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Consumer Protection Codes Department
Central Bank of Ireland
PO Box 559
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10 January 2010

Response to CP 47

Dear Sir/Madam,

The Irish Association of Investment Managers is pleased to respond to the Consultation on the Review of the Consumer Protection Code.

All IAIM member firms are 'MiFID' firms and we note that the Code does not apply to MiFID services (page 29). You will be aware of the extensive discussions between yourselves and IAIM upon the introduction of MiFID and your written confirmation that "The Financial Regulator does accept that the steps taken to satisfy the obligations in the MiFID Regulations will satisfy us as to compliance with the obligations under the Consumer Protection Code in relation to the non MiFID financial assets within a portfolio".

Notwithstanding the exclusion of our member firms from the Scope of the Code we offer the following observations which we believe are generally relevant.

1. European Developments

The Consultation Paper notes (page 9) the evolving European discussion on conduct of business regulation and in particular the protection of consumers. Specifically the MiFID II process is getting underway, the PRIIPS consultation process closes this month as does an AIFM consultation. Each of these contains elements addressing the provision of information to clients. Indeed work is currently concluding on the UCITS IV KID which is likely to be a template for both information and a risk rating system.

It is in the interests of both consumers and investment services providers that there is clarity on the entitlements/obligations imposed by law or regulation. We urge that any consideration of a key facts document or a 'traffic light' system await the conclusion of the relevant work at CESR/ESMA. This would allow all parties to focus on one pan-European model.



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In the context of clarity for the entitlements of consumers we again draw attention to the multiple definitions of the generally interchangeable terms “consumer” and “retail”. In particular there are differences in the definition of a ‘retail’ client under MiFID and a ‘consumer’ under CPC. In the context of this review of the Code we urge that consideration be given to the standardisation of definitions in a manner consistent with that adopted at EU level.

2. Pension Policies

The proposed change of definition of ‘Investment Product’ could be construed as including pension policies. As there is already a separate legal framework for the regulation of pension products (including for example the issue of statements) it would be useful to clarify that Investment Products exclude pension policies.

3. Vulnerable Clients

We are conscious of the particular need to protect vulnerable persons and recognise that achieving a suitable definition/scope is difficult. We consider that there would be considerable challenges to client relationships if firms found themselves actively exploring the possible applicability of the factors listed in Chapter 13 (which are not exhaustive) with clients. Questions arise also as to the level of obligation necessary to ensure that a previously non-vulnerable client should not be reclassified as vulnerable. It is even conceivable that clients could view some of the possible identifiers as ‘discriminatory’.

We suggest that these special challenges be met through enhanced obligations on ‘knowing the customer’ and ‘suitability’.

I am available to discuss, or expand upon, any of these comments if necessary.

Yours faithfully

Frank O’Dwyer
Chief Executive

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