when concluded by distance means such as by telephone (e.g., travel insurance). It would clearly be a disadvantage to consumers it that was rendered impossible by the proposed provisions of CP 47. We therefore believe it would be appropriate to make a distinction in the new provisions between low risk protection policies (which we would consider to be any general insurance product that is renewable on an annual basis) and other protection policies.

Similarly we believe low risk banking products (e.g. a "*basic banking product or service*") should be excluded from the new provisions.

We also note that the new provisions, as currently drafted, apply to all consumers. It is our strong view that unsolicited contact should be permitted to business consumers and that any new provisions should not apply to consumers who fall within parts b) and c) of the definition of consumer.

We also suggest that a distinction should be made between unsolicited personal visits and unsolicited telephone calls and, in particular, a regulated entity should be permitted to make unsolicited telephone calls to existing personal consumers who have given the regulated entity their consent for marketing purposes.

Finally, we would like the Central Bank to confirm that the intention of provisions 3.29 & 3.30 is not intended to restrict a regulated entity's ability to contact an existing consumer to discuss their financial needs and to provide product information. It is our experience that consumers (and existing consumers in particular) expect to be contacted by their financial service providers to discuss their needs and be advised of financial products and services and very much welcome this contact.

ARREARS HANDLING (Chapter 9)

General Comments

Bank of Ireland has serious concerns with the proposals included in CP47 on Arrears Management. These concerns are set out in detail below.

We believe that the proposals as constructed will render guarantees ineffective in many cases and the practical effect of that will be to prevent financial institutions from using security instruments such as guarantees to support loan applications. In addition, the proposals which prevent financial institutions from acting expediently in an arrears situation will force changes to credit policies. Bank of Ireland is also very concerned that the draft provisions seem to be wide enough to cover existing guarantees which were (as is good banking practice) designed to be callable on demand.

The net effect of all these changes will be to materially reduce the provision of much needed credit facilities to business and personal consumers. By way of example

- Bank of Ireland currently has over 50,000 business loans that rely on guarantees, the provisions in CP 47 could deter the Bank from providing these loans
- A popular product for personal consumers is the provision of a Laser card to teenagers and students, guaranteed by parents, to facilitate travelling abroad. Again under the proposed provisions of CP 47, the Bank will be deterred from providing these products where a guarantee is required.

Therefore our conclusion is that the current proposals on arrears are not in consumers' best interests as financial institutions will be forced to significantly reduce financial credit facilities.

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

Business consumers coming within the definition of "consumer"
In Bank of Ireland's view, Chapter 9 should only apply to a natural person acting outside their business, trade or profession (i.e., element (a) of the definition of "consumer" in CP47). The reasons for the bank's view are as follows:-

1. Chapter 9 largely derives from the Code of Conduct on Mortgage Arrears (itself recently revised) and, thus, seems best adapted for term debt incurred by a "consumer" who is a "natural person acting outside their business, trade or profession" (which is element (a) of the definition of "consumer" in CP47).
2. Internal evidence in Chapter 9 (the mention of MABS and PPI) indicates the draftsperson had debt incurred by individuals acting outside of business in mind and not business debts.
3. The Financial Regulator's Code of Conduct for Business Lending to Small and Medium Enterprises (February 2009) applies to SMEs and covers any consumer coming within paragraphs (b) and (c) of the definition of "consumer" in CP47. That implies such consumers should be out of scope for Chapter 9, CP47 because the Code of Conduct for Business Lending to Small and Medium Enterprises contains different provisions for business consumers in financial difficulties. There should be a uniform practice for all SME consumers in financial difficulties. It (a) would lead to consumer confusion; and (b) be impractical for lenders to have a dual system for dealing with business borrowers in scope for CP47 differently from those in scope for the Code of Conduct for Business Lending to Small and Medium Enterprises only.
4. Mortgages for business loans are treated differently to mortgages from individuals acting outside their trade, business or profession in the Consumer Credit Act 1995 as amended and the Land and Conveyancing Reform Act 2009. CP47 should (in the Bank of Ireland's view) maintain the distinction thus made in primary legislation. In particular, the 2009 Act recognises the practical need for swift and procedurally simple enforcement of security for business loans.
5. Chapter 9 (if it were to apply to business loans of any sort) would seriously impede the effectiveness of security for business loans in scope for CP 47 and that would have negative implications for capital requirements under Basel II and capital requirements for loans in (see EC (Capital Adequacy of Credit Institutions) Regulations SI 661/2006).
6. Speed of action is typically essential where there is a default in a business loan and the lender needs to enforce security. For example, by appointing a receiver

or liquidator in a timely manner to prevent dissipation or removal of assets (such as cash and intangible assets and also movable assets such as vehicles, vessels or agricultural stock), to ensure that insolvent companies or partnerships cease trade promptly, or to prevent arrears of VAT or PAYE accumulating where a lender relies on a fixed charge on book debts (see Section 1001, Taxes Consolidation Act 1997 as amended).

Consumers acting outside of their business, trade or profession

1. The requirement for speed of action, so obviously necessary for business lending, also applies to a large extent where there is a default in a consumer loan where the consumer comes within element (a) of the definition of "consumer" in CP47. This is particularly true for personal term loans (as opposed to mortgage loans) where there is a default and the lender needs to enforce security. For example, to prevent the dissipation or removal of secured assets or to ensure that a consumer does not incur further unsustainable debt or become liable to pay mounting levels of default interest or charges. If a credit institution cannot readily realise security for a loan, that could have negative implications for capital requirements under Basel II (see point 5 above).
2. In addition we believe the provisions are inappropriate in relation to overdraft, credit cards and revolving facilities – see our response in relation to Provision 3, Chapter 9.

Three months notice to set off (Chapter 9, Provision 10)

Draft Provision 10 of Chapter 9 says that "a regulated entity must give a consumer three months notice in writing where it intends to offset any credit balance in other accounts held by the consumer with that regulated entity, against any arrears outstanding."

1. Requiring 3 month's notice before accounts are set off would enable a consumer withdraw cash and also could make any credit balance vulnerable (during the notice period) to attachment from other creditors including the revenue commissioners (the latter do not need a court order to attach an account because of Section 1002 Taxes Consolidation Act 1997). These other creditors would not, of course, be regulated entities subject to the limitations on set off proposed in Provision 10. Provision 10 would, in Bank of Ireland's view, handicap credit institutions against other creditors.
2. Requiring 3 month's notice before set off appears to conflict with the right to set off mutual debts on bankruptcy (Bankruptcy Act, 1988, Schedule 1, paragraph 17) or company insolvency (see e.g., Freaney v. Bank of Ireland, High Court, [1975] IR 376). Company insolvency will be relevant to Chapter 9 if it is to apply to a company coming within element (c) of the definition of "consumer" in CP47.
3. A letter of set-off is a well recognised instrument which effects quasi - security in favour of a lender. Letters of set -off are particularly common in Ireland (following the Supreme Court Case of Bank of Ireland v Martin & Martin, [1937] IR). Such letters of set off are frequent in a business banking context, being an important and long-standing way of enabling businesses access credit. However, they are also used by consumers acting outside of business. The letters of set-off are (for practical reasons) drafted on the assumption that the credit balance can be set off against the secured liabilities without further notice to the consumer. Provision 10 would have these effects:-
    a. The provision seems to apply retrospectively to affect all existing letters of set off, in effect diminishing or negating the benefit of existing letters of set off for lenders. For example, there would be nothing to prevent the consumer withdrawing the credit balance in the notice period (or for another creditor to attach the credit balance). As existing set off letters

would not be readily realisable, that would have negative capital implications for bank capital under Basel II (SI 661/2006—as above).

b. The letter of set off would not be a viable method for business or other consumers to obtain credit in future, diminishing lenders' ability to advance credit to borrowers, an obviously undesirable outcome.

4. The Provision is unclear on what is to apply where the lender has security (by way of charge or security assignment) over a credit balance. If the balance is with the lending institution itself, the security is usually enforced by set - off. Clearly, such security should not be affected by the rule and an express exception should be made for it.

Restricting Account Operation following default by the consumer (Chapter 9, Provisions 11-13)

These following provisions of Chapter 9 are of concern:-

11. Where a consumer is in arrears but continues to operate other account(s) held with the regulated entity, within the agreed terms and conditions, the lender must not close such accounts.

12. Where a consumer is in arrears in respect of an overdraft facility on a current account, but is otherwise operating within the terms and conditions, the credit institution must not close the consumer's current account without the consumer's consent.

13. Where a consumer has not engaged or cooperated with the regulated entity and the regulated entity intends to place restrictions on the operation of the account in arrears, the consumer must be provided with a minimum of three months notice of this in writing.

These are the concerns of Bank of Ireland:-

1. Provisions 11 and 12 would prevent a lender from doing what its account terms and conditions would usually allow on a consumer's default. For example, it is usual to close a current account when the overdraft is demanded and not paid within an appropriate timeframe on the grounds that the account has not been handled by the consumer in a financially responsible manner. It seems to Bank of Ireland that the principle that consumers be dealt with fairly and not be marginalised by the closure of accounts does not require that a bank be forced to continue to deal with uncooperative or dishonest consumers.
2. Provision 11 could be interpreted to prevent combination of accounts. Therefore, the concerns we express above concerning set off and Provision 10 also apply here.
3. Provision 13 would appear to operate to prevent a lender from, say, blocking a credit card or stopping a cheque book. It would seem imprudent to allow a non-co-operative or irresponsible consumer to continue the means of running up debts through the use of such facilities. It does not seem to Bank of Ireland right that a non-co-operative consumer would merit the protection provided in the provision, yet the provision is specifically addressed to non-co-operative consumers.

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

No, for the reasons stated in our comments on Provisions 11 to 13 of Chapter 9 above.

Bank of Ireland response to CP47 Questions 1-27

ADVERTISING

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

Bank of Ireland does not see the need for defining Key Information and for formulating a rule that it be included in advertisements. Often, financial services are advertised in a very simple way and may comprise nothing more than an invitation to the consumer to deal with a regulated entity on a particular product type (making no claims as to the advantages of the product). In other cases, the advertisement can concentrate on one or two advantageous features of a product only. If key information is to be included in all advertisements of financial information, that would complicate otherwise simple advertisements and make advertisements in many conventional media (e.g., poster, bill board, radio and television) impossible. That would have a negative effect on competition in the sector and on the ability of consumers to get information.

Insofar as advertising goes into further detail and describes product features such as interest rates, the benefits of investment or compares the advertiser's product favourably with that of competitors, existing regulation already prescribes the information (and sometimes the form of notices) that must be included (see, e.g., the bulk of Chapter 10, CP47, the Consumer Credit Act, the EC (Consumer Credit Agreements) Regulations 2010). Also, the issues of misleading a consumer in an advertisement by omitting or concealing material information where doing so would cause the average consumer to make a transactional decision he /she would not otherwise make is already dealt with in primary legislation (Section 46 Consumer Protection Act, 2007 - which implemented the EU Unfair Commercial Practices Directive No. 2005/29/EC). Therefore, the consumer has adequate protection against misleading omission of key information.

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 as outlined above, we do not agree with the definition of 'key information' or the suggested placement of it in the main body of advertisements.

The use of small print must always be looked at in the context that advertising is usually consumed at the early stage of the consumer's purchasing journey. Excessive small print at this early stage does not aid a consumer and more often than not can serve to confuse them. It may even deter consumers from exploring options which may meet their financial needs e.g. protection or insurance policies.

We believe key information displayed on small formats where space (or in the case of radio/tv – time, is limited) leads to 'message clutter' thereby seriously detracting from any communication objectives. Ultimately this can prove counterproductive and to the detriment of consumers as many will experience information overload/fatigue.

There is a limit to the amount of information consumers can reasonably digest from advertising messaging. Furthermore this limit varies hugely by advertising format e.g. the press medium allows for longer 'dwell' time compared to TV advertising. Outdoor media can vary considerably by format – e.g. consider billboards viewed by a consumer from a moving vehicle compared to that same consumer viewing an advertisement whilst standing at an outdoor bus shelter. Similarly, online media allows for varying levels of information display using 'click through' where the consumer effectively 'owns'

and controls the engagement process by choosing to click through or seek different levels of detail.

We are of the opinion that existing warnings within current CPC, displayed in bold or capital letters are a more effective way of ensuring consumers understand the fundamental risks associated with certain products.

Given the evolution of new media (SMS, mobile applications, instant messaging etc) and the new advertising channels associated with these, we have a concern that the advertising chapter of the Code in its current format does not fully reflect the different nature and challenges of these new media. In particular, some of the advertising clauses could potentially preclude the participation of regulated entities in such media formats into the future even though consumers are increasingly adopting such new media.

Finally, looking to other industries where consumer protection is also regulated (e.g. telecommunications providers) as a reference point for comparison, it is evident that advertising is performing a similar function - generating awareness. Advertisements provide high level warnings (usually in small print) but do not detract from the overall message. It is the product labelling/brochureware that provides the necessary information to help a consumer reach a final decision to purchase or consume.

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?

Bank of Ireland does not agree with the wording of the new proposed minimum payment warning and we do not believe that it will add value from a consumer's perspective.

It is unusual for a consumer to only make the minimum payment over an extended period of time and for the majority of consumers, the proposed calculations will be meaningless and indeed potentially misleading as the figures involved will change from month to month based on spending and repayment patterns. The calculation will be based on the rarest repayment type pattern and therefore will bring no real value to the consumer.

We believe that the current minimum payment warning is sufficient to convey the implications of only making the minimum payment to a consumer:

"The minimum payment must be made by the due date outlined on the front of your statement. Where possible you should try to pay off all or as much as you can of your monthly balance. If you only pay off the minimum payment on your credit card each month, you will incur interest and it could take several years for you to pay off a large balance".

SECTORAL COMMITMENTS

The following provisions were also included in the sectoral measures commitments. We would request your views on the proposed provisions and comments on how the market for bundled products works and how a product is bundled in practice.

Bank of Ireland supports the provisions outlined above and believes that they afford appropriate protection to the consumer. There are a number of ways in which products

can be bundled and these provisions appear comprehensive in terms of affording protection to consumers.

However, we note that the commitment given to the EU clarifies that the consumer is not entitled to retain any loyalty element of a bundle should they exit the bundle. We therefore seek to clarify that where a consumer wishes to exit a bundle while retaining one or more of the individual elements, the regulated entity will, not withstanding the wording "without penalty" in this provision, be entitled to charge the consumer the cost that the consumer would have been charged if the elements of the bundle they are choosing to retain had been purchased individually.

CODE OF CONDUCT ON THE SWITCHING OF CURRENT ACCOUNTS WITH CREDIT INSTITUTIONS

The statutory Code of Conduct on the Switching of Current Accounts with Credit Institutions (the Switching Code) was introduced with effect from 1 October 2010. Due to the tight timescales involved to meet EU commitments in this area, it was not possible for us to undertake a full public consultation prior to the introduction of the Switching Code and we stated that we would consult on the Switching Code during the consultation on the revised Consumer Protection Code.

Accordingly, we invite any comments you may have on the statutory Switching Code and are also seeking your views as to whether the scope of the statutory Switching Code should be extended to include demand deposit and savings accounts.

Bank of Ireland comments on the statutory Switching Code:-

The new statutory Switching Code came into effect on 1st October 2010. Since its introduction a number of operational issues have been identified and we make the following observations:-

Timeframes

We request that the wording on the timing of the commencement of the switching process included in the CB code be revisited as the current wording could give rise to situations where the "old bank" would find it impossible to comply with the statutory timeframes, through no fault of its own.

Under the CB provisions, the "new bank" and the consumer agree the switching date. The "old bank" is then required to complete within 10 days of that date, even if the "new bank" delays forwarding the switching instructions and they are not received in a reasonable timeframe. We suggest that the 10 day completion timeframe be based on a date that does not leave the "old bank" exposed to delays outside its control. The date of dispatch by the "new bank" or the date of receipt by the "old bank" would we believe be far more appropriate in this regard.

Alternatively we suggest that a stipulation be built in that the switching date set by the consumer/"new bank" must, at a minimum, be a set number of working days (say 7) after the date on which the switching form is signed by the consumer and dispatched to the "new bank".

Such a provision would also address the current anomaly whereby the consumer/"new bank" could set a switching date that is prior to the date on which the "old bank" receives the instructions, making it impossible for the "old bank" to comply with provision (11a) which states that "with effect from the switching date, reject any direct debits presented and cancel any standing order on the existing account"

Similarly, the above approach to defining the switching date would enable the "old bank" to more easily comply with provision (14) which states that "with effect from the switching date, a credit institution must ensure that those direct debits that have been transferred to the new account are returned to the direct debit originator marked "account transferred", if presented in error on the existing account",

The use of the term "with effect from the switching date" is somewhat ambiguous and we suggest that this should be amended to "once the switching date has passed". Items presented for payment on the switching date would, using the terminology "with effect from the switching date" require to be returned whereas it would be in the consumers interests if such items were paid.

Scope

In relation to the scope of the Switching Code we believe it should be limited to stand-alone current accounts and we suggest the following wording:-

"The Code applies to stand-alone current accounts held by consumers. The Code does not apply to accounts, including current accounts, where:

- Advance notice of withdrawal is required;
- A lien is held on the funds in the account as security, for example for credit facilities, contingent liabilities, letters of credit, performance bonds etc.;
- The funds in the account have been pledged to cover a guarantee to repay other credit facilities in the event of default;
- The account is grouped to other accounts that are not being switched;
- The account is a servicing account for a credit facility

Appendix 3

Response from Bank of Ireland on the New and Amended Provisions in CP47

CHAPTER 1 – SCOPE

Co-existence with existing legislation:

It is our understanding that CP47 is a statutory code of conduct for practice and procedure in dealings with consumers. We believe that CP47 must respect the statutory, regulatory and common law framework and not attempt to amend them or promulgate policies contrary to them. For example:-

- The common law position on set-off and guarantees
- Statutory law on assignments
- Equal Status Acts
- Data Protection Acts
- Distance Marketing (EU directives, Irish regulations)

Our concerns with potential conflict with the established legal framework (and the consequences that might flow from that) are detailed in our commentary on the following chapters.

Correlation with other regulation and codes:

There are a number of other codes and regulations in existence that cover matters similar to those covered by CP47. These include the Code of Conduct for Business Lending to Small and Medium Enterprises, Life Assurance disclosure regulations and the PRSA disclosure regulations. The co-existence of these codes will inevitably give rise to consumer and institutional confusion if there is not full alignment of provisions. Bank of Ireland is strongly of the view that the opportunity afforded by the revision of the Consumer Protection Code should be taken to ensure alignment of all relevant codes and to avoid potentially conflicting requirements and ultimately consumer confusion.

Business imperative:

The Scope section of the Code of Conduct for Business Lending to Small and Medium Enterprises clarifies that “Nothing in this Code prohibits a regulated entity from acting with all necessary speed in the case of a liquidation, receivership, examinership or similar insolvency event, or where there is reasonable evidence of fraud, terrorist connections, money laundering and/or misrepresentation”. We believe a similar general provision should be included in the Scope section of CP47.

In addition it is recognised in the recently published Code of Conduct on Mortgage Arrears that consumers do not always cooperate with a regulated entity such as consumers failing to make full and honest disclosure of information, failing to provide information sought by the regulated entity, failing to meet agreement repayments or failure to make contact and/or failure to respond to communications from the regulated entity. We believe a similar recognition of “not co-operating” should be included in the Scope section of CP47.

Industry Letters:

The Central Bank has issued a number of industry letters since the introduction of the Consumer Protection Code in 2006. We believe that the Central Bank should clarify

in the revised Code that the relevant parts of these industry letters have been incorporated into the revised Code and that the industry letters themselves will no longer apply once the revised CPC comes into force.

Definition of consumer:

In a number of provisions the applicability of the provisions to consumers who are other than natural persons acting outside their trade, business or profession is questionable. We believe the Central Bank should make a clear distinction in the revised Code regarding which proposals appropriately relate to all consumers including businesses and which appropriately relate specifically to consumers who are natural persons acting outside their trades, business or profession. This point is elaborated on in more detail in our commentary on the following chapters.

Regulated entities and business activities to whom the Code does not apply:

Chapter 1 clarifies that the Code does not apply to hire purchase and consumer hire agreements. It is highly unlikely that the Central Bank intends consumer leasing to be excluded from the Code but for business leasing to be included within the scope of the Code. We therefore suggest, for clarity, that it would be useful to confirm that business leasing is also excluded from the scope of the Code.

CHAPTER 3 – COMMON RULES

2. A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly. Where an instruction cannot be acted on within two business days, the regulated entity must acknowledge in writing receipt of the instruction, outline the reason for the delay and confirm when it will be processed.

Bank of Ireland notes that consumer payments, which are the most time critical of instructions, are governed by the Payment Services Regulations.

It therefore appears that, from a market competition perspective, this Provision is seeking to regulate customer service requirements. We believe this is unnecessary and inappropriate. Each institution should be allowed decide and compete on its own customer service performance, which is the essence of competition.

Bank of Ireland will always seek to act on a consumer's instructions within two business days. However to include a two day turnaround timeframe as a requirement in the Code is simply not practical and to require a regulated entity to write to a consumer if the instruction has not been acted on within two days is counterproductive.

Two days to process:-
The volume of instructions received by Bank of Ireland is in the order of millions per annum. The business areas responsible for processing consumer instructions are highly dependent on workflow management systems. At times there will be unusual and unanticipated increases in activity, for example recently there was a spike in consumer instructions regarding home insurance policies following a radio discussion on same. Staffing in processing centres is based on monthly averages and any unusual or unanticipated levels of business will result in longer processing times.

Acknowledge instruction in writing, outline reason for delay and confirm when it will be processed:-
The new requirement to acknowledge receipt of the instruction in writing, outline the reason for the delay and confirm when it will be processed will be totally counterproductive as it will further delay the regulated entity from completing the initial instruction and will severely impact on customer service.

In addition this new requirement will lead to duplication of effort which we suggest will not be in the consumer's best interest which would be best served by the completion of the original instruction in as speedy a manner as possible. This will be hindered by these additional new requirements.

It is our firm belief that the consumer would prefer the regulated entity to process the request rather than firstly confirm a delay in writing and we would anticipate a significant increase in consumer complaints and high levels of customer dissatisfaction.

We also seek to clarify that the definition of an instruction does not extend to a consumer request (e.g. a request to process a mortgage application) and that this clause does not replace existing timeframes established by other legislation or other Codes e.g. an instruction to switch an account which is subject to timeframes outlined in the Switching Code.

Implementing this requirement would incur a substantial cost, not only from a systems perspective but also in relation to an annual operational cost, with minimal consumer benefit.

To summarise, Bank of Ireland is satisfied that it is complying with the existing provision under the current Consumer Protection Code and is satisfied that the Bank's current processes are strongly aligned with consumer needs and expectations. We therefore request the Central Bank to revert to the existing wording under the current Consumer Protection Code i.e.

> "A regulated entity must ensure that all instructions from or on behalf of a consumer are processed properly and promptly."

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3. A credit institution must ensure that any funds lodged by a consumer to its term or notice deposit account directly or via a deposit agent, are credited to that account on that day.

Bank of Ireland notes that with the emergence of on-line products consumers have the ability to transfer funds directly to term and notice deposit accounts. If this is done post close of business then the funds will not be credited to the consumer's account until the following day. Bank of Ireland notes that under certain circumstances a consumer's funds may not be credited on the day (e.g. systems restrictions) and we suggest that Provision 3 should be amended to accommodate these situations once credit is backdated to the day the funds were lodged.

We also seek to clarify that the phrase "funds" does not relate to cheques as cheques will need to go through the clearing cycle before same day value can be given.

Bank of Ireland suggests the following alternative wording:-

> "3. A credit institution must ensure that any funds lodged by a consumer to its term or notice deposit account by close of business day directly or via a deposit agent, are credited to that account on that day or where funds are not credited on the day that credit is backdated to the day the funds were lodged. "

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4. A regulated entity that is in direct receipt of a negotiable or non-negotiable instrument from a consumer as payment for a financial product or service must provide that consumer with a receipt. This receipt must include the following information:

a) the name and address of the regulated entity;
b) the name and address of the person furnishing the instrument or payment;
c) the value of the instrument or payment received and the date on which it was received;
d) the purpose of the payment; and
e) in the case of an insurance intermediary, that the acceptance by the insurance intermediary of a completed insurance proposal does not itself constitute the effecting of a policy of insurance.

Bank of Ireland seeks clarification on this new Provision. We suggest that it should be expressed to exclude any payment (that happens to be) by cheque to repay an instalment on a loan, mortgage or overdraft. The Provision, in our view, seems to be designed to oblige a regulated entity to give a consumer evidence of investments, thus enabling the consumer to produce evidence that the regulated entity is accountable for that payment, and we suggest that this Provision should be confined to such scenarios.

The cost of implementing this Provision as currently drafted, and in particular (d) - the purpose of the payment, would be significant.

In this regard, the Provision is similar to but not identical to the requirement set out in S. 30 of the Investment Intermediaries Act 1995. We seek confirmation that compliance with S. 30 will result in compliance with this Provision

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7. A regulated entity 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 advertisement. The warning statement must be in a box separate to other information but must appear alongside the benefits of the product.

Bank of Ireland believes it is appropriate that warning statements are given prominence and brought to the attention of consumer. However, the requirement that the box appear "alongside the benefits of the product" is problematic in that benefits may be distributed across an advertisement or brochure and would potentially require the box to appear in multiple places and numerous times. The fact that for lending, savings & investments products a minimum of 2 warnings are potentially required further complicates this requirement. We also wish to highlight that the evolution of new media e.g. mobile applications, instant messaging may result in practical implementation implications where we are required to include warning statements in media formats not suited to such warnings given space constraints.

Bank of Ireland suggests the following alternative wording:-

> "7. A regulated entity must ensure that all warnings required by this Code are prominent and visible, i.e. in bold type and of a font size that is larger than the normal font size used throughout the document, print advertisement or website. The warning statement must be in a box separate to other product information ~~but must appear alongside the benefits of the product~~ and in no way obscured or hidden. In the case of a non print medium such as television, it is sufficient that the warnings are displayed at the end of the advertisement. In the case of radio, warnings should be outlined at the end of the advertisement. "
>
> Where this is more than one warning on an advertisement, where possible they should be placed alongside other warnings in a prominent and visible position."

The Bank of Ireland also suggests that it would be more appropriate to move this clause to the advertising chapter for consistency and ease of reference.

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8. Where a power of attorney has been granted, a regulated entity must:
a) obtain a certified copy of the power of attorney; and
b) ensure that it operates within the limitations set out in the power of attorney.

Bank of Ireland suggests this Provision should clarify that it applies where the regulated entity is dealing with someone who is acting for a consumer under a Power of Attorney (to simply refer to the fact that a power of attorney "has been granted" means there is no context for the rule. Further, a regulated entity is not responsible for policing the donee's performance under the power of attorney (and Provision 8(b) could as drafted confuse that position).

Bank of Ireland suggests the following alternative wording:-

"8. Where a regulated entity has dealings with someone who is acting for a consumer under a power of attorney ~~has been granted~~, a regulated entity must:
a) obtain a certified copy of the power of attorney; and
b) ensure that ~~it operates within the limitations set out in~~ the power of attorney allows the person to act on the consumer's behalf"

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14. Where a credit institution requires a consumer to operate a feeder account in order to avail of another product, all of the following conditions must be met:
a) the consumer must not be obliged to use the account for purposes other than facilitating payments to the product concerned;
b) charges cannot be applied for using the feeder account for the purpose for which it was established;
c) where additional facilities are available on the account they must be optional and must be requested by the consumer; and
d) these conditions must be communicated clearly to the consumer.

Bank of Ireland requests that this Provision be amended to clarify that a regulated entity cannot require the consumer to "open" a feeder account as opposed to operate a feeder account because an existing consumer could use his/her existing account as a feeder account (in which circumstance the Provision should not apply).

Bank of Ireland also seeks to clarify that this Provision is intended to apply to all regulated entities and not just credit institutions.

Bank of Ireland suggests the following alternative wording:-

"14. Where a ~~credit institution~~ regulated entity requires a consumer to ~~operate~~ open a feeder account in order to avail of another product, all of the following conditions must be met:
a) the consumer must not be obliged to use the account for purposes other than facilitating payments to the product concerned;
b) charges cannot be applied for using the feeder account for the purpose for which it was established;
c) where additional facilities are available on the account they must be optional and must be requested by the consumer; and
d) these conditions must be communicated clearly to the consumer. "

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15. A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer.

Bank of Ireland notes that this is a commitment given to the EU and supports this commitment.

We suggest that the definition of bundling should be amended to clarify that it relates to products available from/through the regulated entity and we suggest the following alternative wording:-

"bundling" means the packaging of two or more products into a bundle, where each of these products can be purchased separately ~~on the market~~ from or through the regulated entity;

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16. Prior to the sale of a bundled product or service, a regulated entity must provide the consumer with information in writing on:
a) the cost of the bundle;
b) the cost of each item separately;
c) how to switch products within the bundle;
d) how to exit the bundle; and
e) the cost of exiting the bundle.

Bank of Ireland supports this Provision. However we seek to clarify that the reference to "cost" in this Provision is the cost to the consumer (i.e. how much the consumer will be charged) and not the cost to the regulated entity of providing the products

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17. Where a consumer wishes to exit a bundle, the regulated entity must allow that consumer to retain any product(s) in the bundle that the consumer wishes to keep, without penalty or additional charge.

Bank of Ireland supports this Provision. However we note that the commitment given to the EU clarifies that the consumer is not entitled to retain any "loyalty" element of the bundle. We therefore seek to clarify that where a consumer wishes to exit a bundle the regulated entity will, notwithstanding the wording "without penalty" in this Provision, be entitled to charge the consumer the cost that the consumer would have been charged if the products/services had been purchased individually i.e. the price that is charged to other consumers purchasing the individual products/services.

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19. Where a regulated entity offers payment protection insurance in conjunction with a loan:
a) the initial repayment estimate of the loan advised to the consumer must be exclusive of the payment protection premium and the amount of the premium must be advised separately;
b) a combined application form may not be used; and
c) a suitability assessment must be carried out separately in respect of the loan and in respect of the payment protection insurance.

Bank of Ireland does not support the new obligation to have a separate application form for payment protection insurance. As payment protection insurance is only ever sold in conjunction with a credit facility, the need for the consumer to complete 2 separate application forms, when they choose to avail of a payment protected credit facility, will cause unnecessary frustration and confusion. We fully agree that the payment protection insurance section of the application form should be separate to the loan section of the form. This can be achieved by having two distinct sections on the same application form, with a clear indication that the payment protection insurance section is optional and must be signed separately by the consumer (as in Provision 7, Chapter 4 of the existing Consumer Protection Code, 2006). An obligation on a regulated entity to require a consumer to complete two application forms for an additional, optional product which the consumer wishes to purchase is excessive, costly and not in the consumer's interests.

Bank of Ireland suggests the following alternative wording:-

> "19. Where a regulated entity offers payment protection insurance in conjunction with a loan:
> a) the initial repayment estimate of the loan advised to the consumer must be exclusive of the payment protection premium and the amount of the premium must be advised separately;
> b) a combined application form may ~~not~~ be used if the payment protection section of the application form is separate, contains a requirement for the consumer to sign to apply for payment protection and is clearly indicated as being optional; and
> c) a suitability assessment must be carried out separately in respect of the loan and in respect of the payment protection insurance. "

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20. A regulated entity may pay a fee, commission, other reward or remuneration in respect of the provision of regulated activities only to a person that is:
a) a regulated entity;
b) a certified person;
c) an individual for whom a regulated entity has taken full and unconditional responsibility under the Investment Intermediaries Act 1995;
d) an authorised credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or
e) a former regulated entity, where the fee, commission, other reward or remuneration is in respect of activities that the entity provided when it was regulated.

Bank of Ireland agrees with this Provision. However we suggest that it would be appropriate to permit a regulated entity to pay a small sum or make some other small reward in such circumstances as a referral by a staff member or a simple "introduce a friend" type promotion.

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24. A regulated entity must not knowingly create situations that may give rise to a conflict of interest.

Bank of Ireland suggests the following alternative wording because the word "may" could mean "any possibility" creating the danger that the Provision could become meaningless:-

Bank of Ireland suggests the following alternative wording:-

> "A regulated entity must not knowingly create situations that ~~may~~ are likely to give rise to a conflict of interest.

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29. A regulated entity must not make an unsolicited personal visit or telephone call for the purpose of offering a product or service to a consumer except where the purpose of the contact is limited to offering a protection policy.

Bank of Ireland believes this protection is unnecessary and the proposal to prohibit the conclusion of a sale of a financial product or service by telephone runs contrary to the Distance Marketing Regulations (SI 833/2004 as amended). Regulation 7 of the Distance Marketing Directive gives explicit recognition to the sale of financial services by telephone. The Distance Marketing Regulations contain a complete scheme for consumer protection including the provision of information, terms and conditions and a cooling off period. The Distance Marketing Regulations, of course, derive from the EU Distance Marketing Directives and it seems to Bank of Ireland undesirable to introduce a scheme differing from EU norms in this areas.

Bank of Ireland believes, quite apart from the issue of uniformity with the Distance Marketing Regulations/Directives, that in the case of low risk products additional protection is not necessary and the proposed Provisions will disadvantage consumers.

For example, under the new Provision a regulated entity will not be able to offer and conclude the sale of a low risk general insurance product to a consumer even if this is the wish of the consumer e.g. the consumer receives an unsolicited phone call in relation to motor insurance, is given an attractive quote and wishes to pay for and be put on protection immediately – this will no longer be permitted and will be to the disadvantage of the consumer (particularly bearing in mind that the consumer will nevertheless have the benefit of the regulatory cooling off period). Note, for example, that the Distance Marketing Regulations (Regulation 12) specifically recognise some contracts that must commence spontaneously when concluded by distance means such as by telephone (e.g., travel insurance). It would clearly be a disadvantage to consumers if that was rendered impossible by the proposed Provisions of CP 47. We therefore believe it would be appropriate to make a distinction in the new Provisions between low risk protection policies (which we would consider to be any general insurance product that is renewable on an annual basis) and other protection policies.

Similarly we believe low risk banking products (i.e. a "*basic banking product or service*") should be excluded from the new Provisions.

We also note that the new Provisions, as currently drafted, apply to all *consumers*. It is our strong view that unsolicited contact should continue to be permitted, as is currently the case under the existing Code, to *business consumers* and therefore that any new Provisions should not apply to consumers who fall within parts b) and c) of the definition of consumer. We further suggest that a distinction should be made between unsolicited personal visits and unsolicited telephone calls and, in particular, a regulated entity should be permitted to make unsolicited telephone calls to existing personal consumers who have given the regulated entity their consent for marketing purposes. In this context we note Provision 32 ensures that such consumers retain the right to terminate a call/visit at any time and in addition consumers have existing protections under the National Directory Database (whereby they can opt out of direct marketing calls) and Data Protection legislation.

It is our experience in Bank of Ireland that consumers welcome our message that we are "Open for Business" and limiting an opportunity to provide information to a consumer in relation to what products and services are available would, in our view, be to disadvantage the consumer. We believe it is in the consumers' interests to be proactively contacted by regulated entities who are "Open for Business" and at times this could involve a discussion regarding the availability of low risk products that would be of interest to the consumer e.g. attractive interest rates on deposit accounts. To restrict such contact is not, in Bank of Ireland's view, in the best interests of consumers. It would also restrict competition in the market place.

Finally, it is important to note that a product would never be offered to a consumer without firstly establishing their needs and completing a financial needs review, in accordance with Chapter 5 (Knowing the Consumer & Suitability) Provision 1.

As an aside we note that in recent times Bank of Ireland has contacted consumers in the SME sector to advise them of the Bank of Ireland Enterprise Week and offering them (both Bank of Ireland consumers and non-Bank of Ireland consumers) the opportunity to display their product or service in the local bank branch. This is very positively received by the small business community and was actively taken up by the business community (including business consumers who do not currently bank with Bank of Ireland). This is an example of a service that was recently offered on an unsolicited basis to consumers but which may be precluded under Provisions 29 and 30.

Bank of Ireland suggests the following alternative wording:-

> "29. A regulated entity must not make an unsolicited personal visit or telephone call for the purpose of offering a specific product or service to a consumer except where the purpose of the contact is limited to offering a protection policy. This provision does not apply to any contact made by a *regulated entity* with
> (i) a *consumer* who falls within parts b) or c) of the definition of *consumer*; or
> (ii) a *consumer* who is an existing consumer of the regulated entity and who has given consent to be contacted for marketing purposes."

30. A regulated entity may make an unsolicited personal visit or telephone call to a consumer who is an existing customer provided the contact is in relation to a product held by that consumer.

We refer to our comments under Provision 29 above.

It is the strong view of Bank of Ireland that, if the intention of Provision 30 is to restrict a regulated entity's ability to only contact an existing consumer "in relation to a product held" it will significantly reduce a consumer's satisfaction with their bank.

It is our experience that existing consumers expect to be contacted by financial service providers to be advised of financial products and services and very much welcome this contact. Below are some comments from Bank of Ireland customer sentiment surveys undertaken in June-Nov 2010:-

- *"They just need to be more proactive. They should keep people more informed on what's on offer, and available. They are not selling their services well enough."*
- *"It would be nice if they could contact me now and again about their offers. I would feel more valued then. I would just like to be treated the same way as the big guys."*
- *"The only thing is that I have always had to act on my own initiative when looking for a new product e.g. life insurance and savings. Bank of Ireland have never come to me to offer advice."*
- *"I think that Bank of Ireland should ring up a customer a couple of times a year to see how they are doing."*

The above illustrates to Bank of Ireland that consumers expect to be kept informed and contacted on a proactive, unsolicited basis. Independent market research of the business sector confirms this view, with pro-activity and contact frequency being a key service attribute to the small business consumer.

Again we would note that Provision 32 ensures that consumers retain the right to terminate a call/visit at any time and in addition consumers have existing protections under the National Directory Database (whereby they can opt out of direct marketing calls) and Data Protection legislation.

Finally, we would like the Central Bank to confirm that the intention of Provisions 3.29 & 3.30 is not intended to restrict a regulated entity's ability to contact an existing consumer to discuss their financial needs and to provide product information. It is our experience that consumers (and existing consumers in particular) expect to be contacted by their financial service providers to discuss their needs and be advised of financial products and services and very much welcome this contact.

Bank of Ireland suggests the following alternative wording (as it stands the Provision could be read as meaning a regulated entity could not make a unsolicited call to an existing consumer who has given consent to marketing calls – we presume that cannot have been intended):-

> "30. A regulated entity may make an unsolicited personal visit or telephone call to a consumer who is an existing ~~customer~~ consumer ~~provided~~ if (a) the contact is in relation to a product held by that consumer or (b) the consumer has given consent for marketing purposes to the regulated entity.

31. An unsolicited personal visit or telephone call may be made only between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding bank holidays and public holidays) except where the purpose of the contact is to protect the consumer from fraud or other illegal activity.

The change from 9pm to 7pm will severely limit the opportunity for a regulated entity to contact consumers. Trends in society point to longer and different shift hours. A significant proportion of consumers do not get home before 7pm and are not contactable during the day. In addition it is our experience that many consumers, including shift workers, have a preference to be contacted on a Saturday. We therefore recommend that the contact times existing in the current Consumer Protection Code should be retained in the new Code.

Bank of Ireland also seeks to confirm that this Provision is intended to relate to unsolicited contact for the purpose of a sale and is not intended to restrict a regulated entity's contact with a consumer in relation to account management, arrears etc. which are addressed in our comments under Chapter 9 of the Consultation Paper.

Bank of Ireland suggests the following alternative wording:-

> " An unsolicited personal visit or telephone call may be made only between 9.00 a.m. and ~~7.00 p.m.~~ 9.00pm Monday to ~~Friday~~ Saturday (excluding bank holidays and public holidays) except where the purpose of the contact is to protect the consumer from fraud or other illegal activity or for any other case there the regulated entity reasonably believes such contact is necessary in the best interests of the consumer and that the consumer's interests would be affected by delay caused by an attempt to contact the consumer by other means"

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33. A regulated entity must not provide a protection policy to a consumer on the basis of an unsolicited personal visit or telephone call alone. A regulated entity may, during the course of an unsolicited visit or telephone call, provide the consumer with information about a protection policy but must allow at least five business days and no more than 10 business days to elapse before making a further visit or telephone call for the purpose of offering, arranging or recommending a protection policy or requesting the consumer to make any payment in relation to the protection policy. Where a consumer purchases a protection policy, the regulated entity must provide the consumer with details in writing of any cooling-off period that applies.

Bank of Ireland believes this Provision is unnecessary because of the existing protections (e.g., the 14 and 30 day cooling off periods) provided in the Distance Marketing Regulations. Establishing a new provision which differs from EU / DMD norms is undesirable. See comment on Provision 29.

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41. Where a product producer distributes its products through an intermediary and imposes target levels of business or pays commission based on levels of business introduced, the product producer must be able to demonstrate that these arrangements:
a) do not impair the intermediary's duty to act in the best interests of consumers; and
b) do not give rise to a conflict of interest, either between the product producer and the intermediary or between either of them and the consumer.

Bank of Ireland notes that the concept of *product producer* relates to the Investment Intermediaries Act, 1995 (IIA) and we seek to clarify that this Provision is intended to relate to investment products.

Bank of Ireland agrees that a product producer should not seek to influence an intermediary in any way that could result in the intermediary not acting in a consumer's best interest or that could give rise to a conflict of interest. However we note that intermediaries are regulated entities in their own right and are subject to this Code. The onus of responsibility must be on the intermediary to ensure that it acts in the consumer's best interest and does not create conflicts of interest.

Bank of Ireland suggests the following alternative wording:-

> "41. Where a product producer, as defined under the Investment Intermediaries Act, 1995 (IIA), distributes its products through an intermediary and imposes target levels of business or pays commission based on levels of business introduced, the product producer must be able to demonstrate that it has clearly advised the intermediary of the intermediary's obligations to comply with the Code and that the intermediary must ensure that these arrangements:
> a) do not impair the intermediary's duty to act in the best interests of consumers; and
> b) do not give rise to a conflict of interest, either between the product producer and the intermediary or between either of them and the consumer.

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42. 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.

Bank of Ireland fully endorses the need to ensure that an intermediary is not put under undue pressure to sell a product producer's products.

We agree that a product producer should not terminate the appointment of an independent intermediary based solely on target levels of business. However we believe that a product producer should be permitted to terminate the appointment of a tied agent in this regard and that a distinction should be made between the two types of intermediaries.

Bank of Ireland suggests the following alternative wording:-

> "42. A product producer must not terminate a letter of appointment with an intermediary, other than a tied agent, solely based on the volume of new business introduced by the intermediary."

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43. When designing a new investment product, 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 consumer 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.

We agree with the requirement to identify the target market. However we question the requirement for a product producer to identify groups of consumers for whom a product would be unsuitable. The KYC and suitability process is designed to address this at individual consumer level. We believe that this is sufficient protection for a consumer.

Defining unsuitable consumers for a particular product would have to be high level. This could constrain a financial advisor from offering a product that in broad target market terms is deemed unsuitable for the consumer but in the context of a detailed financial review would be ideal, to the detriment of the consumer.

Bank of Ireland suggests the following alternative wording:

> "43. When designing a new investment product, 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 consumer 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~~."

CHAPTER 4 – PROVISION OF INFORMATION

4. a) Where a regulated entity intends to cease operating or to transfer all or a part of its business to another entity it must:
i) provide at least two months notice to affected consumers to enable them to make alternative arrangements;
ii) advise the consumer of the option to have their details transferred (where relevant);
iii) ensure all outstanding business is properly completed; and
iv) notify the Central Bank immediately.

b) When intending to close or move a branch, a credit institution must give three months notice to affected consumers; advise the Central Bank immediately, and notify the wider community in the local press.

Bank of Ireland does not agree with the new wording in this Provision regarding the transfer of business – for example, there could be a corporate re-organisation or intra-group transfer. In addition this Provision has the potential to end a regulated entity's ability to assign contracts which are a vital foundation for securitisations and similar funding transactions – see also our comments in relation to Chapter 7.

Bank of Ireland notes that there would seem to be no need for a consumer to make "alternative arrangements" on transfer (in contrast to ceasing operations). Rule (ii) does not make clear sense in the context of (a) cessation of operation; or (b) transfer.

We also suggest that the Central Bank should make explicit provision to permit the Central Bank to waive this Provision at its discretion.

Bank of Ireland suggests the following alternative wording:-

> "4. a) Where a regulated entity intends to cease operating ~~or to transfer all or a part of its business to another entity~~ it must:
> i) provide at least two months notice to affected consumers to enable them to make alternative arrangements;
> ~~ii) advise the consumer of the option to have their details transferred (where relevant);~~
> iii) ensure all outstanding business is properly completed; and
> iv) notify the Central Bank immediately.
>
> b) When intending to close or move a branch, a credit institution must give three months notice to affected consumers; advise the Central Bank immediately, and notify the wider community in the local press.
>
> The Central Bank may at its discretion waive the notice periods in this provision. "

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8. A regulated entity must include a regulatory disclosure statement:
a) on its business stationery;
b) in all advertisements; and
c) on all electronic communications with consumers including on the home page of its website, if any.
In respect to c) above, a regulatory disclosure statement is not required on an SMS message.

Bank of Ireland welcomes this clarification in respect of SMS messaging

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9. A regulated entity must only use the regulatory disclosure statement on its business stationery or electronic communications in connection with activities for which the firm is authorised, registered or licensed by the Central Bank.

Bank of Ireland notes that there are many activities that a credit institution or regulated entity carry out that are not required to be covered by the authorisation, registration or license from the Central Bank e.g. activities carried out by a regulated entity's procurement function. It is not always practical to distinguish between activities covered by authorisation, registration or license and Bank of Ireland seeks significantly greater clarification from the Central Bank regarding application of Provisions 9 – 11, particularly for a large credit institution and group of regulated entities where the protections of the Consumer Protection Code are afforded to all *consumers* who fall within the definition of the Code.

To try to implement Provisions 9 – 11 as currently worded would be extremely costly and difficult to implement with no apparent benefit.

Bank of Ireland suggests the following alternative wording:-

> "9. A regulated entity must only use the regulatory disclosure statement on its business stationery or electronic communications in connection with activities for which the firm is authorised, registered or licensed by the Central Bank. For the avoidance of doubt the activities of a Credit Institution are considered by the Central Bank to be activities for which the Credit Institution is authorised, registered or licensed by the Central Bank other than for any specific activities that the Central Bank lists from time to time."

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10. A regulated entity must use separate business stationery and electronic communications where it engages in an activity that falls outside of its Central Bank authorisation, registration or license.

See comments under Provision 9 above

Bank of Ireland suggests the following alternative wording:-

> "10. A regulated entity must use separate business stationery and electronic communications where it engages in an activity that falls outside of its Central Bank authorisation, registration or license where the use of the regulatory disclosure statement would [materially] mislead the consumer regarding the protection available to the consumer."

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11. In the case of a website, a regulated entity must have separate sections for the activities that fall inside and those that fall outside of its Central Bank authorisation, registration or license.

See comments under Provision 9 above.

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15. A regulated entity must draw up its terms of business and provide each consumer with a copy ~~prior to providing the first service to that consumer~~ at the outset of its relationship with the consumer.

Bank of Ireland notes that the wording for this Provision has changed from

"…. and provide each consumer with a copy prior to providing the first service to that consumer" to "provide each consumer with a copy at the outset of its relationship with the consumer".

It is the view of Bank of Ireland that a relationship commences with a consumer upon the provision of the first product or service and that this is the most appropriate time to provide the terms of business to the consumer.

Bank of Ireland therefore suggests that the existing wording in the current CPC is appropriate.

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20. A regulated entity must always disclose the following to consumers:
a) where the regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in another regulated entity;
b) where another regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the regulated entity.

We seek to clarify the purpose of this new Provision. We note that within a large group of companies a regulated entity might hold shares in a number of regulated entities and we do not see how the provision of this information is necessary or of benefit to the consumer.

Under the existing Consumer Protection Code (Chapter 5.9 - Insurance Products & Services) a "regulated entity which offers financial services under a number of business names and product images or through any direct outlets must disclose, in all correspondence with consumers, the identity of the group to which it belongs" and we suggest that a provision along these lines would be an appropriate alternative to this Provision.

Bank of Ireland therefore suggests the following alternative wording:-

> "20. A regulated entity, where it is a member of a group of companies, must always disclose to consumers the ~~following~~ identity of the *group* to which it belongs ~~to consumers:~~
> ~~a) where the regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in another regulated entity;~~
> ~~b) where another regulated entity has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the regulated entity~~."

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22. Before providing a service, an intermediary must explain to each consumer the extent of the service to be provided.

Bank of Ireland suggests incorporating this Provision 22 into Provision 16 above.

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24. The term 'broker' may only be used to describe the services of an intermediary where the intermediary offers consumers a fair analysis of the market for that particular product or service.

Bank of Ireland seeks to confirm that this Provision does not prevent a deposit broker as defined in the Investment Intermediaries Act 1995 as amended from describing him or herself as such.

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27. Before offering, arranging or recommending a product, a regulated entity must provide information about the main features and restrictions of the product to the consumer, including where relevant, 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.

Bank of Ireland notes that this Provision is out of scope for products covered by CCR. As a general observation we note that this Provision seems to be directed to investment products and we suggest that it should be moved to come under the Investment Products section of Chapter 4 for the following reasons:-

1. The paragraphs under the heading "information about products" on pages 8 and 9 of CP47 indicate that the Central Bank envisaged this Provision as applying to investment products.
2. The wording of this Provision points to its relevance to investment products only (the Provision would oblige a regulated entity to"…provide information about the main features and restrictions of the product… including… the risks inherent in the product and the level, nature and limitations of any guarantee attaching to the product and the name of guarantor.").
3. There are other more relevant requirements which apply to consumer mortgage lending and to the different risks which a mortgage borrower can assume (see, e.g., Part IX of the Consumer Credit Act 1995 as amended and Provisions 44-48 of CP47 Chapter 4 itself).

However if this Provision is intended to apply to products other than investment products we suggest that it would appropriate to exclude *basic banking products* from this Provision.

Bank of Ireland suggests the following alternative wording:-

> "27. Before offering, arranging or recommending a product, other than a *basic banking product*, a regulated entity must provide information about the main features and restrictions of the product to the consumer, including where relevant, 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."

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29. A regulated entity must inform each affected consumer in advance of acting on any term or condition attaching to a product or service purchased by the consumer.

Bank of Ireland has serious concerns in relation to this new Provision:-

1) The Provision is too broadly and uncertainly drafted. In a sense, everything a regulated entity does in relation to a product (such as paying or charging interest, maintaining account records, collecting and paying cheques or managing an investment) is "acting" on the terms and conditions of the contract and we do not suppose anyone would suggest a regulated entity should inform a consumer in advance of carrying out such everyday operations. To do so would incur a substantial increase in operational costs, as well as requiring significant system changes.
2) Bank of Ireland accepts that where a regulated entity proposes to carry out an action that would substantially affect a consumer, it should notify the consumer in advance of doing that. For example, the consumer may wish to suggest an alternative course of action to the regulated entity or may wish to terminate the contract before the regulated entity acts as proposed.
3) Many terms and conditions for banking products give banks discretion to act in various ways without notifying the consumer in advance. In general, that is for practical reasons. For example, if a cheque drawn on a current account, a bank will need to make a (more or less instant) decision whether to pay the cheque or return it unpaid through the clearing where the consumer does not have sufficient credit balance (or approved overdraft) to meet the payment of the cheque. The rule (as drafted and if strictly interpreted) could considerably alter the existing banking/ consumer contractual relationship, sometimes to the disadvantage of a consumer.
4) Many terms and conditions allow for summary termination of the consumer contract without notice where the consumer dies, is declared bankrupt or is in breach of the terms and conditions. The practical need for such clauses is self-explanatory (e.g., to ensure a bank is not obliged to pay a cheque after receiving notice of the death of the consumer or to ensure a consumer in default does fall into further indebtedness). The Provision should not apply to such cases.
5) Terms and conditions also allow banks to act without prior notice to correct errors for readily understandable practical reasons. If a bank paid a sum to a consumer's account in error, it would be imprudent to require the bank to warn the consumer before it deducted the amount (a dishonest consumer could then seek to take unlawful advantage by drawing from the sum paid to his or her account in error).
6) Terms and conditions for investment products will often invest the product producer with discretion to make investment decisions. It is frequently the case that such decisions need to be made urgently in the best interests of the consumer. It would be impractical (and often against the consumer's interest) for consumers to be notified in advance of such decisions.
7) There needs to be an exception for cases of urgent need to act (e.g., fraud, consumer interest). Compare CP47 Provision 3.31 in this regard.
8) The purpose of providing the consumer with the terms and conditions is in order that the consumer is aware of the basis upon which the regulated entity is providing the product or service and by taking the product the consumer is accepting these terms and conditions.

Bank of Ireland suggests the following alternative wording:-

"29. A regulated entity must inform ~~each affected~~ a consumer in advance of acting on any term or condition attaching to a product or service purchased by the consumer where the action would result in a substantial change to the financial position of the consumer.

This Provision 29 does not apply where a regulated entity acts
(a) in reaction to a breach by the consumer of a term or condition of the product or service; or
(b) to protect the consumer from fraud or other illegal activity; or
(c) in the best interest of the consumer in a case of genuine urgency where the consumer may be adversely affected by a delay in action."

Investment Products

32. Before offering, arranging or recommending an investment product the regulated entity must provide the consumer, where relevant, with information about:
a) capital security;
b) the risk that some or all of the investment may be lost;
c) leverage and its effects;
d) any limitations on the sale or disposal of the product;
e) restrictions on access to funds invested;
f) restrictions on the redemption of the product;
g) the impact, including the cost, of exiting the product early;
h) the minimum recommended investment period;
i) the risk that the estimated or anticipated return will not be achieved; and
j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment.

As noted under Provision 27 above we recommend that Provision 27 should be moved to come under the Investment Products section of Chapter 4.

Bank of Ireland also seeks to clarify if Provision 32 is intended to cover pre-sale product brochures and if so we recommend that this Provision 32 should be expressed to apply as such.

Bank of Ireland suggests the following alternative wording:-

"32. Before offering, arranging or recommending an investment product the regulated entity must in its pre-sale product brochures provide the consumer, where relevant, with information about:
a) capital security;
b) the risk that some or all of the investment may be lost;
c) leverage and its effects;
d) any limitations on the sale or disposal of the product;
e) restrictions on access to funds invested;
f) restrictions on the redemption of the product;
g) the impact, including the cost, of exiting the product early;
h) the minimum recommended investment period;
i) the risk that the estimated or anticipated return will not be achieved; and
j) the potential effects of volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment. "

Banking Products

38. A credit institution must ensure that at least 10 business days before the maturity of a fixed term deposit, ~~which has a minimum term of 1 year~~, it alerts the consumer about its impending maturity.

Bank of Ireland notes that this Provision is now intended to apply to all fixed term deposits, while previously it only related to those with a minimum term of 1 year. The extension of this Provision to fixed term deposits of shorter duration will be costly and excessive, for example a consumer who rolls on a monthly basis (i.e. with a 1 month fixed term deposit) would get a Confirmation of Investment 5 days after opening the account and then further correspondence approx. 10 days later to advise the consumer of the impending maturity. This would be excessive, costly and confusing. Bank of Ireland seeks, at a minimum, for this Provision to be limited to fixed term deposits with a maturity of 6 months or greater. However it is our strong recommendation that the original term of 1 year should be reinstated.

Bank of Ireland suggests the following alternative wording:-

> "38. A credit institution must ensure that at least 10 business days before the maturity of a fixed term deposit, which has a minimum term of 1 year, it alerts the consumer about its impending maturity. "

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39. A regulated entity must, before a consumer opens a joint account:
a) warn such consumer of the consequences of opening and operating such a joint account;
b) ascertain from the account holders any limitations that they wish to impose on the operations of the account including any limitations in the event of the death of either account holder.

Bank of Ireland suggests that a further sub-clause c) should be included to cater for a situation where a consumer wishes to impose a restriction on the account which the regulated entity cannot accommodate.

Bank of Ireland also notes that there can be more than 2 parties to a joint account and that the reference to "either" is therefore inappropriate.

Bank of Ireland suggests the following alternative wording:-

> "39. A regulated entity must, before a consumer opens a joint account:
> a) warn such consumer of the consequences of opening and operating such a joint account;
> b) ascertain from the account holders any limitations that they wish to impose on the operations of the account including any limitations in the event of the death of ~~either~~ any account holder; and
> c) advise the consumer if the limitations they wish to impose on the operation of the account under b) above cannot be implemented."

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41. The regulated entity must notify the guarantor in writing:
a) if the terms of the credit agreement change;
b) when an account goes into arrears; and
c) three months in advance of calling on a guarantee.

The significant issue with this Provision is that guarantees will effectively be rendered valueless and this will have unintended consequences in terms of (a) access to finance for consumers and (b) a potential increase in bad debts for all regulated entities.

We note that:-

- The provision of a guarantee (including a guarantee counter-covered by security) is frequently used by borrowers to enable them obtain credit. This is true of all credit, but particularly so for business banking. If a guarantor is warned 3 months in advance before a guarantee is called (as required in Provision 4.41(c)), he, she or it can move assets beyond the reach of the lender concerned, e.g., by transferring assets abroad. The Provision could have the effect of diminishing, if not negating the value and usefulness of the guarantee. That would have implications for borrowers seeking credit and for lenders' capital requirements under Basel II.
- It would be impractical to notify a guarantor each time an account went into arrears (as required in Provision 4.41(b)).
- Provision 4.41(b) seems to conflict with the Supreme Court ruling in O'Connor v Sorahan [1933] IR 591.
- The standard form of guarantee in use by lenders invariably (largely, for practical reasons) says it can be called on demand. Provision 4.41 purports to affect these vested contractual rights.

We also note that there is no materiality referred to in sub-clause b). We suggest that this should not apply where a consumer is not in a material arrears position.

Bank of Ireland suggests the following alternative wording:-

> "41. The regulated entity must notify the guarantor in writing:
> a) if the terms of the credit agreement change; and
> b) when an account goes into arrears other than where the arrears are not material; ~~and~~
> ~~c) three months in advance of calling on a guarantee~~"

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42. A regulated entity must notify affected consumers in writing in advance of any change in the interest rate. This notification must include:
a) the date from which the new rate will apply;
b) details of the old and new rate;
c) the revised repayment amount; and
d) an invitation for the consumer to contact the lender if he/she anticipates difficulties meeting the higher repayments.

In Bank of Ireland the interest rate charged to a consumer is based either on a ***matrix rate*** (a standard rate that is not individually negotiated with the consumer) or a ***market rate*** (EURIBOR or similar Cost of Funds calculation that is struck on a daily basis and is individually negotiated with the consumer).

Matrix Rates:- Bank of Ireland notes that under the European Communities (Consumer Credit Agreements) Regulations 2010 ("CCR") a regulated entity is permitted to publish the change in rates in the media where the rate is a reference rate under CCR. Bank of Ireland recommends that the same criteria that are applied under CCR be applied in this Provision i.e. that a notice in the media will be sufficient to comply with this Provision. To require otherwise would be a very significant and costly new requirement and would be out of step with CCR.

Bank of Ireland agrees that the consumer should be made aware of the difference between the old rate and the new rate in accordance with purpose of b) above. However Bank of Ireland believes the current wording of b) is very restrictive. We suggest that where a regulated entity advises the consumer of the amount of the increase/ decrease, together with the new rate, that this will have the same result in terms of ensuring transparency to the consumer, for example that the regulated entity intends to increase interest rates by 1% to 10% with effect from xx/xx/xxxx.

In addition Bank of Ireland notes that a change in interest rates does not always result in a revised repayment schedule for the consumer.

Market Rates:- By their nature market rates are struck on the day. It would not be possible to comply with this Provision for lending that is based off market rates as the interest rate changes are not known in advance. The method of applying these rates is to agree the rate and the term with the consumer upfront and document it in the consumer's offer letter which is then signed by the consumer. The option to vary the subsequent interest rate period, or to switch to a variable interest rate, is provided to the consumer by way of Offer Letter and in subsequent rollover communications. Confirmation of the prevailing interest rate and the interest rate period are sent to the consumer on the date of rollover. An invitation to contact the lender is contained in all correspondence.

Bank of Ireland notes that market related loans are generally provided to business consumers e.g. to purchase commercial property; acquire stock or assets for use in a business etc. The negotiated nature of the pricing of such loans is markedly different to personal consumer loans and it is the view of Bank of Ireland that Provision 42 should not apply to this type of lending.

The cost of implementing this Provision, as currently drafted, would be significant.

Bank of Ireland suggests the following alternative wording:-

"42. A regulated entity must notify affected consumers in writing in advance of any change in the interest rate. This notification may be by way of press advertisement where the rate would be a reference rate under the European Communities (Consumer Credit Agreements) Regulations 2010. This notification must include:
a) the date from which the new rate will apply;
b) details of the old and new rate *or* details of the amount of the increase/decrease and the new rate;
c) the revised repayment amount, where relevant; and
d) an invitation for the consumer to contact the lender if he/she anticipates difficulties meeting the higher repayments.

For the avoidance of doubt this Provision 42 does not apply to market related lending where the interest rate is based off EURIBOR or a similar Cost of Funds calculation that is struck on a daily basis and is individually negotiated with the consumer".

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45. Where a consumer is not in arrears and wishes to change from a tracker rate to an alternative rate, for any reason, the lender must provide the consumer with the information and warning outlined in Provision 44 at least two months before the proposed change, where applicable.

Bank of Ireland notes that regulated entities are obliged to include warnings prescribed by the Central Bank in the Mortgage Form of Authorisation (MFA) as outlined below and we see no further benefit being provided to the consumer as a result of this Provision 45.

> "WARNING: IF YOU SELECT A RATE OF INTEREST USING THIS FORM IT IS LIKELY THAT WILL END ANY AGREEMENT WE MAY NOW HAVE WITH YOU AS TO THE RATE OF INTEREST WE CHARGE ON THE LOAN INCLUDING THE MANNER IN WHICH SUCH INTEREST IS TO BE CALCULATED. FOR EXAMPLE, IF YOUR LOAN IS NOW ON A TRACKER RATE AND YOU MOVE FROM IT YOU WILL NOT BE ENTITLED TO REVERT TO A TRACKER RATE IN FUTURE."

Bank of Ireland further notes that in certain circumstances this Provision could be disadvantageous to a consumer, for example if a consumer wishes to avail of the prevailing fixed interest rate. This could seriously disadvantage consumers in periods of ECB interest rate increases.

Bank of Ireland recommends that this Provision should be removed.

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49. Where a consumer's credit application is rejected, a regulated entity must clearly outline in writing to the consumer the reasons why the credit was not approved.

Bank of Ireland seeks to clarify if this new Provision is intended to relate solely to mortgages, given that it follows the other mortgage specific clauses, and if so we suggest that this is stated in the Provision.

Bank of Ireland notes that in certain cases a credit application may not be processed by a regulated entity where, following discussion with the consumer, the consumer does not wish to pursue a formal credit application.

Bank of Ireland further notes that in our experience there is minimal demand by consumers to have the reasons for declined applications to be outlined in writing. We therefore suggest that it would be more proportionate that this requirement should only apply where requested by the consumer. In fact many consumers will not welcome a subsequent letter from a regulated entity to advise them in writing that their credit application has not been approved when they have already been verbally advised of same.

We believe this Provision will be an unnecessary and excessively costly requirement for regulated entities with no additional benefit to consumers.

Bank of Ireland suggests the following alternative wording:-

> "49. Where a consumer's mortgage credit application is processed by a regulated entity and is rejected, a regulated entity must, on request from the consumer, clearly outline in writing to the consumer the reasons why the credit was not approved.

Insurance Products

51. A regulated entity must express clearly in the quotation any warranties or endorsements. These sections in the quotation documents must not be detailed in smaller print than other information provided in the documents and the information given must be to a level that enables the consumer to make an informed choice.

Bank of Ireland seeks to confirm that compliance with relevant Disclosure Regulations will continue to satisfy this requirement

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52. A regulated entity must clearly identify any discounts or loadings applying to the policy at the quotation stage.

Bank of Ireland seeks to confirm that this Provision does not apply to life assurance business as it is impossible to identify any discounts or loadings at the quotation stage. These will depend on medical details etc. which will not be established until after the application form has been submitted.

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55. A regulated entity must, before completing a proposal form for a permanent health insurance policy, explain to the consumer the meaning of disability as defined in the policy, the benefits available under the policy, the exclusions that apply, and the reductions applied to the benefit where there are disability payments from other sources.

Bank of Ireland notes that it is the consumer and not the regulated entity that completes the proposal form.

Bank of Ireland suggests the following alternative wording:-

> "55. A regulated entity must, before ~~completing~~ a proposal form for a permanent health insurance policy is completed, explain to the consumer the meaning of disability as defined in the policy, the benefits available under the policy, the exclusions that apply, and the reductions applied to the benefit where there are disability payments from other sources. "

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57. A regulated entity must issue policy documents to the consumer within 10 business days of all relevant information being provided by the consumer and cover being underwritten. This provision also applies in the case of renewals.

Bank of Ireland seeks to confirm that this Provision relating to "renewals" does not apply in the case of life assurance

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61. Before offering an insurance policy where the premium may be subject to review during the term of the policy, a regulated entity must:
a) explain clearly to the consumer the risk that the premium may increase;
b) provide the consumer with details of the period for which the initial premium is fixed; and
c) include the following warning on the application form for the product:
Warning: The current premium may increase after [insert number of years for which the premium is guaranteed] years.

Bank of Ireland notes that it is not only after a stated period of years that the premium may change e.g. it may change if alterations are made to the policy which might cause the premium to change e.g. adding or removing a life insured etc. We therefore suggest the following clarification in the Provision:-

Bank of Ireland suggests the following alternative wording:-

> "61. Before offering an insurance policy where the premium may be subject to review during the term of the policy, other than as a result of an alteration to the policy that is initiated by the consumer, a regulated entity must:
> a) explain clearly to the consumer the risk that the premium may increase;
> b) provide the consumer with details of the period for which the initial premium is fixed; and
> c) include the following warning on the application form for the product:
> Warning: The current premium may increase after [insert number of years for which the premium is guaranteed] years. "

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71. A regulated entity must, where applicable:
a) provide the consumer with a written breakdown of all charges, including third party charges, which the regulated entity will pass on to the consumer, prior to providing a product or service to the consumer. Where such charges cannot be ascertained in advance, the regulated entity must advise the consumer that such charges will be levied as part of the transaction;
b) advise affected consumers of changes in charges, specifying the old and new charge, or the introduction of any new charges, at least 30 days before the change takes effect; and
c) where charges are accumulated and applied periodically to accounts, advise consumers at least 10 business days before deduction of charges and give each consumer a breakdown of such charges, except where charges total an amount of €10 or less.

Bank of Ireland notes the proposed reduction in the threshold in (c) from €12.70 to €10.00. We note that the current threshold of €12.70 was originally set in 1996 (eq. IR£10.00) by the then regulator the Director of Consumer Affairs. It is our view that a reduction to €10.00 would create significant additional administration costs and workload to the industry and we believe it would now be more appropriate to increase the threshold up to €15.00 (which is in line with inflation over the period) rather than reducing it to €10.00.

Bank of Ireland suggests the following alternative wording:-

> "71. A regulated entity must, where applicable: ……
> c) where charges are accumulated and applied periodically to accounts, advise consumers at least 10 business days before deduction of charges and give each consumer a breakdown of such charges, except where charges total an amount of €15 or less."

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74. Prior to offering, arranging or providing a product or service other than a non-life insurance product or service, a regulated entity must disclose in writing to a consumer the existence, nature and amount of any fee, commission or other remuneration received or to be received from a product producer in relation to that product or service. Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable.

It is our view that this Provision is not relevant or appropriate in situations where the regulated entity and the product producer are part of the same group of companies.

Bank of Ireland suggests the following alternative wording:-

> *"74. Prior to offering, arranging or providing a product or service other than a non-life insurance product or service, a regulated entity, that is an intermediary, must disclose in writing to a consumer the existence, nature and amount of any fee, commission or other remuneration received or to be received from a product producer, other than a product producer within the same group of companies that the regulated entity belongs to, in relation to that product or service. Where the amount cannot be ascertained, the method of calculating that amount must be disclosed. The disclosure must be in a manner that is comprehensive, accurate and understandable."*

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75. Where remuneration is received on an ongoing basis, a regulated entity must disclose in writing the nature of the service provided to the consumer in respect of this remuneration.

Please refer to our response in relation to Provision 74.

In addition, Bank of Ireland seeks to confirm that compliance with relevant Disclosure Regulations will continue to satisfy this requirement
Bank of Ireland suggests the following alternative wording:-

> "75. Where remuneration is received on an ongoing basis from a product producer that is not of the same group of companies as the regulated entity, a

regulated entity, that is an intermediary, must disclose in writing the nature of the service provided to the consumer in respect of this remuneration.

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80. A regulated entity must display a schedule of its fees in a public area of its premises.

Bank of Ireland notes that for a large banking institution this information will be very detailed. We currently display schedules of fees & charges for both our personal and business consumers (current accounts) in our branches, schedules of fees & charges for international payments etc. We seek to clarify what other types of fees the Central Bank has in mind.

CHAPTER 5 – KNOWING THE CONSUMER AND SUITABILTY

1. Before offering, arranging or recommending a product or service, a regulated entity must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must be to a level that allows the regulated entity to provide a professional service and must include, where relevant, details of the consumer's:
a) Needs and objectives (including, where relevant, the length of time for which the consumer wishes to hold a product, need for access to funds, need for emergency funds);
b) Personal circumstances (including age, health, knowledge and experience of financial products, dependents, potential changes to his/her circumstances);
c) Financial situation (including income, financial products and other assets, debts and financial commitments); and
d) Attitude to risk (in particular, the importance of capital security to the consumer).

In the case of a mortgage, a regulated entity must use a Standard Financial Statement to obtain financial data from the consumer.

Bank of Ireland is wholly supportive of the requirement to gather information appropriate to the nature and complexity of the product. The challenge for the industry will be to ensure that appropriate but not excessive information is requested from the consumer.

Bank of Ireland notes the new requirement to use a Standard Financial Statement for a mortgage application and makes the following observations:-

1) the SFS currently being developed is geared towards consumers who fall within part a) of the definition of consumer only, and
2) the SFS is designed for budgeting purposes to assist consumers in financial difficulties. It is not an appropriate method to capture data for the purposes of assessing new mortgage lending as it would not provide a mortgage lender with the data or comprehensive information it would require for the assessment of a mortgage

Bank of Ireland recommends that the reference to the SFS is deleted from this Provision as it is unnecessary once regulated entities comply with c) above.

Bank of Ireland further notes that regulated entities who lend to consumers who fall within parts b) and c) of the definition of consumer must comply with the Business Lending Code. Bank of Ireland strongly recommends that lending to such consumers should be covered within one dedicated code.

Bank of Ireland suggests the following alternative wording:-

> "1. Before offering, arranging or recommending a product or service, a regulated entity must gather and record sufficient information from the consumer to enable it to provide a recommendation or a product or service appropriate to that consumer. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the consumer, but must

be to a level that allows the regulated entity to provide a professional service and must include, where relevant, details of the consumer's:
a) Needs and objectives (including, where relevant, the length of time for which the consumer wishes to hold a product, need for access to funds, need for emergency funds);
b) Personal circumstances (including age, health, knowledge and experience of financial products, dependents, potential changes to his/her circumstances);
c) Financial situation (including income, financial products and other assets, debts and financial commitments); and
d) Attitude to risk (in particular, the importance of capital security to the consumer).

~~In the case of a mortgage, a regulated entity must use a Standard Financial Statement to obtain financial data from the consumer~~."

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3. A regulated entity must ensure that, where a consumer refuses to provide information sought in compliance with Provisions 1 and 2, the refusal is noted on that consumer's records and that it advises the consumer that it does not have the information necessary to assess suitability and cannot offer the consumer the product or service sought.

Bank of Ireland supports this new Provision whereby a regulated entity cannot offer a product to a consumer where the consumer has refused to provide information sought in compliance with Provisions 1 & 2.

In light of the new prohibition on the provision of the product to the consumer Bank of Ireland notes that the requirement under the existing Consumer Protection Code, which is being retained in the revised Code, to keep a note on the consumer's file will be unnecessary. It will have no consumer benefit (as the consumer won't have been provided with the product) and it will therefore be an excessively onerous, and costly, obligation on regulated entities for no benefit.

Bank of Ireland recommends that this element of the Provision should be removed.

"3. A regulated entity must ensure that, where a consumer refuses to provide information sought in compliance with Provisions 1 and 2, ~~the refusal is noted on that consumer's records and~~ that it advises the consumer that it does not have the information necessary to assess suitability and cannot offer the consumer the product or service sought. "

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5. Before a mortgage can be drawn down a lender must have had sight of all original supporting documentation including bank statements, P60/certificate of earnings and other supporting documentation evidencing the consumer's identity and ability to repay.

A declaration signed by the consumer, (or his representative), certifying their income and/or ability to repay is not sufficient evidence for these purposes.

Bank of Ireland seeks to clarify that this Provision is intended to relate to direct mortgage lending and that it does not apply where a product producer is dealing with a mortgage intermediary (ref Chapter 5, Provision 6). We further seek to clarify that sight of the original P60 is not necessary where the consumer's salary is mandated

to a bank account held by the consumer with the regulated entity, or with another regulated entity which is part of the same group of companies and where relevant data protection consents are in place.

We also note that the references to P60/certificate of earnings etc. are not necessarily relevant for lending to consumers who fall within parts b) and c) of the definition of consumer and we recommend that this Provision should only apply to consumers who fall within part a) of the definition of consumer.

Bank of Ireland suggests the following alternative wording:-

> "5. Before a mortgage can be drawn down a ~~lender~~ regulated entity, when dealing with consumers who fall within part a) of the definition of consumer, must have had sight of all original supporting documentation including bank statements, P60/certificate of earnings (unless the consumer's salary is mandated into a bank account held with the regulated entity or with another regulated entity which is part of the same group of companies and where relevant data protection consents are in place) and other supporting documentation evidencing the consumer's identity and ability to repay."

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8. A regulated entity must ensure that it has sight of an original valuation report before drawdown of the funds.

Bank of Ireland seeks to clarify that this Provision relates to the drawdown of a mortgage and would request that this should be included in the Provision.

Bank of Ireland also seeks to confirm that receipt of a soft copy of the valuation report is sufficient to meet this requirement.

Bank of Ireland suggests the following alternative wording:-

> "8. A regulated entity must ensure that it has sight of an original valuation report before drawdown of ~~the funds~~ a mortgage. "

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10. When assessing the suitability of a product or service for a consumer, the regulated entity must, at a minimum, consider and document whether:
a) the product/service meets that consumer's needs and objectives;
b) the consumer 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;
c) the consumer has the necessary experience and knowledge in order to understand the risks involved; and,
d) the consumer may be a vulnerable consumer, and as such, has particular needs and circumstances that require due consideration.

In addition, in the case of a mortgage, a regulated entity must consider the information contained in a Standard Financial Statement when assessing the consumer's ability to service mortgage repayments.

Bank of Ireland refers to comments made in relation to the Standard Financial Statement under Chapter 5, Provision 1 above i.e.

1) the SFS currently being developed is geared towards consumers who fall within part a) of the definition of consumer only, and
2) the SFS is designed for budgeting purposes and to assist consumers in financial difficulties. It is not an appropriate method to capture data for the purposes of assessing new mortgage lending

Bank of Ireland further notes that a regulated entity is wholly reliant on the accuracy and completeness of the information provided by the consumer and that in carrying out Provision 5.10 a regulated entity must be entitled to rely on the information it has been provided with.

In addition, an assessment of suitability is a point in time assessment and it is important to recognise that a regulated entity cannot foresee certain circumstances, for example circumstances (e.g. redundancy, loss of a major contract, revocation of a license etc.) that could under sub-provision (b) impact on a consumer's ability to meet financial commitments in the future.

We also refer to our comments on the concept of vulnerable consumers in our Executive Summary, in our response to CP47 Questions 1 & 2 and in Chapter 13. In particular, in relation to this Provision, there is no tangible guidance on how a vulnerable consumer is to be identified or treated. See our response to CP47 Questions 1 & 2 in this regard. In the absence of tangible and pragmatic guidance we believe this new requirement will be an extremely onerous and costly provision to implement.

Bank of Ireland suggests the following alternative wording:-

"10. When assessing the suitability of a product or service for a consumer the regulated entity must, at a minimum, consider and document whether at the time of competing the assessment:
a) the product/service meets that consumer's needs and objectives;
b) the consumer 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;
c) the consumer has the necessary experience and knowledge in order to understand the risks involved; and,
d) the consumer may be a vulnerable consumer, and as such, has particular needs and circumstances that require due consideration.

~~In addition, in the case of a mortgage a regulated entity must consider the information contained in a Standard Financial Statement when assessing the consumer's ability to service mortgage repayments~~."

In complying with this Provision 5.10 the consumer is obliged to ensure that the information it provides to the regulated entity is accurate and complete and the regulated entity is entitled to rely on the information provided by the consumer."

13. A regulated entity must, when assessing the consumer's ability to repay, calculate the impact on the repayment amount of a 2% interest rate increase above the interest rate offered to the consumer. Where the consumer is availing of an introductory interest rate, the calculation must be based on the lender's standard variable rate or fixed rate, whichever is to be applied after the introductory period.
This information must be provided to the consumer.
The lender must calculate the impact of the rate increase and must be provide these calculations to the mortgage intermediary.

Bank of Ireland fully supports the principle of stress testing.

Bank of Ireland notes that in the introduction to the Consultation Paper this new Provision comes under the Suitability of Mortgages section (page 7 of the Consultation Paper) and we suggest that this should be clarified within this new Provision.

We also request that the Provision should be restricted to lending to consumers in relation to residential property and as such should not apply to non-mortgage lending and commercial mortgages.

Bank of Ireland suggests the following alternative wording:-

> "13. A regulated entity must, when assessing the ~~consumer's~~ ability of a consumer who falls within part a) of the definition of consumer to repay a residential mortgage, calculate the impact on the repayment amount of a 2% interest rate increase above the interest rate offered to the consumer. Where the consumer is availing of an introductory interest rate, the calculation must be based on the lender's standard variable rate or fixed rate, whichever is to be applied after the introductory period. "

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14. Before offering, arranging or recommending an interest-only mortgage to a consumer, a regulated entity must be satisfied that the consumer will be able to repay the principal at the end of the mortgage term.

Bank of Ireland suggests that this Provision should only relate to consumers who fall within part a) of the definition of consumer

Bank of Ireland suggests the following alternative wording:-

> "14. Before offering, arranging or recommending an interest-only mortgage to a consumer who falls within part a) of the definition of consumer, a regulated entity must be satisfied that the consumer will be able to repay the principal at the end of the mortgage term. "

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15. Before offering, arranging or recommending a mortgage on an interest-only basis for a limited duration, a regulated entity must be satisfied that the consumer will be able to meet the increased mortgage repayments at the end of the interest-only period.

Bank of Ireland notes that this is our standard practice in relation to new mortgage lending. However we note that in certain cases, when working with a consumer in financial difficulties, it may be appropriate to offer an interest-only mortgage option to the consumer, to facilitate cashflow difficulties etc., although the regulated entity may not be capable of being "satisfied" that the consumer will be able to repay the principal at the end of the mortgage term.

This new Provision could be to the detriment of consumers in financial difficulty and could go against the Code of Conduct of Mortgage Arrears where regulated entities are working with consumers in financial difficulties.

Bank of Ireland suggests that this Provision should only relate to consumers who fall within part a) of the definition of consumer.

Bank of Ireland suggests the following alternative wording:-

> "15. Before offering, arranging or recommending a mortgage on an interest-only basis for a limited duration to a consumer who falls within part a) of the definition of consumer, a regulated entity must be satisfied that the consumer will be able to meet the increased mortgage repayments at the end of the interest-only period. This Provision does not apply to restructuring arrangements that are being put in place for consumers who are in arrears or pre-arrears under the Code of Conduct on Mortgage Arrears"

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17. Before offering, arranging or recommending a product or service, a regulated entity must prepare a written statement setting out:
a) the reasons why a product or service offered to a consumer is considered to be suitable to that consumer; or
b) the reasons why each of a selection of product options offered to a consumer are considered to be suitable to that consumer; or
c) the reasons why a recommended product is considered to be the most suitable product for that consumer.

The written statement must include an outline of how the product meets the consumer's needs and objectives, and the following, where relevant:
i) how the product is suitable for the consumer taking into account the consumer's specific vulnerabilities;
ii) how the risk profile of the product is aligned with the consumer's attitude to risk;
iii) how the nature, extent and limitations of any guarantee attached to the product is aligned with the consumer's attitude to risk; and
iv) where a non-standard PRSA is recommended, the statement must demonstrate why the non-standard PRSA is more appropriate than a relevant standard PRSA.

Bank of Ireland fundamentally objects to the mention of consumer vulnerability in this Provision. We refer to our comments on the concept of vulnerable consumers in our Executive Summary, in our response to CP47 Questions 1 & 2 and in our commentary on Provision 5.10 and the definition of "vulnerable consumer" in Chapter 13. In particular, in relation to this Provision, it would appear to oblige a regulated entity to include its belief that a consumer was credulous, or had a low level of education, in its suitability statement. That would clearly be unacceptable.

Bank of Ireland supports the requirement in Provision 18 for the suitability statement to be time specific.

Bank of Ireland suggests the following alternative wording:-

> "17. Before offering, arranging or recommending a product or service, a regulated entity must prepare a written statement setting out:
> a) the reasons why a product or service offered to a consumer is considered to be suitable to that consumer at this time; or
> b) the reasons why each of a selection of product options offered to a consumer are considered to be suitable to that consumer; or
> c) the reasons why a recommended product is considered to be the most suitable product for that consumer.
>
> The written statement must include an outline of how the product meets the consumer's needs and objectives, and the following, where relevant:
> ~~i) how the product is suitable for the consumer taking into account the consumer's specific vulnerabilities;~~
> i) how the risk profile of the product is aligned with the consumer's attitude to risk;
> ii) how the nature, extent and limitations of any guarantee attached to the product is aligned with the consumer's attitude to risk; and
> iii) where a non-standard PRSA is recommended, the statement must demonstrate why the non-standard PRSA is more appropriate than a relevant standard PRSA. "

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20. Provisions 1- 4, 10-11 and 17-19 (inclusive) do not apply where:
a) the consumer has specified both the product and the product producer ~~and has not received any advice~~ and has otherwise not engaged with the regulated entity in relation to that product; or
b) the consumer is purchasing or selling foreign currency; or
c) the regulated entity has established that the consumer is seeking a basic banking product or service; or
d) the consumer is seeking credit that falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010.

In relation to a) above, before providing the product or service the regulated entity must warn the consumer that the regulated entity does not have the information to determine the suitability of that product for the consumer and must obtain written confirmation from the consumer that such warning has been received.

This exemption does not apply where the consumer is availing of a credit facility that falls outside the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 or is purchasing a lifetime mortgage or home reversion agreement.

Bank of Ireland notes that the changes to a) were queried with the Central Bank at the IBF seminar on 2nd December 2010 and it was clarified that the purpose of clause a) above is to address situations where the consumer has not received advice from the regulated entity i.e. execution only business. However Bank of Ireland notes that the change in the wording in relation to execution only business under a) above will render it impossible for a consumer to effect execution only business as in virtually all

circumstances a consumer will "engage" with the regulated entity e.g. will engage to obtain an application form, will engage to enquire what the rate is on a deposit account etc.

Bank of Ireland is strongly of the view that the change in clause a) and the addition of the new warning requirement are excessive in relation to execution only business and strongly recommends that the existing wording of this clause under the current Consumer Protection Code in relation to execution only business should be retained.

"20. Provisions 1- 4, 10-11 and 17-19 (inclusive) do not apply where:
"a) the consumer has specified both the product and the product producer and has not received any advice from ~~otherwise not engaged with~~ the regulated entity in relation to that product;"
b) the consumer is purchasing or selling foreign currency; or
c) the regulated entity has established that the consumer is seeking a basic banking product or service; or
d) the consumer is seeking credit that falls within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010.

~~In relation to a) above, before providing the product or service the regulated entity must warn the consumer that the regulated entity does not have the information to determine the suitability of that product for the consumer and must obtain written confirmation from the consumer that such warning has been received.~~
This exemption does not apply where the consumer is availing of a credit facility that falls outside the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 or is purchasing a lifetime mortgage or home reversion agreement."

CHAPTER 6 – STATEMENTS

1. Statements must be issued to the consumer's last known postal address, or be made available to the consumer electronically if the consumer so requests.

Bank of Ireland agrees with the proposal to permit regulated entities to correspond, including provision of statements, with consumers electronically. However we do not believe the intention of this Provision is to oblige the regulated entity to have electronic statement capability and we therefore suggest the following amendment to this Provision:-

> "1. Statements must be issued to the consumer's last known postal address, or may be made available to the consumer electronically if the consumer so requests"

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2. A regulated entity must not use abbreviations, acronyms or numerical references to depict any of the items of information listed in a statement of transactions.

Bank of Ireland agrees with the intent of this Provision, being to ensure that consumers can understand the meaning of all transactions on their statements.

However we note that typically when abbreviations etc. are used they are self evident and their use is pragmatic, e.g. a direct debit from the Electricity Supply Board could be depicted as ESB DD. In addition, at times the use of abbreviations, acronyms and numerical references is necessary and cannot be avoided e.g. if the payment details received from a consumer or from a third party only gives a numerical reference or if there isn't sufficient space on the statement narrative to include full details.

The cost to the industry to implement this Provision is likely to be extremely significant as it will require a total restructure of regulated entities' core systems. It is the view of Bank of Ireland that this Provision is excessive and totally disproportionate to any benefit to the consumer. We suggest that a consumer can always contact the regulated entity if there is any item on their statement that they cannot understand and this is a much more pragmatic way of addressing the issue.

We therefore suggest that this new Provision should be removed from the Code.

> ~~2. A regulated entity must not use abbreviations, acronyms or numerical references to depict any of the items of information listed in a statement of transactions.~~

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3. Where the account is a joint account, the statement must be issued separately to each of the joint account holders.

To apply this Provision, as currently worded, would be disproportionate to the needs of the vast majority of joint account consumers who do not require duplicate copies of statements, particularly where online banking facilities are available to consumers, joint account holders are living at the same address etc. It is the Bank of Ireland policy to address statements to the two account holders, in cases where there are just two joint account holders, and we believe that in the vast majority of cases this is sufficient.

As an alternative, Bank of Ireland would be supportive of a requirement to make separate statements available to each account holder on request. To do otherwise would be environmentally unfriendly and disproportionately costly.

Bank of Ireland further notes that this Provision is not practical for certain types of joint account, e.g. partnership accounts, and we suggest that this Provision should not apply to consumers who fall within part b) and part c) of the definition of consumer.

Bank of Ireland suggests the following alternative wording:-

> "3. Where the account is a joint account and the joint account holders are consumers who fall within part a) of the definition, the statement must be issued separately to each of the joint account holders where the joint account holders have so requested."

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4. A credit institution must, at least annually, issue statements of transactions on all deposit accounts with a balance in excess of €20, and on all current accounts, unless otherwise agreed with the consumer in writing.
This statement must include, where applicable:
i) the opening balance;
ii) all additions, including interest;
iii) all withdrawals including charges and interest;
iv) the closing balance;
v) details of the interest rates applied to the account during the period covered by the statement;
vi) where tax is deducted from interest earned, provide information on the tax deducted or inform consumers how they may obtain a certificate detailing the tax paid.

Bank of Ireland agrees with this Provision but notes that it would be disproportionately costly to apply this Provision to current accounts with a balance < €20 that have been inactive in the previous 12 months. We believe that such accounts should continue to be excluded from this Provision.

Bank of Ireland suggests the following alternative wording:-

> "4. A credit institution must, at least annually, issue statements of transactions on all deposit accounts with a balance in excess of €20, and on all current accounts other than on current accounts with a balance of €20 or less that have been inactive for the previous 12 months, unless otherwise agreed with the consumer in writing.
> This statement must include, where applicable:
> i) the opening balance;
> ii) all additions, including interest;
> iii) all withdrawals including charges and interest;
> iv) the closing balance;
> v) details of the interest rates applied to the account during the period covered by the statement;
> vi) where tax is deducted from interest earned, provide information on the tax deducted or inform consumers how they may obtain a certificate detailing the tax paid. "

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5. A credit institution must, on request, provide consumers who fall within part b) and part c) of the definition of consumer, with three years of current account history without charge and provide other consumers with 12 months of current account statements without charge.

Bank of Ireland notes that this is a commitment that Ireland has given to the EU to further enhance competition in the Irish Banking Sector. Bank of Ireland is happy to provide duplicate statements to consumers in this regard but notes that the commitment to the EU is in relation to Customer Mobility and we therefore seek to clarify that this new Provision relates to consumers who are seeking to switch their banking relationship.

In addition it has been the past experience of Bank of Ireland that where consumers have not been required to pay for duplicate statements the consumers have had no incentive to retain the original copies of statements. This can lead to excessive requests for duplicate statements, particularly for business consumers, which is inefficient and costly. We would therefore seek to include a limit on the number of free duplicate statements to 1 per annum.

Bank of Ireland suggests the following alternative wording:-

> "5. A credit institution must, on request and limited to one request per annum, provide consumers who fall within part b) and part c) of the definition of consumer and who are seeking to switch their current account to another credit institution, with three years of current account history without charge and provide other consumers who are seeking to switch their current account to another credit institution with 12 months of current account statements without charge. "

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6. A credit institution must ~~make available to~~ provide a consumer who holds a deposit account with:
a) details of the different interest rates that are being applied to the credit institution's other deposit accounts; and
b) a stand-alone annual statement of the total interest earned on the account.

Bank of Ireland notes the change in this Provision from "make available" to "provide".

We would note in relation to a) that not all deposit accounts will be available to all consumers (e.g. business deposit accounts may not be available to all consumers). We therefore request that the requirement is limited to those rates that would be available to the consumer.

While we note that the requirement under (b) of this Provision is one of the commitments that Ireland has given to the EU to further enhance competition in the Irish Banking Sector we would nevertheless seek to clarify that the requirement will be to provide this information at the request of the consumer. It is our experience that a relatively low number of consumers seek an annual certificate of interest and it is therefore the view of Bank of Ireland that a requirement to send this information to all consumers would be excessive. We also suggest that the reference under Provision (b) should more accurately be worded "total interest credited" to the account.

Bank of Ireland suggests the following alternative wording:-

"6. A credit institution must, on request, provide a consumer who holds a deposit account with:
a) details of the different interest rates that are being applied to the credit institution's other deposit accounts which would be available to the consumer; and
b) a stand-alone annual statement of the total interest ~~earned on~~ credited to the account."

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7. A credit institution must provide a consumer who holds a current account with a stand-alone annual statement setting out:
a) the total amount of charges applied to the account during the year,
b) the total amount of interest earned on the account during the year, and
c) the total amount of interest paid on the account during the year.

Bank of Ireland notes that the requirement to "provide consumers who have current accounts with separate annual statements of total fees/interest paid" is one of the commitments that Ireland has given to the EU to further enhance competition in the Irish Banking Sector. However Bank of Ireland notes that this commitment relates to fees, not charges, and that (b) above is not included in the commitments given to the EU. Bank of Ireland also seeks to clarify that the requirement will be to provide this information at the request of the consumer.

Bank of Ireland further notes that some regulated entities, including Bank of Ireland, continue to provide consumers with a pre-notification of interest and fees, in accordance with the IBF Voluntary Code, where such interest and/or fees exceed €12.70 per quarter and otherwise a quarterly fee statement is issued to the consumer with the account statement. Bank of Ireland suggests that where regulated entities provide these separate quarterly statements they should be deemed to be compliance with this Provision. Otherwise regulated entities are likely to discontinue the practice of sending the quarterly statements, as this will be costly duplication. Bank of Ireland considers the quarterly statements to be more beneficial to the consumer than one annual statement.

Bank of Ireland suggests the following alternative wording:-

"7. Where a credit institution does not provide consumers with quarterly information on interest and fees a credit institution must on request provide a consumer who holds a current account with a stand-alone annual statement setting out:
a) the total amount of ~~charges~~ fees applied to the account during the year,
~~b) the total amount of interest earned on the account during the year,~~ and
b) the total amount of interest paid on the account during the year.

CREDIT

8. A regulated entity must, at least annually, issue a statement of account in respect of a loan, unless otherwise agreed with the consumer in writing. This statement must include:
a) opening balance;
b) details of all transactions;
c) interest amount charged;
d) details of any charges applied;
e) outstanding balance due; and
f) details of the interest rate applied to the account, during the period covered by the statement.

There are certain situations where the continued issuance of a statement would be of questionable benefit to the consumer and we believe exceptions should be allowed in these cases:

- Where the Bank no longer holds a valid postal address for a consumer (e.g. letters returned "Gone away"),
- Where a consumer has an outstanding debt that they are not servicing, the financial institution should have the option to cease issuing statements so as to avoid further unnecessary expenditure.

Bank of Ireland suggests the following alternative wording:-

"8. A regulated entity must, at least annually, issue a statement of account in respect of a loan, unless otherwise agreed with the consumer in writing or where the regulated entity has been unable to contact the consumer or where the consumer has an outstanding debt with the regulated entity and has not made any repayments on the account for a minimum of 12 months"
This statement must include:
a) opening balance;
b) details of all transactions;
c) interest amount charged;
d) details of any charges applied;
e) outstanding balance due; and
f) details of the interest rate applied to the account, during the period covered by the statement"

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10. In addition to Provision 9 above, a credit card statement must include the following notices, where applicable:
a) A notice on interest charged method:
Warning: Interest will not be charged on purchases if you 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.
b) A minimum payment warning:
Warning: If you only make the minimum payment each month, you will not clear your balance until [Insert Date]
or
You will have to pay [€X amount] over [X months] to clear the debt.

c) A statement regarding transactions outside the normal spending pattern:
You should advise your lender if you will be making transactions outside your normal spending pattern, as unusual transactions may be declined.

Bank of Ireland notes that the majority of consumers make the full monthly payment on their credit card. In addition another significant portion of consumers partially pay off their credit card debt in excess of the minimum payment and only a small minority of consumers make the minimum payment in a month. The incidence of consumers who only make minimum payments over the lifetime of the outstanding balance is unusual.

Is therefore the view of Bank of Ireland that the new warning under (b) above will be based only on the rarest repayment type pattern and will bring no real value to the consumer. It is far more likely to create confusion regarding actual payments outstanding for consumers.

Bank of Ireland suggests that a warning such as "*Warning: The minimum payment must be made by the due date outlined on the front of your statement. Where possible you should try to pay off all or as much as you can of your monthly balance. If you only pay off the minimum payment on your credit card each month, you will incur interest and it could take several years for you to pay off a large balance."* , which is similar to other warnings requested on statements, would meet all consumers' needs and ensure clarity on the consequences of making only minimum payments.

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11. A regulated entity must issue statements for each investment product held with it at least on an annual basis, either on an actual basis in respect of the previous 12-month period or on a forecast basis in respect of the next 12-month period, unless otherwise agreed, in writing, with the consumer. The statements must include, where applicable:
a) the opening balance or value;
b) all additions including additional amounts invested in the relevant 12-month period;
c) all withdrawals in the relevant 12-month period;
d) the total sum invested in the relevant 12-month period;
e) the number of units held during the relevant 12-month period;
f) details of interest paid during the relevant 12-month period;
g) all charges and deductions affecting the investment product including any charges associated with the management, selling, set up and ongoing administration of the investment product; and
h) a closing balance or statement of the value of the investment.

Bank of Ireland seeks to confirm that compliance with relevant Disclosure Regulations will continue to satisfy this requirement

CHAPTER 7 – TRANSFER OF RESIDENTIAL MORTGAGES

Bank of Ireland requests the Central Bank to replace the proposed Provisions with the existing Code of Practice on Transfer of Mortgages. To do otherwise will make it impossible for regulated entities to put in place efficient funding mechanisms such as securitisations. This is not in interests of Irish financial institutions.

The earlier Code of Practice on the Transfer of Mortgages required a consumer to be "…*given reasonable time to give or decline his consent*." In practice, financial institutions incorporated the relevant consumer consents in the mortgage loan documentation itself. A good example of this is Clause 23 of the IBF General Housing Loan Mortgage Conditions which document we understand was considered by the Central Bank in 2009 before its launch. Doing this enabled financial institutions carry out securitisations and to avail of mortgage backed promissory note facilities through the Central Bank of Ireland and so on. Such clauses also facilitated asset covered securities (under the Asset Covered Securities Acts 2001 and 2007, &c).

Chapter 7 of CP47, as drafted, would require each borrower to *"…be afforded three months to decide whether to give or decline to give his/her consent. The lender must also provide the borrower with the following information:*

a) *The name and address of the intended transferee, and of any holding company…;*
b) *The nature of the relationship, if any, between the lender and the transferee;*
c) *A description of the intended transferee and its business, including details of how long it has been in operation, and of its experience in the management of mortgages;*
d) *An explanation of the transferee's policy and procedures … for the setting of mortgage interest rate and making repayments…;*
e) *Confirmation that, in the absence of the borrower's specific consent, the existing arrangements, will continue to apply."*

It seems quite clear to Bank of Ireland that the proposed wording would preclude the present practice of including consents to securitisations, &c, in the mortgage (or the mortgage loan offer letter).

Practical Objections to the Provisions of Chapter 7

1. Chapter 7, as drafted, would effectively prevent any securitisation or similar efficient funding mechanism as a lender could not (in practical terms) make it contingent on obtaining the consent of each relevant mortgage consumer in writing.
2. Chapter 7, as proposed, could inhibit any restructuring of the banking sector in Ireland.
3. Chapter 7, as drafted, appears to be contrary to the existing law concerning the assignment of debts and mortgages (which underpins securitisations and other transaction types). For example, if a loan agreement permits assignment or transfer by the lender, the borrower's prior written consent to assignment of debt is not necessary under the present law; the assignment becomes absolute once the borrower is notified of it (see, e.g., Section 26(6) of the Judicature Act (Ireland) 1877).

CHAPTER 8 – REBATES AND CLAIMS PROCESSING

Bank of Ireland seeks to clarify that this chapter, and in particular the following Provisions, are not intended to apply to life assurance.

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1. A regulated entity must transfer a premium rebate to a consumer within five business days of the rebate becoming due.

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9. A regulated entity must have in place a written procedure for the effective and proper handling of claims. At a minimum, the procedure must provide that:
a) where an accident has occurred and a personal injury has been suffered, a copy of the InjuriesBoard.ie information leaflet (reference no.) is issued to the potential claimant;
b) where the potential claimant has been involved in a motor accident with an uninsured or unidentified vehicle or with a foreign registered vehicle, the regulated entity must advise the potential claimant to contact the Motor Insurance Bureau of Ireland (MIBI);
c) where a claim form is required to be completed, it is issued within 5 business days of receiving notice of a claim;
d) the regulated entity must offer to assist in the process of making a claim;
e) details of all conversations with the claimant in relation to the claim are noted;
f) the regulated entity must, while the claim is ongoing provide the claimant with updates of any developments affecting the outcome of the claim within 10 business days of the development. When additional documentation or clarification is required from the claimant, the claimant must be advised of this at an early stage and, if necessary, issued with a reminder in writing.

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16. A regulated entity must ensure that any claim settlement offer made to a claimant is fair and represents the regulated entity's best estimate of the claimant's reasonable entitlement under the policy. An offer must be made in writing and allow the claimant at least 10 business days to accept or reject the offer.

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17. Where the policyholder will not be the beneficiary of the settlement amount the policyholder must be advised in writing by the regulated entity, at the time that settlement is made, of the final outcome of the claim including any details of the settlement amount paid. Where applicable, the policyholder must be informed that the settlement of the claim will affect future insurance contracts of that type.

CHAPTER 9 – ARREARS HANDLING

This is a commentary on some individual Provisions of Chapter 9. For further detailed comments see our response to Question 23 of CP47. For the purpose of this part of the commentary we assume Chapter 9 will be amended to apply only to natural persons acting outside their business, trade or profession. On the whole, the comments below assume the consumer is such a person.

In addition, the Provisions contained in Chapter 9 seem to Bank of Ireland to be more suitable for term loan debt in arrears and not for revolving credit or running account facilities (e.g., a credit card or overdraft facility). The concept of "arrears" does not seem to sit with such facilities and it seems to Bank of Ireland not feasible operationally to apply the provisions to them. Bank of Ireland, therefore, recommends the provisions be amended to make clear it applies to term debt (including mortgage debt) only if that is the intention.

Finally, Bank of Ireland seeks to confirm that this Chapter 9 does not apply in the case of life assurance.

3. Where an account (other than a mortgage account that is subject to the Code of Conduct on Mortgage Arrears) is in arrears, a regulated entity must inform the consumer in writing of the status of the account as soon as it becomes aware of the arrears. This information must include the following:
a) the date the account fell into arrears;
b) the number and total amount of payments (including partial payments) missed;
c) the amount of the arrears to date;
d) the interest rate applicable to the arrears;
e) details of any charges in relation to the arrears that may be applied;
f) the importance of the consumer engaging with the regulated entity in order to address the situation;
g) relevant contact points;
h) the consequences of continued non-payment, including any possible impact of the default on other accounts held by the consumer with that regulated entity, if relevant; and
i) the contact details of the consumer's nearest Money Advice and Budgeting Service (MABS) office and a statement to the effect that the involvement of MABS could help the consumer if they are experiencing financial difficulty.

As drafted, this Provision would apply regardless of the amount in arrears, which could be small. That could be disadvantageous for a consumer. For example, a consumer might find the information prescribed by the Provision unduly threatening or overbearing in the context of a small amount being overdue for payment. Bank of Ireland suggests the Provision should only apply to arrears of material significance.

Bank of Ireland suggests that Provision 3(i) should be referred to MABs. Bank of Ireland also believes it is impractical for the regulated entity to refer the consumer to the nearest MABs office. Bank of Ireland suggests it would, in any case, be more beneficial for a consumer to refer to the MAB website at first instance. The website itself contains much appropriate guidance for the consumer which he/she can avail of without placing demand on MAB's resources.

This Provision 3 will be costly to implement.

5. Where a consumer has purchased payment protection insurance (PPI) in relation to that loan from the lender, it must advise the consumer in writing of the following:
a) that the consumer has purchased PPI;
b) the circumstances under which a claim can be made;
c) the consumer's policy number; and
d) the procedure for making a claim under the policy.

The items described in paragraphs 5(b) and (d) will be dealt with in the payment protection policy document itself. It would be preferable for the consumer to consult the policy document rather than for a regulated entity to attempt to re-state or summarise some salient details in a letter. We suggest the Provision (instead of including paragraphs (b) and (d) should simply say that the "*regulated entity* will provide the *consumer* with a copy of the payment protection policy on request."

Bank of Ireland suggests the following alternative wording:-

"5. Where a consumer has purchased payment protection insurance (PPI) in relation to that loan from the lender, it must advise the consumer in writing of the following:
a) that the consumer has purchased PPI;
b) ~~the circumstances under which a claim can be made;~~
~~c)~~ the consumer's policy number; and
~~d) the procedure for making a claim under the policy~~."
c) a copy of the payment protection policy is available on request."

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6. In respect of a mortgage (other than a mortgage account that is subject to the Code of Conduct on Mortgage Arrears), where a third full or partial repayment is missed and remains outstanding and, where an approach to resolving the arrears situation has not been agreed, a regulated entity must advise the consumer, in writing, of the following:
a) the potential for legal proceedings and loss of the property, together with an estimate of the costs to the consumer of such proceedings; and
b) that irrespective of how the property is repossessed and disposed of, the consumer will remain liable for the outstanding debt, including accrued interest, charges, legal, selling and other related costs, if this is the case.

This Provision is not suitable for business loans. For example, consider a business loan secured on a floating charge or chattel mortgage; a business consumer receiving a warning letter under this Provision could take evasive action to put secured assets beyond the practical reach of a lender. See answer to Question 23 on Bank of Ireland's suggestion to exclude business consumers coming within paragraphs (b) and (c) of the definition of "consumer" in CP47 which would cover the point on this Provision.

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10. A regulated entity must give a consumer three months notice in writing where it intends to offset any credit balances in other accounts held by the consumer with that regulated entity, against any arrears outstanding.

We refer to our response to the Central Bank's Questions 23 & 24 in relation to this new Provision:-

1. Requiring 3 month's notice before accounts are set off would enable a consumer withdraw cash and also could make any credit balance vulnerable (during the notice period) to attachment from other creditors including the revenue commissioners (the latter do not need a court order to attach an account because of Section 1002 Taxes Consolidation Act 1997). These other creditors would not, of course, be regulated entities subject to the limitations on set off proposed in Provision 10. Provision 10 would, in Bank of Ireland's view, handicap credit institutions against other creditors.
2. Requiring 3 month's notice before set off appears to conflict with the right to set off mutual debts on bankruptcy (Bankruptcy Act, 1988, Schedule 1, paragraph 17) or company insolvency (see e.g., Freaney v. Bank of Ireland, High Court, [1975] IR 376). Company insolvency will be relevant to Chapter 9 if it is to apply to a company coming within element (c) of the definition of "consumer" in CP47.
3. A letter of set-off is a well recognised instrument which effects quasi - security in favour of a lender. Letters of set -off are particularly common in Ireland (following the Supreme Court Case of Bank of Ireland v Martin & Martin, [1937] IR). Such letters of set off are frequent in a business banking context, being an important and long-standing way of enabling businesses access credit. However, they are also used by consumers acting outside of business. The letters of set-off are (for practical reasons) drafted on the assumption that the credit balance can be set off against the secured liabilities without further notice to the consumer. Provision 10 would have these effects:-
    a. The provision seems to apply retrospectively to affect all existing letters of set off, in effect diminishing or negating the benefit of existing letters of set off for lenders. For example, there would be nothing to prevent the consumer withdrawing the credit balance in the notice period (or for another creditor to attach the credit balance). As existing set off letters would not be readily realisable, that would have negative capital implications for bank capital under Basel II (SI 661/2006—as above).
    b. The letter of set off would not be a viable method for business or other consumers to obtain credit in future, diminishing lenders' ability to advance credit to borrowers, an obviously undesirable outcome.
4. The Provision is unclear on what is to apply where the lender has security (by way of charge or security assignment) over a credit balance. If the credit balance is with the lending institution itself, the security is usually enforced by set - off. Clearly, such security should not be affected by the rule and an express exception should be made for it.

PROVISIONS 11-13

Bank of Ireland has very serious difficulties with the Provisions as drafted and these are set out in our detailed response to CP47 Question 23.

13. Where a consumer has not engaged or cooperated with the regulated entity and the regulated entity intends to place restrictions on the operation of the account in arrears, the consumer must be provided with a minimum of three months notice of this in writing.

Bank of Ireland notes the following:

The Provision affords protection to a consumer who has not engaged or cooperated; why does such a consumer merit such accommodation? Contrast the treatment of non-cooperating consumers under the CCMA.

- The Provision could operate to prevent a regulated entity from blocking a credit card or stopping a cheque book. This would allow a consumer incur further debt (allowing that would be inappropriate and make it more difficult for a consumer to remediate his/her arrears.

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16. Each calendar month, a regulated entity, and/or any third party acting on its behalf, may not initiate more than three unsolicited communications, by whatever means, to a consumer in respect of an arrears situation. The three unsolicited communications do not include any communications to the consumer which are required by this Code.

1. This Provision appears to Bank of Ireland to be unreasonably restrictive. It may be in a consumer's best interests to receive a communication concerning arrears from a regulated entity more often than 3 times in a month. For example, a bank may wish to contact a consumer to agree to pay a cheque or other debit notwithstanding the arrears situation. "Communications" are broad enough to cover post. A large institution will frequently communicate with customers from different units and through diverse media (post, phone call, email, &c.). It would require the creation of entirely new systems (at considerable cost) to limit the communications on an arrears situation with a consumer in a particular calendar month to a particular number.
2. The Provision should not discourage purposeful and supportive communication with a consumer on the subject of his/her arrears. As drafted, Bank of Ireland believes the Provision could have that undesirable affect.
3. Bank of Ireland presumes the intention is to stop harassment and that the Provision should, therefore, be directed against harassment and abusive or intimidating communication or behaviour. Communicating with unwarranted frequency could be deemed to be a form of harassment in a newly drafted version of the Provision.

CHAPTER 10 – ADVERTISING

BOI General Comments

- The purchase of financial service products, given their sometimes complex nature and importance usually involves a number of steps. This is in sharp contrast to other products such as fast moving consumer goods. Bank of Ireland is committed to ensuring that the features, benefits, criteria, risks are highlighted at each of the appropriate stages in this journey.
- Advertising is used at an early stage in a consumer's buying journey to build awareness of the availability of product options to meet their needs. We believe the availability of clear, comprehensible, relevant information in relation to products and services on advertisements is useful for consumers to aid this early stage of decision making. Sufficient but not excessive information is key to allowing consumers to move to the next stage in the purchasing process i.e. making an enquiry or requesting more information.
- However, there is a limit to the amount of information consumers can reasonably digest from advertising messaging. Furthermore this limit varies hugely by advertising format e.g. the press medium allows for longer 'dwell' time compared to television advertising. Outdoor media can vary considerably by format – e.g. consider billboards viewed by a consumer from a moving vehicle compared to standing at an outdoor bus shelter. Similarly, online media allows for varying levels of information display using 'click through' where the consumer effectively 'owns' and controls the engagement process by choosing to click through or seek different levels of detail. There is no one-size-fits-all in terms of what information can be made available.
- We wish to highlight that given the evolution of new media (mobile applications, instant messaging etc) and the emerging advertising channels associated with these, the advertising chapter of the Code in its current format does not wholly address the different nature of these new media. We have a particular concern that advertising restrictions could potentially preclude the participation of financial service players in such media formats.
- We believe that brochureware (i.e. product brochures/factsheets/flyers - either in print or electronic/online format) are a far superior way of providing consumers with the necessary 'key information' needed by them to understand a product. It is at this point that the inclusion of Warnings and all key details relating to a product/service is most warranted.

Small Print

- Advertising is used at the early stages in a consumer's decision making process. The use of small print must be looked at in the context of which formats are being looked at. Excessive quantities of small print do not add value in that it can often serve to confuse consumers and may act as a deterrent to them exploring options about products which may meet their financial needs e.g. protection or insurance policies.
- The proposal that the font size for 'key information' necessarily be equivalent to the predominant font size in an advertisement is not a realistic option for many advertising formats for practical reasons outlined above. We believe key information displayed like this would lead to 'message clutter', seriously detract from any communication objectives. Ultimately this would be counterproductive as consumers will experience information overload/fatigue.
- From an implementation point of view it is likely to be very difficult to execute on certain formats e.g. messaging on our ATM machines (where screens by

their nature are very small) cannot accommodate excessive amounts of info or on bus but similarly customer dwell time does not allow for consumers to read and digest all the information.

- The provision of key product information (i.e. terms & conditions, key features and benefits) are better presented in product brochures/product sheets/online webpages in formats that better meet the need. Warnings in bold are a more effective way of ensuring consumers understand the fundamental nature/ risks of certain products. We believe the focus of consumer protection should be directed at ensuring product brochure information provision at the sales and application process either in print or electronic format.
- Looking to other industries where consumer protection is equally important and regulation plays a key role (e.g. telecommunications providers) as a reference point for comparison, it is evident that advertising is performing a similar function - generating awareness, providing high level warnings (in small print) but not detracting from the overall message. It is the product factsheets/brochures that are subject to providing the necessary information to help a consumer make a decision.

Fixed Rates

- Bank of Ireland believes that it would be impossible and very misleading to give an indication of what rate may apply at the end of a fixed rate period.
- Advertisements already contain a lot of information for a consumer to digest, and adding in another rate, which would need to contain a caveat would only cause confusion.
- It is difficult to conceive of circumstances where the actual rate at the conclusion of a fixed rate product offer would be known in advance. All fixed rate products would 'rollover' at the prevailing rate at the end of the term or be changed following consultation with the consumer. Informing consumers of what will happen at the end of their fixed rate period would form part of the account opening conversation and would also be covered within the product Offer Letter and Terms and Conditions. We believe that adding further detail to such advertisements would not be in the consumers' best interests.

Implementation Timeframe

- Bank of Ireland requests that regulated entities be provided with flexibility in implementing the proposed changes in order to allow stocks of marketing and customer literature to be run down naturally rather than requiring costly stock replacements. To do otherwise would involve significant wastage.

6. The design and presentation of an advertisement must allow it to be clearly understood and key information in relation to the product must be included in the advertisement. Small print or footnotes should only be used where appropriate and should be linked to the relevant part of the main copy. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible.

Bank of Ireland notes that the purpose of a product specific advertisement is to make a consumer aware of the availability of the product. The purpose is not to fully inform the consumer of all aspects of the product – that is the purpose of the product brochure and the product sales process (under Chapter 5 of the Code).

Bank of Ireland does not see the need for defining Key Information and for formulating a rule that it be included in advertisements. Often, financial services are advertised in a very simple way and may comprise nothing more than an invitation to the consumer to deal with a regulated entity on a particular product type (making no claims as to the advantages of the product). In other cases, the advertisement can concentrate on one or two advantageous features of a product only. If key information is to be included in all advertisements of financial information, that would complicate otherwise simple advertisements and make advertisements in many conventional media (e.g., poster, bill board, radio and television) impossible. That would have a negative effect on competition in the sector and on the ability of consumers to get information.

Insofar as advertising goes into further detail and describes product features such as interest rates, the benefits of investment or compares the advertiser's product favourably with that of competitors, existing regulation already prescribes the information (and sometimes the form of notices) that must be included (e.g., the bulk of Chapter 10, CP47, the Consumer Credit Act, the EC (Consumer Credit Agreements) Regulations 2010). Also, the issues of misleading a consumer in an advertisement by omitting or concealing material information where doing so would cause the average consumer to make a transactional decision he /she would not otherwise make is already dealt with in primary legislation (Section 46 Consumer Protection Act, 2007- which implemented the EU Unfair Commercial Practices Directive No. 2005/29/EC). Therefore, the consumer has adequate protection against misleading omission of key information.

Bank of Ireland suggests the following alternative wording:-

> "6. The design and presentation of an advertisement must allow it to be clearly understood and key information in relation to the product must be included in the advertisement where appropriate. Small print or footnotes should only be used where appropriate and should be linked to the relevant part of the main copy. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible."

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8. An advertisement that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter.

See general comments in relation to Chapter 10. No further comments

Bank of Ireland suggests the following alternative wording:-

> "8. An advertisement that uses promotional or introductory rates must clearly state the expiry date of that rate and provide an indication of the rate that will apply thereafter where this is known."

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17. Where an advertisement contains an acronym (AER, EAR, CAR, APR etc.), a clear and understandable definition for such acronym(s) must also be included in the advertisement.

Bank of Ireland agrees that it is inappropriate to use a non-standard acronym in an advertisement without clearly explaining the acronym to the consumer. However in the case of standard acronyms such as AER, EAR, CAR, APR, the need to include a clear and understandable definition in the advertisement could distort the nature of the advertisement without adding any additional benefit to the consumer. Bank of Ireland suggests that this Provision be amended to require the regulated entity to outline what the acronym stands for in a footnote.

Bank of Ireland suggests the following alternative wording:-

> "17. Where a print advertisement contains an acronym (such as AER, EAR, CAR, APR etc.), ~~a clear and understandable definition for such acronym(s)~~ an explanation of what the acronym stands for must also be included in the advertisement. Where appropriate this should be included as a footnote, linked to the relevant part of the main copy and be of legible size."

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18. Any statements in an advertisement relating to minimum price or potential maximum savings must be available to at least 50% of the regulated entity's target market for that product.

In principle Bank of Ireland agrees with this new Provision. However we note that at times a regulated entity may want to advertise the availability of a product for which there may be limited availability e.g. availability of a fund of €20m at a preferential rate for lending to SMEs. In such scenarios we suggest that the regulated entity be permitted to advertise this subject to making it clear that there is limited availability and that it would be available, for example, on a first come first served basis.

Bank of Ireland suggests the following alternative wording:-

> "18. Any statements in an advertisement relating to minimum price or potential maximum savings must be available to at least 50% of the regulated entity's target market for that product. In circumstances where there is limited availability the regulated entity may make statements relating to minimum price or potential maximum savings once it clearly states that the availability will be limited and states what the limit will be"

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19. Where an advertisement includes an annual percentage rate, the advertisement must clearly state if the underlying interest rate is fixed or variable. In the case of fixed interest rate, the term of the fixed rate must be displayed and, where relevant, an indication of the rate that will apply thereafter.

See general comments in relation to Chapter 10. No further comments

Bank of Ireland suggests the following alternative wording:-

> "19. Where an advertisement includes an annual percentage rate, the advertisement must clearly state if the underlying interest rate is fixed or variable. In the case of fixed interest rate, the term of the fixed rate must be displayed and, where relevant, an indication of the rate that will apply thereafter where this is known."

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20. An advertisement for a term loan must, if displaying the annual percentage rate and the term, display the total cost of credit. A term loan is a fixed-period loan, usually for one to 10 years but does not include the provision of loans for mortgage credit.

Bank of Ireland recommends that the definition of a fixed term loan should be moved to the definitions chapter instead of having it in the Advertising chapter.

Bank of Ireland suggests the following alternative wording:-

> "20. An advertisement for a term loan must, if displaying the annual percentage rate and the term, display the total cost of credit. ~~A term loan is a fixed-period loan, usually for one to 10 years but does not include the provision of loans for mortgage credit~~."

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28. Where an interest rate for a savings or deposit account is displayed in an advertisement, it must clearly state the following:
a) whether the rate quoted is variable or fixed, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter;
b) the relevant interest rate for each term quoted together with the annual equivalent rate, and each rate should be of equal size and prominence;
c) the minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable; and
d) if any tax is payable on the interest earned.

See general comments in relation to Chapter 10.

Bank of Ireland also suggests that the requirement in b) "equal size" be removed and replaced with just "equal prominence".

Bank of Ireland also requests that this Provision 28 be put under a separate "Savings" heading and Provisions 29-46 be put under a separate "Investments" heading

Bank of Ireland suggests the following alternative wording:-

"28. Where an interest rate for a savings or deposit account is displayed in an advertisement, it must clearly state the following:
a) whether the rate quoted is variable or fixed, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter where this is known;
b) the relevant interest rate for each term quoted together with the annual equivalent rate, and each rate should be of equal ~~size and~~ prominence;
c) the minimum term and/or minimum amount required to qualify for a specified rate of interest, if applicable; and
d) if any tax is payable on the interest earned."

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29. An advertisement for a product where the 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.

Bank of Ireland suggests the following alternative wording:-

"29. An advertisement for a product where the ~~promised~~ minimum return is known but which could involve a loss of some of the initial amount invested ~~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

3. A regulated entity must speedily, efficiently and fairly, correct an error that has resulted or may result in consumer detriment. All such errors must be fully resolved within six months of the date the error was first discovered, including:
a) correcting any systems failures;
b) making all reasonable efforts to effect a refund (with appropriate interest) to all consumers who have been affected by any error; and
c) notifying all affected consumers, 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.

Bank of Ireland seeks clarification on the term "consumer detriment". It is the Bank of Ireland's view that this should be restricted to charging and pricing errors, which would be consistent with the Central Bank of Ireland letter dated 11th June 2010 in relation to the resolution of charging and pricing errors.

Bank of Ireland notes that it is not always feasible or possible to develop, test and implement system changes within 6 months of issue identification and, at times, interim manual controls are appropriate pending a final systems fix. Bank of Ireland therefore suggests amending the wording of this Provision as follows:-

Bank of Ireland suggests the following alternative wording:-

> "3. A regulated entity must speedily, efficiently and fairly, correct ~~an~~ a charging or pricing error that has resulted or may result in consumer detriment. All such errors must be fully resolved within six months of the date the error was first discovered, or such other timeframe as agreed with the Central Bank, including:
> a) ~~correcting any systems failures~~ Ensuring effective controls are implemented to prevent any recurrence of the identified error;
> b) making all reasonable efforts to effect a refund (with appropriate interest) to all consumers who have been affected by any error; and
> c) notifying all affected consumers, 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. "

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5. A regulated entity must inform the Central Bank, in writing, of any errors that have resulted or may result in consumer detriment that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month.

Bank of Ireland notes the absence of any materiality provisions in this new clause. It is Bank of Ireland's view that this will create an unnecessary administrative reporting burden for both the Central Bank and regulated entities where the monetary impact of the error is small and/or the number of consumers affected is not material. In addition Bank of Ireland notes that regulated entities will no longer be required to notify the Central Bank of a material error if it is capable of being rectified within one month. This could result in significant consumer refunds being issued by a regulated entity without the knowledge of the Central Bank.

Bank of Ireland strongly recommends that a materiality threshold, which would ensure consistency of reporting of errors to the Central Bank, be included in the new Code.

Alternatively Bank of Ireland suggests that the Central Bank could issue periodic guidance in relation to thresholds. This would facilitate differing materiality threshold levels depending on the size and industry sector of the regulated entity and/or specific thresholds for individual regulated entities where the Central Bank deems that to be appropriate or necessary.

Bank of Ireland suggests the following alternative wording:-

> "5. A regulated entity must inform the Central Bank, in writing, of any charging or pricing errors that have resulted or may result in consumer detriment ~~that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month~~ where
> a) [xxx] or more consumers are impacted; or
> b) consumer refunds are likely to exceed [€yyy]; or
> c) the issue has not been resolved in accordance with Provision 3, or does not look like it will be fully resolved within 6 months of identification"
>
> A regulated entity will inform the Central Bank of any charging or pricing errors that have not been notified to the Central Bank by virtue of falling below the thresholds in a) and b) above on a semi-annual basis."

Or alternatively

> "5. A regulated entity must inform the Central Bank, in writing, of any charging or pricing errors that have resulted or may result in consumer detriment ~~that have not been resolved in accordance with provision 3 or are not likely to be resolved within one month~~ where the amounts involved exceed the guideline materiality thresholds as issued by the Central Bank from time to time.
>
> A regulated entity will inform the Central Bank of any charging or pricing errors that have not been notified to the Central Bank by virtue of falling below the guideline materiality thresholds on a semi-annual basis."

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6. A regulated entity must maintain a log of all errors identified. This log must contain:
a) details of the error;
b) how it was discovered;
c) the period over which the error occurred;
d) the number of consumers affected;
e) the monetary amounts involved;
f) the status of the error;
g) the number of consumers refunded; and
h) the total amount refunded.

Bank of Ireland fully endorses the requirement to maintain a log for all systemic or recurring charging and pricing errors that have been identified. By systemic or recurring errors, we are referring to those charging and pricing errors that will be or

have been the subject of a rectification or refund project. While there is a definite requirement to record and track all other pricing and charging errors (once-off errors), it would neither be practical nor beneficial to include these on the type of log outlined in this Provision 11.6 (a)-(h).

Bank of Ireland suggests the following alternative wording:-

"6. A regulated entity must maintain a log of all charging and pricing errors identified that require a rectification or refund project. This log must contain:
a) details of the error;
b) how it was discovered;
c) the period over which the error occurred;
d) the number of consumers affected;
e) the monetary amounts involved;
f) the status of the error;
g) the number of consumers refunded; and
h) the total amount refunded."

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7. A regulated entity must maintain a record of all steps taken to resolve an error, including details of the steps taken where:
a) any affected consumers were dissatisfied with the outcome;
b) there were difficulties contacting affected consumers; and
c) a refund could not be repaid.

Bank of Ireland supports this Provision but seeks clarification that the record required under this Provision 7 relates to the errors that are logged under Provision 6.

Bank of Ireland suggests the following alternative wording:-

"7. A regulated entity must maintain a record of all steps taken to resolve any charging or pricing error that has been logged in accordance with Chapter 11, Provision 6 including details of the steps taken where:
a) any affected consumers were dissatisfied with the outcome;
b) there were difficulties contacting affected consumers; and
c) a refund could not be repaid."

CHAPTER 12 – RECORDS AND COMPLIANCE

1. Where there is a verbal interaction with the consumer to assist the consumer in understanding the product or service on offer, a regulated entity must keep a contemporaneous record of the detail of such verbal interaction.

Bank of Ireland supports the retention of appropriate records of consumer interactions where those interactions involved advice and/or the provision of information that leads to the sale of a product or service. However, we deal daily with numerous enquiries on product features from consumers (including consumers who do not currently bank with Bank of Ireland), many of which are not associated with an intention to purchase at that time.

Were we to be required to record each one of these interactions, we would no longer be able to deal quickly and efficiently with such enquiries as is desired by consumers. Each such interaction would require us to seek identification from the consumer, source their record (if one exists) and update the record in full. To ensure compliance a scripted interaction would be necessary. This would inevitably be significantly more time consuming from the consumer's perspective, something that is unlikely to be welcomed where simple enquiries are concerned.

Bank of Ireland believes it is appropriate that the consumer is assisted in understanding the product or service on offer and that the existing suitability assessment process ensures the consumers' interests are served and only suitable products are offered. We therefore suggest that this Provision should be restricted to situations where there is a clear intention to purchase.

We further suggest that this Provision should not apply to *basic banking products and services*.

To implement this requirement as it currently stands would require substantial investment in our systems to capture records relating to general queries from consumers who are not currently customers of the Bank. In addition, the ongoing operational cost of keeping contemporaneous records of verbal interactions relating to general queries (as opposed to sales related records which are currently maintained) will be significant.

Bank of Ireland suggests the following alternative wording:-

> "1. Where there is a verbal interaction with the consumer to assist the consumer in understanding the product or service on offer (other than a *basic banking product or service*), a regulated entity must keep a contemporaneous record of the detail of such verbal interaction where the consumer proceeds to purchase the product or service following such verbal interaction. "

2. A regulated entity must ensure that all instructions from or on behalf of a consumer are properly documented. The date of both the receipt and transmission of the following must be recorded:
a) an instruction to the regulated entity from a consumer to effect a transaction; or
b) any other instruction to the regulated entity from a consumer to effect a transaction in similar circumstances as those arising on an instruction to effect a transaction; or
c) a decision by the regulated entity in the exercise of its discretion for the consumer with respect to a transaction.

We refer to our previous response in Chapter 3.2 with respect to gaining clarity on definition of an instruction.

We also seek to clarify the meaning intended in b).

Bank of Ireland further notes that c) would give rise to practical difficulty in day to day management of a consumer's account. For example, if a regulated entity decided to pay a debit outside an agreed overdraft limit, would that decision (and the reason for it) need to be "documented"? If so, this would add significant complexity and cost to decision processes and is likely to result in strict enforcement of terms and conditions rather than an exercising of discretion in the consumer's interest, as is the case today.

The need to formally document such discretion would, in our view, be an additional and unnecessary cost which will have no additional consumer benefit and indeed could lead to consumer detriment through reducing the instances where discretion is exercised.

Bank of Ireland suggests the following alternative wording:-

"2. A regulated entity must ensure that all instructions from or on behalf of a consumer are properly documented. The date of both the receipt and transmission ~~of the following~~ of an instruction to the regulated entity from a consumer to effect a transaction must be recorded~~:~~
~~a) an instruction to the regulated entity from a consumer to effect a transaction; or~~
~~b) any other instruction to the regulated entity from a consumer to effect a transaction in similar circumstances as those arising on an instruction to effect a transaction; or~~
~~c) a decision by the regulated entity in the exercise of its discretion for the consumer with respect to a transaction~~. "

CHAPTER 13 – DEFINITIONS

"*Standard Financial Statement*" is a standard format for the purpose of obtaining financial information from consumers, including details of financial assets and commitments, income and expenses;

As noted throughout the Bank of Ireland response to CP47 it is our view that the SFS is currently being designed for budgeting purposes and to assist consumers in financial difficulties. It is not an appropriate method to capture data for the purposes of assessing new lending as it would not provide a lender with the data or comprehensive information it would require for the assessment of a loan application. It is our view that all references to the SFS should be deleted from CP47.

~~"*Standard Financial Statement*" is a standard format for the purpose of obtaining financial information from consumers, including details of financial assets and commitments, income and expenses;~~

"*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;
· those with a low income;
· those with a high level of indebtedness;
· those with a poor credit history;
· those who do not have English as a first language;
· those suffering from a long term illness or disability or episodic illness;
· those whose mental capacity to make a decision is diminished;
· those that are near, or over the statutory retirement age, are retired from their occupation or are retiring soon;
· those who are recently bereaved;
· those with a substantial sum to invest who have little or no investment experience.

1. The business type consumer who comes within parts b) and c) of the definition of 'consumer' should clearly be excluded from the definition of 'vulnerable consumer'.
2. The full meaning of vulnerability is unclear to Bank of Ireland. We suggest that the concept of a "vulnerable consumer" should be replaced by what we understand to be the best practice approach, namely an issue-specific and time-specific assessment of a person's decision-making ability. In other words, the concept of a consumer "whose mental capacity to make a decision is diminished" should be developed as the core concept as it is closest to the best practice approach noted above (it is currently only alluded to incidentally at bullet point 7 of the definition of 'vulnerable consumer').
3. This approach which we suggest at point 2 above seems to Bank of Ireland to be consistent with the approach favoured by the Law Reform Commission (i.e. the "functional approach") as stated in their Report "Vulnerable Adults and the Law (LRC 83-2006)". This Report was issued following consultation with numerous interested parties and a comprehensive review of other jurisdictions' approach (including Scotland, England and Wales, New Zealand, Germany, Canada and

Australia). In the Report, the LRC extensively analyses this complex area and observed that "there is no one single criterion to determine whether or not a person has legal capacity". Indeed in the Report it was further stated that it is important that a capacity assessment is approached in an objective manner and does not rely on making a judgement based on personal appearance. This contrasts with the approach of CP47 and so, we suggest factors such as age and infirmity be excluded from the definition of vulnerable consumer.

4. There should be guidance in CP47 on how a regulated entity is to be expected to assess the mental incapacity of a potential consumer in the suitability process given the complex nature of the issue and that an employee of a regulated entity will not have any medical or legal qualification.
5. If a consumer has not the point in time capacity to conclude the purchase of a financial service, the implication of that appears to Bank of Ireland to be that the service should not be sold to the consumer. CP47 should be clear on that point. As now drafted CP47 (e.g. Provision 5.17(i)) could be read as implying that the financial product is suitable despite the lack of decision making capacity and that it is, therefore, legitimate to conclude the transaction. We presume that is not intended. We suggest, in cases where there is a lack of decision making capacity, CP47 makes clear that the sale of the product not be concluded or that the regulated entity must deal with an appropriately authorised person (e.g., a donee of an enduring power of attorney or the Wards of Court Office).
6. On the question of "credulity" in the definition of 'vulnerable consumer', there has been recent case law in England which clearly separates the concepts of credulity (or gullibility) from the lack of mental capacity. "*The mere fact that a person may display a lack of wisdom or gullibility does not of itself demonstrate an inability to manage his or her own affairs*" (Morley v Hunt & Co (a firm) [2005] All ER (D) 41 (Jan) as quoted by the LRC). The LRC also quoted with approval the finding that the matter for concern is "*the quality of the decision-making and not the wisdom of a decision*" (Bailey v Warren [2006] EWCA Civ 51).
7. It is important that the guidance in CP47 would (a) provide an objective test (again in accordance with the LRC recommendations in the Report referred to above) to identify such consumers and further guidance on assisting such consumers and (b) be clear and easy to follow for employees of the regulated entities, consumers and those having medical charge of consumers.
8. The list of examples in the current definition of 'vulnerable consumer' is unhelpful and possibly misleading or even offensive. For example:
    a. It would likely be socially divisive if regulated entities questioned potential consumers as to their educational achievements in a suitability process (the definition implies such a thing would be needed);
    b. Those at retiring age may well be better informed financially than members of other age groups; there is a suggestion of ageism in picking out this sector;
    c. People from the Gaeltacht or those who have immigrated are not, in Bank of Ireland's view, likely to be happy to be characterised as possibly vulnerable merely by reason of having a mother tongue other than English;
    d. There are many things in the examples that have to do with creditworthiness and suitability generally and nothing to do with "vulnerability" per se in Bank of Ireland's view (for example, low income, high level of indebtedness, poor credit rating); and
    e. Bank of Ireland has concern that including the examples would lead to conflict with the Equal Status Acts 2000 to 2004 or the Data Protection Acts 1988 and 2002 (e.g. discrimination in terms of access to financial services on the grounds of age, disability or nationality or ethnicity, or gathering excessive personal data in a suitability process). Furthermore

the draft definition of vulnerable consumer in its current state may result in conflict with General Principle 11 of CP47 (access to basic financial services).

9. Chapter 5, Provision 10(d) offers no tangible guidance on how a vulnerable consumer is to be identified or treated. See our above comment on replacing the current definition with the concept of a consumer lacking mental capacity at the time to make a financial decision (and the need for a workable test on this issue to be included in CP47).
10. Chapter 5, Provision 17(i) as drafted, considered with the present definition of "vulnerable consumer" is unworkable. For example, it would appear to oblige a regulated entity to include its belief that a consumer was credulous in its suitability statement. That would clearly be unacceptable.

In addition it is important to note that the cost of implementing the vulnerable consumer provisions will be very significant, both in relation to implementation (systems development) costs and ongoing operational costs.