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

10th January 2011

Submission on the Review of the Consumer Protection Code Consultation Paper CP 47 dated October 2010

Dear Sir/Madam

I attach the Submission by the National Financial Abuse of Older People Working Group (the Group) on the Review of the Consumer Protection Code. Even though the Irish Banking Federation is represented on the Group, it did not participate in this submission as I understand that it is making its own separate submission. In addition, though we invited comments/suggestions from the Irish Insurance Federation, they declined as I understand that they will be making their own detailed submission also.

The Group very much welcomes the opportunity to make this submission as it believes that the revision of the Code is of great importance given the recent Report on *Abuse and Neglect of Older People in Ireland* published by the National Centre for the Protection of Older People which stated that financial abuse was the most frequent type of abuse reported. The study also concluded that age was a factor with regard to abuse with those over 70 years suffering higher levels of abuse. It is, therefore, extremely important that the Revised Consumer Protection Code (as you have provided for in the Draft published in October 2010) does provide for a category of vulnerable consumer.

In recognising that there is such a need for a specific category, the Group would like to see the need for a higher level of duty of care contained in the General Principles. With regard to specific products aimed at the vulnerable consumer (for example equity release products), and banking products and services (for example, the use of joint accounts and powers of attorney) the Group would welcome very directed Key Facts Documents in relation to such products and services.

In order to follow through on your request under the heading “**Making a Submission**” and to facilitate the Group in making the submission, the Group has used a scanned copy of the Consultation Paper. While the original format has been lost in the scanned version, the content of the Consultation Paper remains the same. Comments are clearly indicated in red italics and ordinary font is used in making suggestions to the body of the text.

If you require any clarification or further comment please contact me.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Paschal Moynihan', written in a cursive style.

Paschal Moynihan
Specialist Older People Services
HSE West

Consultation Paper on Review of Consumer Protection Code

Introduction

The Consumer Protection Code (the Code) was introduced in 2006 and was implemented on a phased basis between 1 August 2006 and 1 July 2007. Following the introduction of legislation that required firms providing retail credit and home reversion agreements to be authorised and regulated, an Addendum to the Code was issued on 28 May 2008 which required these firms to comply with the provisions of the Code with effect from 1 June 2008.

The Code sets out requirements that regulated entities must comply with when dealing with consumers. The purpose of the Code is to ensure the same level of protection for consumers regardless of the type of financial services provider they choose. It requires regulated entities to act in consumers' best interests by ensuring that they know and understand the consumer's needs, sell them products and services that are suitable and provide them with appropriate information to enable them to make an informed choice. The Code also requires firms to have in place an effective complaints handling procedure and sets out a timeframe within which regulated entities must deal with complaints from

consumers.

Revised Code

We have now reviewed the Code to identify areas where the existing provisions should be strengthened to provide increased consumer protection, where provisions need to be amended to provide clarification, where new provisions need to be included and where provisions need to be disapplied because they are no longer appropriate.

We have updated the Code in light of our experience since its introduction. We have considered issues that have come to our attention through the inspections process and through engagement with regulated entities, representative and consumer bodies and consumers. We have also considered the impact of developments at European level. We have rearranged the layout of the Code.

A revised Code which incorporates our proposed amendments is attached. While we would welcome your views on any of the proposed amendments, we would particularly welcome views on the following issues:

Vulnerable consumers

Definition of vulnerable consumer (Chapter 13 Definitions)

The definition of consumer in the Code covers natural persons, groups of persons, partnerships, small businesses with a turnover of less than (3 million annually and members of a credit union.

The requirements of the Code were developed to provide protections to all consumers, regardless of capacity, capability or circumstance. However, having considered

- the findings during themed inspections (particularly those focussed on the provision of financial products and services to older persons),
- the recommendations made to us by the National Financial Abuse Working Group established by the HSE to reduce the incidence of financial abuse of older persons, and
- the findings of complaints investigated by the Financial Services

Ombudsman,

it has become apparent that some level of differentiation of consumers is necessary in order to identify those consumers that require a greater level of protection. Such differentiation has been incorporated into the Code in the form of a definition of 'vulnerable consumer', which highlights various vulnerabilities that may affect some consumers. Where a regulated entity identifies a vulnerability, such consumers must be provided with a greater level of care and protection when being sold a financial product or service.

We have defined a vulnerable consumer as 'a consumer that is vulnerable because of mental or physical infirmity, age, circumstances or credulity ...' (Chapter 13). The definition goes on to provide an indicative list of circumstances that could render a consumer vulnerable. The inclusion of this definition in the Code means that regulated entities will now have to consider whether a consumer has any of the characteristics of a vulnerable consumer when making an assessment of the suitability of a financial product or service for that consumer.

A number of new provisions and amendments to existing provisions are designed to have the effect of increasing the protection for all consumers, and particularly for vulnerable consumers. Consideration of the following provisions would be particularly relevant where a regulated entity recognises a vulnerability in an individual consumer -

Provision of Information to the Consumer - Verbal Interactions (Chapter 12, Provision 1)

Many consumers place a great deal of reliance and trust on what a regulated entity tells them during the sales process, in particular in relation to verbal assurances and promises concerning the safety and performance of a product or service. Where a verbal exchange takes place, we are proposing that a contemporaneous record of the verbal interactions must be maintained by the regulated entity to verify that such interactions took place and to record the nature of the information provided during such interactions.

Power of Attorney (Chapter 3, Provision 8)

The inclusion of a provision requiring a regulated entity to i) obtain a certified copy of a power of attorney, and

ii) ensure that it operates within the limitations set out in the power of attorney,

is designed to protect the interests of consumers in situations where another person has been appointed to act on their behalf concerning certain aspects of their affairs. Where a person presents

himself/herself to a regulated entity as an Attorney for a consumer with the power to make decisions on, and have access to, that consumer's financial affairs, it is important that the regulated entity obtains proof of the power of attorney and is aware of any limitations attaching to the power of attorney, to enable it to act in the best interests of the consumer.

Knowing the Consumer (Chapter 5, Provision 1)

The knowing the consumer provisions have been strengthened by the inclusion of a list of specific details which a regulated entity must gather from a consumer before offering, arranging or recommending a financial product or service. Such details include:

- the consumer's needs and objectives,
- the personal circumstances of the consumer,
- the financial situation of the consumer, and
- the consumer's attitude to risk.

When collecting information on the consumer's personal circumstances, financial situation, needs and objectives and attitude to risk, the regulated entity must have regard to any vulnerabilities that emerge from its interaction with the consumer.

Suitability (Chapter 5, Provision 10)

In line with the amendments to the know the consumer provisions, the suitability provisions have also been enhanced and strengthened. In order to ensure that adequate consideration is given to the information provided by the consumer, the regulated entity must, at a minimum, consider and document whether:

- the product/service meets the consumer's needs and objectives,
- 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,
- the consumer has the necessary experience and knowledge in order to understand the risks involved, and,
- the consumer may be a vulnerable consumer, and as such, has particular needs and circumstances that require due consideration.

We acknowledge that the introduction of what is essentially an additional category of consumer, and the incorporation of systems and procedures to recognise vulnerabilities and thus trigger the categorisation of those consumers as being vulnerable, will pose a challenge for regulated entities. However, given the concerns that have been raised about the sales of financial products and services to the older persons, we are committed to including provisions in the Code that require regulated entities to consider a consumer's vulnerabilities when providing him/her with a service.

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'?

Comment: Yes, the Group very much welcomes the definition of 'vulnerable consumer' and in particular the indicative list which should be of great assistance in the prevention of financial abuse.

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.

*Comment: Yes, the Group welcomes the detailed proposals. The Group however believe that further detail s are required with regard to **joint accounts** (which are one of the most used mechanisms in relation to the abuse of vulnerable consumers) and **enduring powers of attorney**. The Code should impose a clear obligation on a regulated entity to identify if the law of agency applies to such accounts and if so then to establish the intention of the consumer. The Group would also wish to see more detailed requirements with regard to disclosure of relevant facts in relation to **equity release products**.*

In this context of joint accounts, for example, the distinction between the proceeds of an account passing by the presumption of a resulting trust or by survivorship is an important issue. Due to the fact that regulated entities currently do not ask the appropriate questions at the time of the opening of the joint account means that they may be complicit in assisting with the financial abuse of the original account holder and depriving the beneficiaries of his/her estate of an entitlement.

In the context of an enduring power of attorney, there is an obligation on an attorney to keep the property of the donor of the power separate from the property of the attorney when appointed. Because regulated entities do not appear to understand the agency nature of the appointment they permit the mingling of assets thereby being complicit in assisting in financial abuse and also perhaps resulting in the depletion of the estate of the deceased donor of the power.

As already stated the Group welcomes the introduction of the definition of 'vulnerable consumer' and the comments made in the introduction under this heading where you clearly indicate requirements "(w)here a regulated entity identifies a vulnerability, such consumers must be provided with a greater level of care and protection when being sold a financial product or service" is also welcome. However, the Group suggests that the General Principles in Chapter 2 should contain this specific requirement of a higher duty of care to vulnerable consumers.

The Group also suggest that the General Principles be expanded to include the following:

"Regulated entities should, subject to compliance with this Code, adopt policies that are flexible, allowing tailored responses to particular needs and circumstances.

Regulated entities must have procedures in place to prevent, recognise and respond appropriately to financial abuse of vulnerable consumers.

Regulated entities should implement and maintain procedures to ensure all staff responsible for identifying financial abuse effectively carry out that role.

Suitability of Mortgages

Given the significant financial commitment attached to a mortgage, it is of particular importance that the personal and financial circumstances of consumers who are applying for a mortgage are thoroughly assessed to ensure that they are only offered a mortgage that they will be able to maintain over the long term. With this in mind, it is our expectation that the enhancements to the know the consumer and suitability provisions will improve the process of offering and recommending financial products, including mortgages, to consumers. We have included additional provisions aimed at promoting a greater level of responsible lending, which focus on assessing the consumer's ability to repay borrowings and include a requirement that a regulated entity must assess the impact of a 2% interest rate increase on the consumer's ability to repay credit. The new provisions include the following -

- before offering, arranging or recommending credit, a regulated entity must fully assess the consumer's ability to service the repayments (Chapter 5, Provision 12),
- 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 (Chapter 5, Provision 13),
- regulated entities are prohibited from accepting a self-certified declaration of income from a consumer as evidence of his/her ability to repay a mortgage (Chapter 5, Provision 5),
- regulated entities must be satisfied with the reasonableness of the information contained in and the authenticity of the documentation submitted by a consumer in support of a mortgage application (Chapter 5, Provision 7),
- in the case of interest-only mortgages, a regulated entity must be satisfied that the consumer will be able to repay the principal at the end of the mortgage term (Chapter 5, Provision 14), and
- where a mortgage is interest-only 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 (Chapter 5, Provision 15).

In addition to the above, we have introduced a new requirement in Chapter 5, (Provisions 1 and 10) that, when carrying out the know the consumer and suitability assessment for a mortgage, a regulated entity must use the Standard Financial Statement (SFS) required under the Code of

Conduct on Mortgage Arrears to obtain financial data from a consumer and use this information to assess whether any mortgage is affordable for a consumer.

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?

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

Information about products

We believe that product disclosure needs to be improved and we are proposing new provisions setting out the information that must be provided to consumers about products. We believe that consumers should be provided with sufficient information about products to enable them to make an informed decision. Before offering a product to a consumer, a regulated entity will be required to provide information about the main features of a product, including the risks attaching to a product and the extent of any guarantee. In addition, in the case of investment products, firms will be required to provide specific information in relation to capital security, restrictions on access to funds or redemption, limitations on sale or disposal of the investment and the potential effect of volatility in price, fluctuation in interest rates, and/or movements in exchange rates. These requirements are set out in Chapter 4, Provisions 27 and 32.

We currently require information to be provided to consumers in a short Key Features Document for tracker bonds. We are considering whether we should require a similar document for a wider range of product types. This issue is currently being considered at European level in the context of developments in relation to packaged retail investment products. In addition, a Key Information Document has already been developed for UCITS.

We are also considering a 'traffic light' system of risk disclosure for investment products by product producers, perhaps based on key product design characteristics such as whether capital is at risk, the strength of guarantees, the extent of leverage and the riskiness of underlying assets. There are challenges associated with this approach, such as the concern that there may be a lack of consistency if the risk categories are determined by individual firms and the difficulty in developing a system that would take account of consumers' different attitudes to and understanding of risk.

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.

Comment: The Regulator is aware that a number of cases referred to the Financial Services Ombudsman related to inappropriate products being sold to older people by virtue of the fact that the redemption date surpassed the possible life expectancy of the consumer. The Group therefore suggests that regulated entities be obliged both in the advertising and selling of products that appropriate information be given on suitability of the product taking into account the age of the consumer. The 'age factor' should be a necessary element with regard to the appropriateness of the product, the redemption of the product but also the requirement of an income stream as distinct from capital appreciation for older consumers. This of course leads to the need for regulated entities to have staff skilled in assessing the individual requirements of vulnerable older consumers.

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?

Comment: Yes, this would be very helpful to have 'Key Facts' Documents which are product specific and in easy to understand terms/language.

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?

In addition to packaged retail investment products (which as indicated above should be tailored to consumer profile – older people in need of an income stream), such a Document should be a necessary requirement in respect of an Equity Release Product.

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?

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?

Personal Retirement Savings Accounts (PRSAs)

In June 2003, requirements were introduced setting out the information to be provided in relation to PRSAs. These requirements were not included in the Code in 2006 but remain in place. They have now been incorporated into the revised Code at provision 69 of Chapter 4 and provisions 9 and 17 of Chapter 5.

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

Comment: The information set out is helpful. However, the information on the manner of charging particularly in relation to a Non-Standard PRSA is still not transparent enough. The level of charges which are usually expressed as a percentage of contributions or fund value do not appear to relate to the level of service supplied to the consumer and is expensive.

The Group also suggest that the Regulator, in the light of the budget announcement to allow people to purchase sovereign annuity bonds through a pension product, might consider the suitability of such products for investors in PRSA products without the need to go through an intermediary and thereby making a saving on charges.

Product Producer Responsibilities

Consideration was given to introducing an extensive form of product regulation where we would play a direct role in vetting and authorising each product. In general, the argument against product regulation is that it would inhibit product innovation and lead to a longer product development process, adding costs and inefficiencies. While several other EU Member States have explored the possibility of implementing product regulation, with the exception of the Danish Financial Services Authority it appears that no other EU jurisdiction has implemented a form of product regulation. The

Central Bank therefore believes that it would be premature to introduce product regulation in Ireland.

However, we believe that more attention to monitoring product developments in the financial services industry is necessary to ensure that we are alert to trends and emerging risks to consumers. We intend to do this in two ways, through imposing new requirements on product producers in the Code and through regular surveys.

Surveys

We are proposing to undertake a regular survey of financial services product trends, analysing patterns in product sales, commenting on new product innovations and discussing potential emerging consumer risks. If it becomes clear that a product is in fact inherently too risky and that consumer detriment is occurring we propose to act swiftly. Currently this can be done on a firm-by-firm basis through formal directions or restrictions on licenses, but that can be cumbersome and slow. Accordingly, we believe that it would be useful to have a broader power to prohibit the sale of particular products, which have been identified as inappropriate for sale to consumers. This would seem a reasonable enhancement to our powers that stops some way short of product approval but still provides for stronger consumer protection.

Comment: The Group fully endorses the additional product producer responsibilities and notes the approach to undertake a regular survey of financial services product. However, without requiring product regulation at the outset it should be a requirement that, prior to the launch of a new product on the market, that at a minimum there should be a requirement to inform the Regulator and to outline the details of the product and the target market.

New Requirements in the Code

In the domestic financial services market decisions about product design have been left in the hands of the product producers while the intermediary has been responsible for the appropriate sale to consumers. It has been considered that product suitability is the responsibility of the seller and this is reflected in the Code where the responsibility for the selling of a product is put squarely on the regulated entity selling the product. However, we believe that product producers need to take on some increased responsibilities and we are proposing amendments to the Code to achieve this.

Our focus in the Code is to enhance protection for consumers, and, in relation to investment products, we are proposing that product producers should have a responsibility to consider the types of consumers their product would - and would not - be suitable for. We are proposing new requirements for product producers to identify a target market of consumers when designing investment products. The target market must comprise the types of consumer for which the product is likely to be suitable (or not suitable). When determining the target market, the product producer should take account of the nature of the product and its general risk profile.

We believe that product producers should have stronger obligations regarding the information they provide to intermediaries about their product's design and risk features. We are proposing that product producers must provide distributors of their products with information that is clear, accurate, up to date and not misleading. This product information must be sufficient to enable those

who sell the product to understand it so as to be able to determine whether it is suitable for a consumer.

We are proposing that, 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 do not impair the intermediary's duty to act in the best interests of consumers, and 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.

Comment: There should also be a requirement to inform the consumer the product is subject to target level or that commission is paid on the level of business introduced.

We believe that it is important for product producers to periodically review the performance of their products to assess whether a product has performed in accordance with its design and to establish whether the product disclosure and the target market for the product is still correct. We are proposing new requirements to ensure that product producers undertake a post-launch review of the performance of their products. Within the first year of launching an investment product, and annually thereafter, a product producer must check whether the product is continuing to meet the general needs of the target market for which it was designed.

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?

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

Comment: The Group has recommended some additions to Provision 32 in Chapter 4.

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?

Comment: See comment made to Provision 45 in Chapter 3.

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?

Recommendations from the Review of the Intermediary Market

During 2008, a Review of the Intermediary Market was undertaken by a joint Financial Regulator and industry working group. The working group was chaired by the Financial Regulator and included senior members of relevant industry representative bodies - Professional Insurance Brokers Association, Irish Brokers Association, Brokers Federation of Ireland, Independent Mortgage Advisors Federation, Irish Banking Federation, Irish Insurance Federation, Irish League of Credit Unions and Credit Union Development Association. The Working Group examined the terms used to categorise

insurance and mortgage intermediaries and looked at improving transparency in relation to the services provided to consumers by insurance intermediaries only.

The Report of the Working Group was published in December 2008 and sets out the recommendations agreed by the Working Group and proposals for the implementation of those recommendations. The Working Group agreed that a number of the recommendations should be included in the revised Code but should not be part of the consultation process on the revised Code. These recommendations have been incorporated into the revised Code, as follows:

1. The term 'broker' may be used by intermediaries who offer consumers a 'fair analysis of the market'. (Chapter 4, Provision 24)
2. A firm must set out in its terms of business the level of service it provides for each product type, i.e., whether fair analysis or limited analysis. (Chapter 4, Provision 16)
3. The intermediary must explain to each customer the extent of the service to be provided. (Chapter 4, Provision 22)
4. If a firm does not propose to provide services on the basis of a fair analysis of the market, it should clearly disclose to the consumer the names of those companies whose products or services it distributes. (Chapter 4, Provision 25)
5. A tied agent must inform the customer that it is under a contractual obligation to conduct business exclusively with one or more product providers. (Chapter 4, Provision 16)
6. A tied agent must specify the relevant product(s) and the provider(s) in respect of which it is tied. This also applies in cases where a broker acts as a tied agent in respect of one or more products or providers. (Chapter 4, Provision 16)
7. Where an intermediary is tied to a single provider for a particular product it must disclose this fact in all advertisements and written material for that particular product. (Chapter 4, Provision 26)
8. The term 'independent' may only be used where all of the following apply:
 - o the intermediary provides services on the basis of a fair analysis of the market;
 - o the entity must allow the client the option to pay for its services in full by means of a fee; and
 - o if the entity is part of a group of companies to which it directs business, it must disclose the name of the group of which it is a part. (Chapter 4, Provision 23)

The option of payment by fee must be explained in advance to the consumer. Where a firm charges a fee and also receives commission in respect of the service/product provided to the consumer, it must explain to the consumer how the commission relates to the fee charged, e.g., whether it will be offset against the fee, either in part or in full. (Chapter 4, Provision 79)

Where the firm provides an independent service for some products and a more limited service for other products, it should explain the different nature of the services in a way that seeks to inform the customer. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity. (Chapter 4, Provision 23)

9. A non-life insurance intermediary should disclose in general terms that it is paid for the service provided to the consumer by means of a remuneration arrangement with the product provider. (Chapter 4, Provision 76)

10. A non-life insurance intermediary should disclose in general terms any remuneration arrangements with product providers that are not directly attributed to the service provided to an individual consumer but are based on levels of business introduced by the intermediary to that product provider or that may be perceived as having the potential to create a conflict of interest. (Chapter 4, Provision 77)

11. Prior to the sale of a product, a non-life insurance intermediary should either inform the consumer of the amount of remuneration receivable in respect of that sale or that details of remuneration are available on request. (Chapter 4, Provision 76)

12. The disclosure required at (8), (9) and (10) should be in the terms of business document or through some other suitable mechanism, and with renewal notices. (Chapter 4, Provision 78)

13. Insurance providers should not terminate an appointment solely based on the volume of new business introduced by the intermediary. (Chapter 3, Provision 42)

14. Intermediaries should clearly inform consumers about the extent of the market they intend to search. Where they do not provide services on the basis of a fair analysis of the market, they should clearly disclose to the consumer the names of those providers whose products or services they distribute. (Chapter 4, Provisions 16, 22 and 25)

The recommendations in the Report relating to increased transparency only apply to insurance intermediaries. However, the Report states that:

"Disclosure of mortgage intermediary remuneration and the relationship between mortgage intermediaries and credit institutions are not considered in this Review. However, the principles of both intermediary markets are very similar and the recommendations in relation to insurance intermediaries may be considered in the future with regard to mortgage intermediaries. "

We are now proposing to extend the transparency recommendations contained in the Report to other regulated entities. These recommendations relate to the termination of appointments by product producers and disclosure of remuneration.

Termination of appointments

The Report recommends that insurance providers should not terminate appointments based solely on target levels of business introduced. We believe that the power to cancel an appointment if certain levels of new business are not achieved has the potential to create a conflict of interest for the intermediary. On the one hand, the intermediary must recommend the most suitable product for the consumer, while on the other hand, it will be mindful of meeting the required new business volumes in order to retain an appointment.

We have included a provision requiring that a regulated entity must not knowingly create situations that may give rise to a conflict of interest and we propose expanding on the recommendation from

the Report on the Intermediary Market so that an appointment from any product producer may not be terminated based solely on target levels of business introduced.

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

Remuneration disclosure

Requirements regarding disclosure of remuneration are contained in the European Communities (Markets in Financial Instruments) Regulations 2007 and the Life Assurance (Provision of Information) Regulations 2001 in respect of MiFID investment services and life assurance policies, such as term assurance, mortgage protection, serious illness, single premium bonds and regular savings, respectively.

The Report on the Review of the Intermediary Market recommends that remuneration should be disclosed to consumers on request in respect of the provision of non-life insurance by intermediaries. As outlined above, this recommendation has been included in the revised Code. In order to increase transparency further, we are proposing that regulated entities must disclose remuneration received or to be received from product producers in respect of areas not covered by the recommendation or the legislation referred to above. The proposed requirements are set out in Chapter 4, provisions 74 to 79.

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?

Comment: This should be an absolute requirement.

Errors handling (Chapter 11, Provisions 1 to 7)

In recent years, we have dealt with a number of situations where errors made by a regulated entity have resulted in consumer detriment. The current provisions in the Code focus on the rectification of errors once they occur and apply only to charging and pricing errors. We believe that firms should be more pro-active in monitoring and testing their systems and controls in order to prevent errors from occurring in the first place.

We propose expanding the Errors Handling section of the Code so that it applies to all errors that have resulted or may result in consumer detriment and requires firms to focus on error prevention as well as rectification. We are proposing that all errors that have resulted or may result in consumer detriment must be rectified within six months. In addition, regulated entities will be required to have procedures in place for the effective handling of errors and to maintain a record of the steps taken to resolve errors.

Our current approach to the reporting of errors is that material errors must be reported to us. This approach has led to inconsistencies in the interpretation of what constitutes a material error. We propose changing our approach so that in the future, regulated entities will be required to inform us about all errors that cannot be resolved within one month.

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?

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

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.

Unsolicited contact (Chapter 3)

We propose tightening the provisions in relation to unsolicited contact. Firstly, we propose reducing the times permitted for making unsolicited contact: unsolicited contact may only be made from Monday to Friday between 9:00 am and 7:00 pm.

Secondly, a regulated entity may not make an unsolicited visit or telephone call for the purpose of providing a product or service to a consumer, except in the case of protection policies. In the case of protection policies, a sale may not be concluded on a first unsolicited visit or telephone call alone. A regulated entity may only provide information on a first visit or telephone call. A sale may be concluded on a subsequent visit or telephone call, provided the contact is at least five days and not more than ten days after the first contact with the consumer.

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

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?

Arrears Handling (Chapter 9)

In the current economic climate, more consumers are finding themselves in financial difficulty and need as much assistance as possible to manage their financial commitments. Therefore, it is important for us to ensure that there is a framework in place to establish a fair process for the handling of arrears cases.

Chapter 4 of the current Code contains a provision that requires regulated entities to have in place a procedure for the handling of arrears cases. This provision has been expanded in the revised Code to include details of specific steps that must be followed by regulated entities when dealing with consumers experiencing arrears on loans and credit facilities, excluding residential mortgages that fall within the scope of the Code of Conduct on Mortgage Arrears.

These steps, set out in Chapter 9, include the following obligations -

- as soon as a regulated entity becomes aware of the arrears situation it must contact the consumer and provide information on the status of the account and contact details for MABS (Chapter 9, Provision 3),
- if relevant, a regulated entity must remind the consumer that he/she purchased payment protection insurance from the regulated entity, and the procedure for making a claim under that policy (Chapter 9, Provision 5),
- unsolicited contacts concerning the arrears situation are limited to three communications per month (Chapter 9, Provision 16),
- rejections by the regulated entity of revised payment amounts or schedules must be documented with accompanying reasons and communicated to the consumer (Chapter 9, Provision 8).

We have also included a provision that will require regulated entities to give a consumer three months notice where it intends to offset credit balances in other accounts that are in credit in order to repay debts arising on loan accounts (Chapter 9, Provision 10). In addition, where a consumer is in arrears in respect of an overdraft facility but is otherwise operating the current account within the terms and conditions, a credit institution will be prohibited from closing that account without the consumer's consent (Chapter 9, Provision 12). It is our view that a consumer who is already in financial difficulty would be further marginalised by the closure of other accounts, in particular his/her current account.

This drive to ensure that consumers can maintain access to, and are not denied access to, a current account is not just a national ambition. The EU Commission recently launched a public consultation seeking views on possible measures to be taken to ensure access to a basic payment account for every consumer in the EU. The responses to its consultation paper will feed into the EU Commission's plan to develop a possible future legislative initiative and we will keep abreast of developments in this area. However, in the meantime, in the case of arrears handling, it is our view that where a consumer is already operating a current account but is experiencing arrears on a credit facility attached to that account, that consumer should not be denied access to the ordinary facilities of a current account.

The provisions of Chapter 9 must also be complied with by any entity to which a regulated entity outsources its debt management functions.

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

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

Small Print

General Principle 6 in Chapter 2 of the Code requires regulated entities to "make full disclosure of all relevant information, including all charges, in a way that seeks to inform the customer". We are concerned about the amount of information that regulated entities include in the small print of advertisements, and that the inclusion of certain information in small print is not in keeping with the spirit of General Principle 6. Our view is that regulated entities should not include key information or

qualifications in respect of a product or service in the small print of an advertisement. Any restrictions or limitations on a product or service or the availability of a product or service should, in our view, be highlighted in the body of the advertisement and in a font size that is equivalent to the predominant font size that is used in the advertisement.

Our proposal is to include a new provision in the Advertising rules stating that 'Key Information must be included in the main body of an advertisement' and to include a definition of 'Key Information' as 'any information which will influence a consumer's decision with regard to purchasing or not purchasing a service or product'.

We would deem 'Key Information' to include criteria for availing of a product, exclusions, minimum or maximum investment, operating balance, restrictions on access or withdrawals, penalties/charges, fixed or variable rates and rates applicable after promotional rates.

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

Comments: The Group has already stated that it is in favour of a 'Key Facts' Documents which are product specific and outlined in easy to understand language. Therefore for example in the context of equity release products 'key information' would include a number of additions to the definition in the paragraph above.

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.

Comments: Small print should be very much limited to an explanation or elaboration of what is set out in the body of the document. It should never be used to give information on limitations, risks, suitability of the product, to include information where is a statutory obligation to disclose specified information or where that information if fully considered by or disclosed to the purchaser would have an impact in deciding on the investment or not.

Review on the Transparency of Credit Card Statements

Credit Card Statements

The Financial Regulator's 2006 Strategic Plan committed to carrying out a review on the transparency of credit card statements. The purpose of the review was to ascertain if the transparency and clarity of the information provided on credit card statements could be improved upon to the benefit of consumers. In 2007, we assessed the adequacy of the information on credit card statements with consideration given to the accuracy, simplicity, clarity, fairness, relevance and comparability of information. Following that assessment we developed recommendations for improving the transparency of, and for the mandatory inclusion of some important additional information on, credit card statements. We have now included these recommendations in the revised Code.

Our proposals require the inclusion of the following information on credit card statements:

- a summary box presenting important information on final payment dates, interest rates and fees applied to the account (Chapter 6, Provision 9),

- a notice on the method for charging interest, a minimum payment warning and a statement concerning transactions outside the normal spending pattern (Chapter 6, Provision 10).

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

Sectoral Commitments

Earlier this year, Ireland gave a commitment to the EU Commission to implement a package of measures to support the restoration of competition in the Irish banking sector by, inter alia, improving customer mobility and enhancing consumer protection. As part of these commitments the Central Bank undertook to place the Irish Banking Federation's voluntary switching codes on a statutory basis and to include a number of requirements in the revised Code.

Requirements in the Revised Code

Amendments to the Code have been included in Chapter 4, Provisions 42, 71(b) and Chapter 6, Provisions 5, 6 and 7. These amendments relate to the provision of information about charges and interest rates on current and deposit accounts and include a requirement to provide statements free of charge for specified periods. As a number of entities have approvals in place under Section 149 of the Consumer Credit Act (1995), as amended, to charge for statements, it is our intention to review, and amend where appropriate, previous approvals in place, so that this requirement would not in any way conflict with approvals granted under Section 149. There is limited scope for amendment to these measures.

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.

- A regulated entity is prohibited from bundling except where it can be shown that there is a cost saving for the consumer (Chapter 3, Provision 15).
- 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 (Chapter 3, Provision 16).
- 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 (Chapter 3, Provision 17).

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.

Making Your Submission

The closing date for submissions is 10 January 2011. We welcome comments from all interested parties. Please make your submissions by e-mail (see details below).

When addressing any issue raised in this paper, please use the headings in this paper to identify the section you are referring to. If you are raising an issue that we have not referred to in this paper, please indicate this in your submission.

We intend to make submissions available on our website after the deadline for receiving submissions has passed. Because of this, please do not include commercially sensitive material in your submission, unless you consider it essential. If you do include such material, please highlight it clearly so that we may take reasonable steps to avoid publishing that material. This may involve publishing submissions with the sensitive material deleted and indicating the deletions.

Despite the approach outlined above, we make no guarantee not to publish any information that you deem confidential. So be aware that, unless you identify any commercially sensitive information, you are making a submission on the basis that you consent to us publishing it in full.

Please clearly mark your submission 'Consumer Protection Code' and send it to:

Consumer Protection Codes Department Central Bank of Ireland

PO Box 559

Dame Street

Dublin 2

E-mail: code@centralbank.ie

CONSUMER PROTECTION CODE

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CHAPTER 1

SCOPE

INTRODUCTION

The activities of regulated entities are subject to a number of different legislative enactments, generally based on European directives. The extent of consumer protection provisions contained in the different pieces of legislation varies, with more recent directives containing detailed consumer protection measures and earlier directives generally containing less extensive consumer protection provisions.

In order to ensure an appropriate level of protection for consumers regardless of the type of financial services provider they choose, the Consumer Protection Code (the Code) was introduced in 2006. Following the introduction of legislation governing the provision of retail credit and home reversion agreements, an Addendum to the Code was issued in May 2008 extending the provisions of the Code to firms engaged in these activities with effect from 1 June 2008.

The Consumer Protection Code has been updated and this revised Consumer Protection Code replaces the original Code and is effective from dd/mm/yy.

LEGISLATIVE BASIS

This Code is issued under Section 117 of the Central Bank Act 1989.

The Central Bank of Ireland (Central Bank) has the power to administer sanctions for a contravention of this Code, under Part IIIC of the Central Bank Act 1942.

The provisions of this Code are binding on regulated entities and must, at all times, be complied with when providing services.

APPLICATION

Subject to the exclusions set out in the following paragraphs this Code applies to the regulated activities of regulated entities operating in the State, including:

- o financial services providers authorised, registered or licensed by the Central Bank; and
- o financial services providers authorised, registered or licensed in another EU or EEA Member State when providing services in this State on a branch or cross-border basis.

Chapter 1 (General Principles) applies in respect of all customers and the other chapters of the Code apply in respect of customers who fall within the definition of consumer used in this Code.

Regulated entities

Without prejudice to the generality of the above, the types of firm that the Code applies to include:

- Credit Institutions;
- Insurance Undertakings;

- Investment Business Firms, authorised under the Investment Intermediaries Act 1995;
- Investment Intermediaries, authorised under the Investment Intermediaries

Act 1995

- Insurance Intermediaries;
- Mortgage Intermediaries;
- Credit Unions, when acting as insurance intermediaries;
- Payment Institutions;
- Regulated entities providing retail credit; and
- Home Reversion Firms.

Due to the maximum harmonisation nature of the Consumer Credit Directive and the Payment Services Directive, credit institutions, payment institutions and entities providing retail credit are subject to the Code only in circumstances that fall outside the areas covered by these directives.

Therefore, where regulated entities are providing credit agreements under the European Communities (Consumer Credit Agreements) Regulations 2010 to consumers as defined in those Regulations, the following sections of the Code do not apply:

- Chapter 2, General Principles: Provisions 5 and 6
- Chapter 4, Provision of Information: Provisions 1, 2, 27, 28, 42, 43 and 71
- Chapter 5, Knowing the Consumer and Suitability: All Provisions
- Chapter 6, Statements: Provisions 4 and 7 where the current account has an overdraft facility, and Provision 8
- Chapter 10, Advertising: Provisions 19, 20, 21, and 22.

Where regulated entities are providing payment services under the European Communities (Payment Services) Regulations 2009, only the following sections apply:

- Chapter 3, Conflicts of Interest: Provisions 23 to 28
- Chapter 3, Unsolicited Contact (Coldcalling): Provisions 29 to 35
- Chapter 4, Provisions 38
- Chapter 6, Provisions 2, 4, 5, 6 and 7
- Chapter 10, Advertising: General Requirements
- Chapter 11, Errors and Complaints.

The Code does not apply to:

- Services provided by regulated entities to persons outside the State;
- MiFID services;
- Moneylending under the Consumer Credit Act 1995;
- Reinsurance activities;
- Bureau de change business;
- Credit union core business, i.e., lending and operation of share and deposit accounts; and
- Hire purchase and consumer hire agreements.

OTHER MATTERS

All references to the provision of services throughout this Code also include the provision of advice.

Please refer to the Definitions section for any term shown in bold and italics throughout the text of the Code.

CHAPTER 2

GENERAL PRINCIPLES

A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:

1. acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;
2. acts with due skill, care and diligence in the best interests of its customers;
3. does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;
4. has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;
5. seeks from its customers information relevant to the product or service requested;
6. makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer;
7. seeks to avoid conflicts of interest;
8. corrects errors and handles complaints speedily, efficiently and fairly;
9. does not exert undue pressure or undue influence on a customer and is not complicit with any other party in exerting undue pressure or undue influence on a customer;

Comment: A regulated entity must have systems in place to ensure that they are not enabling financial abuse of customers.

10. ensures that any outsourced activity complies with the requirements of this Code;
11. without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and
12. complies with the letter and spirit of this Code.

CHAPTER 3

COMMON RULES

GENERAL REQUIREMENTS

1. A regulated entity must ensure that the name of a product or service is not misleading in terms of the benefits that the product or service can deliver.
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.
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.
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.
5. A regulated entity that is in direct receipt of a completed direct debit mandate or payroll deduction mandate from a consumer as a payment instruction for a financial product or service, must acknowledge in writing receipt of such mandate.
6. A regulated entity must ensure that, where applicable, documents conferring ownership rights are given to the consumer in a timely manner or are held for safekeeping under an agreement with the consumer, in accordance with the terms of the regulated entity's authorisation.

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.

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.

8A Where a joint account is being opened by a consumer, a regulated entity must establish whether the account is to be designated an agency account or otherwise. The different consequences of either designation must be clearly explained to the consumer. The consumer's intention with regard to the designation of the joint account must be documented.

9. A regulated entity must have regard to the provisions of any relevant antimoney laundering guidance notes approved by the Minister for Justice, Equality and Law Reform under Section 107 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.

10. A regulated entity must not, in any communication or agreement with a consumer (except where permitted by applicable legislation), exclude or restrict, or seek to exclude or restrict:

a) any legal liability or duty of care to a consumer which it has under applicable law or under this Code;

b) any other duty to act with skill, care and diligence which is owed to a consumer in connection with the provision to that consumer of financial services; or

c) any liability owed to a consumer for failure to exercise the degree of skill, care and diligence that may reasonably be expected of it in the provision of a financial service.

RESTRICTIONS

Credit

11. A regulated entity must not offer unsolicited pre-approved credit.

12. A regulated entity may only increase a consumer's credit card limit following a request from the consumer.

Tying and bundling

13. A regulated entity is prohibited from tying products or services, or making the sale of a product or service contingent on the consumer purchasing another product or service from the regulated entity. This provision does not prevent a regulated entity from offering additional products or services to consumers who are existing customers which are not available to potential consumers.

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.

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

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.

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.

18. a) Where an optional extra is offered to a consumer in conjunction with a product or service, a regulated entity must:

i) inform the consumer in writing that the optional extra does not have to be purchased in order to buy the main product or service; ii) set out the cost of the basic product (excluding the optional extra); and

iii) set out separately the cost of the optional extra(s).

b) A regulated entity must not charge a consumer a fee for any optional extra offered in conjunction with a product or service unless the consumer has confirmed that he/she wishes to purchase the optional extra.

Payment protection insurance

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.

Remuneration

20. (i) 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.

(ii) A regulated entity must inform the consumer that such fee, commission, other reward or remuneration is being paid for the provision of such service.

Deposit agents

21. A deposit agent must not retain in its possession an account passbook of a consumer.

22. A deposit agent must not operate from the same premises as a deposit broker.

CONFLICTS OF INTEREST

23. A regulated entity must have in place and operate in accordance with a written conflicts of interest policy appropriate to the nature, scale and complexity of the regulated activities carried out by the firm. The conflicts of interest policy must:

- a) identify the circumstances which constitute or may give rise to a conflict of interest between the regulated entity and its customers who are consumers or between one such customer and another; and
- b) specify procedures to be followed, and measures to be adopted, in order to manage such conflicts.

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

25. Where conflicts of interest arise and cannot be reasonably avoided, a regulated entity must disclose the general nature and/or source of the conflicts of interest to the consumer. A regulated entity may only undertake business with or on behalf of a consumer where there is directly or indirectly a conflicting interest, where that consumer has acknowledged, in writing, that it is aware of the conflict of interest and still wants to proceed.

26. A regulated entity must ensure that there are effective Chinese walls in place between the different business areas of the regulated entity, and between the regulated entity and its connected parties in relation to information which could potentially give rise to a conflict of interest or be open to abuse.

A regulated entity must ensure it has procedures in place relating to the maintenance of Chinese walls, and the consequences of breaches of Chinese walls. These procedures must be in writing and notified to all relevant officers and employees of the regulated entity.

27. A regulated entity must take reasonable steps to ensure that it or any of its officers or employees does not offer, give, solicit or accept any inducement likely to conflict with any duties of the recipient or of the recipient's employer.

28. A regulated entity must not enter into a soft commission agreement unless such agreement is in writing. Where a soft commission agreement is in place, the following conditions apply:

a) Any business transacted under a soft commission agreement must not conflict with the best interests of its consumers.

b) ~~Where a regulated entity considers that a consumer may be affected by the soft commission agreement,~~ the consumer must be made aware of the soft commission agreement and of how the soft commission agreement may affect them.

Comment: This is leaving it up to the regulated entity to subjectively decide that a consumer may be affected by the soft commission agreement and only then does the obligation arise to inform the consumer of the soft commission agreement. There should be a specific requirement to inform the consumer if any soft commission agreement is in place. The suggested revised text takes account of this.

c) A copy of the soft commission agreement must be made available to the consumer on request.

d) Goods or services received by a regulated entity under a soft commission agreement must be used to assist in the provision of services to consumers.

e) A regulated entity must provide to any affected consumer details of any changes in its policy on soft commission agreements promptly after implementation of any such changes.

UNSOLICITED CONTACT (COLDCALLING)

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.

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.

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.

32. When making an unsolicited personal visit or telephone call, the representative of a regulated entity must immediately and in the following order:

- a) identify himself or herself by name, and the name of the regulated entity on whose behalf he/she is being contacted;
- b) inform the consumer of the purpose of the contact;
- c) inform the consumer that the telephone call is being recorded, if this is the case;
- d) establish if the consumer wishes the call/visit to proceed, and, if not, he/she must end the contact immediately; and
- e) abide by a request from a consumer not to make an unsolicited personal visit or telephone call to him/her again and this request must be recorded by the regulated entity.

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.

34. Where the unsolicited contact is for the purpose of offering a protection policy, a regulated entity must:

- a) disclose to the consumer the source of the business lead or referral supporting the contact, where relevant; and
- b) retain a record of the referral.

PREMIUM HANDLING

35. An insurance intermediary must lodge money it receives in respect of a premium or a premium rebate to a segregated bank account. Each such account must be designated "Client Premium Account".

36. An insurance intermediary must operate separate client premium accounts in respect of life and non-life business.

37. All payment instruments used to make payments from a client premium account must clearly state that the payment emanated from a client premium account.

38. A client premium account must never be overdrawn.

39. The following are the only debits and credits that may be passed through a client premium account:

Credits (money in)

a) money received from consumers in respect of the renewal of a policy, which has been invited by an insurance undertaking, or a proposal for insurance accepted by an insurance undertaking;

b) money received from a regulated entity representing premium rebated for onward transmission to the consumer;

c) transfers from another client premium account operated by the insurance intermediary for the same form of insurance;

d) transfers from the insurance intermediary's office account to allow a 'buffer' amount to be maintained in the client premium account (any such transfers must be clearly identifiable);

e) proceeds received from a regulated entity in respect of the settlement of a claim for onward transmission to the claimant;

f) bank interest, if appropriate; and

g) where mixed remittances are received, the total amount must first be lodged to the appropriate client premium account.

Debits (money out)

a) money paid to a regulated entity on foot of renewal of a policy, which has been accepted by an insurance undertaking, or a proposal, accepted by an insurance undertaking;

b) money paid to a consumer representing rebates of premiums received from insurance undertakings;

c) commissions and fees paid to the insurance intermediary for which there is documentary proof that the funds are properly due to the insurance intermediary;

d) transfers to another client premium account operated by the insurance

intermediary for the same form of insurance;

e) payments of claims settlement amounts to a consumer;

f) bank interest, if appropriate;

g) the portion of mixed remittances that does not relate to a premium payment. Such remittances should be transferred to, or to the order of, the consumer without delay; and

h) payments in respect of charitable donations.

40. An insurance intermediary must carry out and retain, on a monthly basis, a detailed reconciliation of amounts due to regulated entities with the balance on each client premium account it operates.

PRODUCT PRODUCER RESPONSIBILITIES

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.

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.

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.

44. A product producer must ensure that the information it provides to an intermediary about its investment products is clear, accurate, up to date and not misleading, and includes the information outlined in Chapter 4, Provision 32. This product information must be sufficient to enable those who sell the product to understand it so as to be able to determine whether it is suitable for a consumer.

45. Within the first year of launching an investment product, and annually thereafter, a product producer must check whether the product is continuing to meet the general needs of the target market for which it was designed. Where the product producer establishes that a product no longer meets the general needs of the target market, the product producer must:

a) reassess the product to identify the consumer type for which it is suitable;

- b) immediately update the information it provides under Provision 44 above; and
- c) notify the Central Bank.

Comment: This should also provide that if prior to the annual review a complaint/risk is notified then an immediate review should take place to assess whether meeting the needs. Otherwise this allows the matter to await the annual review.

46. A regulated entity must maintain a publicly accessible register of all mortgage intermediaries to which it has issued a current appointment.

47. Upon the termination of the appointment of any mortgage intermediary, a regulated entity must provide to the Central Bank a confirmation in writing that such mortgage intermediary has been removed from the register maintained under Provision 46, together with details of the consequent amendment made to such register.

CHAPTER 4

PROVISION OF INFORMATION

GENERAL INFORMATION

1. A regulated entity must ensure that all information it provides to a consumer is clear, comprehensible, accurate and up to date, and that key items are brought to the attention of the consumer. The information must not be misleading and the method of presentation must not disguise, diminish or obscure important information.
2. A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following:
 - a) the urgency of the situation; ~~and~~
 - b) the time necessary for the consumer to absorb and react to the information provided, **and**
 - (c) the vulnerability of the consumer if relevant.**
3. Where a regulated entity intends to amend or alter the range of services it provides, it must give notice to affected consumers at least two months in advance of the amendment being introduced.
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.
5. A regulated entity must inform the consumer at the outset of a conversation where it intends to record a telephone conversation.
6. A regulated entity must ensure that, where it communicates with a consumer using electronic media, it has in place appropriate arrangements to ensure the secure transmission of information to, and receipt of information from, the consumer.
7. A regulated entity must ensure that all printed information it provides to consumers is of a print size that is clearly legible **and in clear simple language.**

INFORMATION ABOUT REGULATORY STATUS

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.

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.

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 **and confirm that such activity is not regulated by the Central Bank.**

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.

12. Where a regulated entity is licensed, authorised, or registered by, the Central Bank, the regulatory disclosure statement must take the following form:

"[Full legal name of regulated entity (and trading name(s), if applicable)] is regulated by the Central Bank of Ireland".

The regulatory disclosure statement must not include any additional information.

13. Where a regulated entity is operating in this State under EU law freedom of services or establishment provisions, the regulatory disclosure statement must take the following form:

"Full legal name of regulated entity (and trading name(s), if applicable) is authorised by (name of the competent authority from which it received its authorisation or licence, or with which it is registered) in (the name of the State where that competent authority resides), and is regulated by the Central Bank of Ireland for conduct of business rules only."

The regulatory disclosure statement must not include any additional information.

14. The regulatory disclosure statement must not be presented in such a way as to appear to be an endorsement by the Central Bank of the regulated entity or its products or services.

INFORMATION ABOUT THE FIRM AND ITS SERVICES

15. A regulated entity must draw up its terms of business and provide each consumer with a copy at the outset of its relationship with the consumer',

16. The terms of business must set out the basis on which the regulated entity provides its services and must include at least the following:

- a) the legal name, trading name (if any), address, and contact details of the regulated entity;
- b) the identity of the group to which the regulated entity belongs, if any;
- c) confirmation that the regulated entity is authorised and the name of the competent authority that has authorised it;
- d) a statement that it is subject to the provisions of the Central Bank of Ireland's Consumer Protection Code which offers protection to consumers and that the Code can be found on the Central Bank's website www.centralbank.ie;
- e) a description of the services that the regulated entity provides;
- f) if the regulated entity acts as an intermediary, the level of service it provides for each product type, i.e., whether fair analysis of the market or limited analysis of the market;
- g) if the regulated entity is tied for any of the services outlined in e) above, the name of each product/service and regulated entity to which it is tied;
- h) a general statement of the charges imposed directly by the regulated entity;
- i) a summary of the regulated entity's policy in relation to conflicts of interest;
- j) an outline of the action and remedies which the regulated entity may take in the event of default by the consumer;
- k) a summary of the complaints procedure operated by the regulated entity;
- l) if the regulated entity is a member of a compensation scheme, the name of the scheme and the nature and level of protection available from the scheme; and
- m) the effective date of the document.

17. A regulated entity must provide its terms of business to a consumer as a stand-alone document.

18. Where a regulated entity makes a material change to its terms of business, it must provide each affected consumer with a revised terms of business as soon as possible and inform the consumer of the effective date.

1 Note: this does not apply to deposit agents - see Provision 19

19. A deposit agent must ensure that each consumer is given a copy of the relevant credit institution's terms of business prior to providing the first service to that consumer. Such terms of business must set out the nature of the relationship between the credit institution and the deposit agent and the basis on which the deposit agent's services are provided.

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.

21. A regulated entity which offers financial services under a number of business names and business images, whether directly or indirectly, must disclose, in all correspondence with consumers, the identity of the group to which it belongs.

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

23. An intermediary may only describe itself as 'independent' where all of the following apply:

a) the intermediary provides services on the basis of a fair analysis of the market; and

b) the entity must allow the consumer the option to pay for its services in full by means of a fee; and

c) if the entity is part of a group of companies to which it directs business, it must disclose the name of the group of which it is a part.

Where the regulated entity provides an independent service for some products and a more limited service for other products, it must explain the different nature of the services in a way that seeks to inform the consumer. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.

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.

25. Where an intermediary does not provide a product or service on the basis of a fair analysis of the market, it must clearly disclose to the consumer the names of those product producers whose products or services it intends to consider as part of its analysis.

26. Where an intermediary is tied to a single provider for a particular product it must disclose this fact in all advertisements and written material for that particular product **and must disclose this fact to any consumer that enquires about the product.**

INFORMATION ABOUT PRODUCTS

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.

28. A regulated entity must provide each consumer with the terms and conditions attaching to a product or service, before the consumer enters into a contract for that product or service, or before the cooling-off period (if any) expires.

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.

30. When announcing a change in interest rates, a regulated entity must publish a notification which states clearly the date from which the changes will apply **and communicate directly with consumers that are affected.**

31. Where a regulated entity changes the interest rate on accounts, it must update the information on information services, including telephone helplines and websites as soon as the change comes into effect.

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;

aa) whether there is an ongoing capital commitment to invest and if so for what period and for what amount

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;

ff) whether there is any automatic redemption of the investment product within a specified period

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.

33. A regulated entity must provide consumers with pre-sale product information specific to that consumer that contains an estimation of the investment product's value after tax, at the end of year 1, 2, 3, 4, 5, 10, 15 and 20 (where applicable) assuming realistic growth rates. **A distinction should be made as to whether the charge is a charge to income tax or a charge to capital gains tax.**

34. A regulated entity must ensure that all illustrations contained in investment product documentation must be shown pre- and post- any tax deduction due on surrender or encashment of the investment product **and pre and post any fees or charges payable on surrender or encashment of the investment product.**

35. A regulated entity must include the following statement with all illustrations:

Warning: These figures are estimates only. They are not a reliable guide to the future performance of your investment.

36. Where a prospectus, other than a prospectus falling within the scope of the Prospectus Directive (2003/71jEC), represents or contains the terms of a contract between the regulated entity and one or more of its consumers, this fact must be clearly stated in the prospectus.

Banking products

37. Before providing a basic banking product to a consumer, a credit institution must first establish that the consumer is seeking a basic banking product. In addition, a credit institution must advise the consumer of:

- a) any restrictions applying to the account (including any restrictions on access to funds, notice periods, limitations on ATM withdrawals); and
- b) the availability of any lower cost alternatives with that credit institution, if any.

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

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;

Comment: There is an assumption which is misleading. See detail below.

- 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.

Comment: This is not sufficient. One of the biggest tools of financial abuse of older people is the misuse of joint accounts. 39 needs to be recast and the following is suggested to make it clear that there are two distinct legal options.

39A A regulated entity must, before a consumer opens a joint account ascertain the reason for the opening of the joint account:

(a) If it is for the convenience of the original owner of the account then it must be designated an agency account and the following will apply –

- It will be necessary to ascertain the wishes of the original owner with regard to the operation of the joint account
- In the event of the original owner becoming mentally incapacitated then the arrangement with regard to the operation of the joint account will cease.
- To access funds from the account it will be necessary to have an enduring power of attorney in place or a court order directing how the account should be operated.
- In the event of the death of the original owner the proceeds of the account will pass on a resulting trust to the estate of the deceased account holder.

(b) If the intention that the joint account is for the benefit of all the joint holders of the account from the date of the opening of the account then the following will apply-

- It will be necessary to ascertain the wishes of the account holders with regard to the general operation of the joint account during the joint lifetimes
- It will be necessary to ascertain the wishes of the account holders in the event of the separation, divorce, or cessation of civil partnership
- In the event of the death of any one of the joint account holders is it the intention that the proceeds of the account will pass to the survivor/s of the joint account

39B Where a power of attorney is noted over a consumer's bank account, a regulated entity must ensure

- (i) that the proceeds of such bank account are retained in the name of the consumer
- (ii) that the authority of the attorney to manage the consumer's bank account is in accordance with the authority contained in the power of attorney
- (iii) that accounts are furnished periodically to the appointed Court Officer when requested.

Credit

40. Where credit is being advanced subject to a guarantee, the guarantee documentation must outline the obligations of the guarantor and must contain the following warning:

Warning: As a guarantor of this credit, you will have to payoff the debts of the borrower up to the level of your guarantee, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice.

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.

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.

43. Prior to a loan being approved, a regulated entity must explain to a consumer the effect of missing any of the scheduled repayments. This information must be highlighted in any relevant documentation and the following notice must also appear:

Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.

44. Where a consumer is not in arrears and a regulated entity is seeking to move a consumer from a tracker rate to an alternative rate, for any reason, the lender must provide the consumer with the following information in writing at least two months before the proposed change, where applicable:

- a) indicative comparisons of the cost of monthly repayments at the consumer's tracker rate and the alternative rate(s) being offered; and
- b) details of the advantages and disadvantages of both the tracker mortgage rate compared to the other rate(s) being offered.

The following warning should also appear:

Warning: By switching to an alternative rate, the tracker rate option will be terminated.

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.

46. Prior to offering, arranging or recommending a mortgage to a consumer for the purpose of consolidating other loans or credit facilities, the regulated entity must provide the consumer with a written indicative comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer. Any assumptions made must be reasonable and justifiable.

47. Where a regulated entity provides a fixed interest rate on a mortgage to a consumer, it must provide the consumer with a worked example of the early redemption charge in financial terms and details in relation to the calculation of this charge in the mortgage documentation.

48. Where a regulated entity is making a mortgage offer, it must inform the consumer of the amount of the mortgage and the length of time for which the mortgage offer is valid, assuming that all details provided by the consumer are correct and do not change.

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.

Insurance products

50. A regulated entity must, when providing a quote to a consumer, inform the consumer of the amount of the quotation and the length of time for which the quotation will be valid, assuming that all details provided by the consumer are correct and do not change.

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.

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

53. A regulated entity must state the full legal name of the relevant underwriter on all quotations, policy documentation and renewal notices issued to a consumer.

54. A regulated entity must explain to a consumer the consequences of failure to make full disclosure on the proposal form of such consumer's medical details or history.

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.

56. A regulated entity providing serious illness policies must, before completing a proposal form, explain clearly to the consumer the restrictions, conditions and exclusions that attach to that policy.

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.

58. Where an insurance undertaking refuses to quote for motor insurance, it must, on request from the consumer, state its reasons in writing. The insurance undertaking must advise the consumer immediately of their right to refer the matter to the Declined Cases Committee of the Irish Insurance Federation and the method of doing so.

59. When a consumer advises a regulated entity of the intention to use an insured vehicle in another Member State, the regulated entity must provide the consumer with details of the regulated entity's appointed claims representative for that Member State.

60. Where a secondary market exists for a life policy, and when the holder of such a life policy seeks information on its early surrender, the regulated entity must divulge to the holder, at the same time as it discloses the surrender value of the policy, that this secondary market exists and that the policy may be sold on it.

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.

Lifetime mortgages and home reversion agreements

62. A regulated entity must advise the consumer of the consequences of a lifetime mortgage or a home reversion agreement, including details of the total costs involved, including all **interest (the amount of compound interest must be clearly stated)**, charges and the effect on the existing mortgage, if any. **The distinction between a lifetime mortgage and a home reversion agreement must be clearly explained to the consumer.**

63. A regulated entity must ensure that consumers are made aware of the importance of seeking independent legal **and financial advice**. **The contact details of the consumer's nearest Money Advice and Budgeting Service (MABS) should be given to the consumer.** **The consumer must be informed that entering into an equity release agreement may have adverse taxation and social security implications.**

A regulated entity who proposes to sell equity release products must have detailed documentation indicating that such products have significant risks for consumers. A regulated entity must ensure that a consumer fully appreciates the implications of obtaining funding under the terms of an equity release product.

64. A regulated entity must include the following warning on any information document, application form or any other document given to the consumer in connection with a lifetime mortgage or home reversion agreement:

Warning: Purchasing this product may negatively impact on your ability to fund future needs.

64 (A) A regulated entity in approving a specified amount for drawdown by a consumer under an equity release agreement must not under any circumstances ask the consumer to sign a receipt for the total amount if the consumer does not draw down the full amount at once. Each drawdown will require a separate receipt for the exact amount received by the consumer.

64(B) A regulated entity must inform the consumer that the Lifetime Mortgage does not qualify for any exemption to a redemption fee as contained in Section 121(1) of the *Consumer Credit Act 1995*.

A regulated entity must set out the amount of details of any redemption and comply with the provisions in Section 121(5) of the *Consumer Credit Act 1995*.

64 (C) The valuation of the property of a consumer who wishes to participate in an equity release agreement must be carried out by a person independent of the regulated entity (not an employee or a person paid commission by the regulated entity).

64 (D) If the terms of an equity release agreement provide for a 'buy back' arrangement, the regulated entity must give full information of the impact on the equity in the property and separate details of the implications if a consumer dies within a short period of availing of the product.

64(E) Any obligations with regard to insurance, repair and maintenance or the ability of any third party to reside in the property during the term of the equity release agreement must be clearly set out in the documentation provided to the consumer and specifically brought to the attention of the consumer.

64(F) If at the end of the period of the equity release agreement the amount of the debt exceeds the value of the property (negative equity) the documentation should clearly state whether the debt is with recourse or without recourse.

64(G) The consumer must be advised of the options of obtaining funding as an alternative to an equity release product.

Tracker bonds

65. A regulated entity must provide the following information in a prominent position in a tracker bond product brochure, if any, and on a tracker bond application form:

a) for investments in products that do not promise the 100% return of a consumers capital on maturity, the following statement:

Warning: The value of your investment may go down as well as up. You may get back less than you put in.

b) where the promised return is known but is less than the initial 100% invested the following statement:

Warning: If you invest in this product you could lose xx% of the money you put in.

c) if the promised 'return of capital' is only applicable on a specific date, this date and the following statement:

Warning: If you cash in your investment before [specify the particular date] you may lose some or all of the money you put in.

d) if there is no access to funds for the term of the product, the following statement:

Warning: If you invest in this product you will not have any access to your money for (insert time required before the product matures).

e) the nature, extent and limitations of any guarantee attaching to the product and the name of the ultimate provider of any guarantee.

66. A regulated entity must provide a consumer with a "Key Features Document", of a type referred to in the Appendix A to this Code before the consumer signs an application form for a tracker bond. Where the information required by the Key Features Document is already provided to the consumer under a legal requirement to do so, the regulated entity is not obliged to include that information in the Key Features Document.

67. A regulated entity must provide a consumer who has invested in a tracker bond with a document within five business days of the start of the fund, setting out:

a) the name(s) and address(es) of the consumer(s);

b) the date of investment;

c) the amount of the investment;

d) the date or dates on which the promised minimum payment is payable;

e) disclosure of the make up of the investment, if the make up differs from that shown in the Key Features Document prepared in accordance with Provision 66; and

f) the date the investment will mature.

68. Where a regulated entity shows an illustration of the projected return on investment of a tracker bond, the value of the total return must be expressed and shown as prominently as the equivalent compound annual rate.

69. Where a regulated entity offers a consumer the facility to borrow funds to invest in a tracker bond, the regulated entity must give the consumer an illustration showing:

a) the year-by-year and total interest payments the consumer is likely to have to pay in respect of the funds borrowed to invest in the tracker bond, until the date the product matures;

(i) for this purpose the fixed interest rate offered by the lender for the period to the date of the promised payment under the tracker bond must only be used.

(ii) where the lender does not offer a fixed interest rate over this period, an equivalent open market fixed interest rate should be used for this purpose.

b) the compound annual rate equivalent of the promised payment under the relevant tracker bond must be shown prominently; and

c) the difference between the promised payment under the tracker bond and the total projected outgoings of the consumer (i.e. interest payments related to the funds borrowed to invest, any capital repayments related to such borrowings and any capital investment by the consumer other than the borrowed funds) over the period to the date of promised payment under the tracker bond.

Personal Retirement Savings Accounts (PRSAs)

70. Before offering, arranging or recommending PRSAs, a regulated entity must provide the consumer with the information set out in Appendix B to this Code. Where a non-standard PRSA is recommended to a consumer, both the consumer and the regulated entity must complete the declaration set out in Appendix C to this Code.

Comment: This is too vague. There should be a specific obligation to give written confirmation of the level of fees and refer to detail required under 71 below.

INFORMATION ABOUT CHARGES

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; ~~and~~

d) advise consumer where charges are specifically related to transactional activity.

72. A credit institution must advise consumers who are subject to penalties, including interest surcharges, of the methods by which these penalties may be mitigated.

73. Where a regulated entity intends to impose a charge in respect of the provision or arrangement of a mortgage, and it is proposed that this charge is incorporated into the mortgage, a regulated entity must:

Comment: It should be made clear if this also applies to life-time mortgages.

a) inform the consumer, in writing, of the total cost of this charge over the term of the mortgage; and

b) give the consumer the option to pay such a charge up-front.

INFORMATION ABOUT REMUNERATION

74. Prior to offering, arranging or providing a product or service other than a nonlife 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.

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.

76. In the case of non-life insurance:

a) A regulated entity must disclose in general terms that it is paid for the service provided to the consumer by means of a remuneration arrangement with the product producer.

b) Prior to the sale of a product, a regulated entity must either inform the consumer of the amount of remuneration receivable in respect of that sale or that details of remuneration are available on request.

77. A regulated entity must disclose in general terms any remuneration arrangements with product producers that are not directly attributed to the service provided to an individual consumer but are based on levels of business introduced by the regulated entity to that product producer or that may be perceived as having the potential to create a conflict of interest.

78. The disclosure required at Provisions 76 and 77 must be in the terms of business or through some other suitable mechanism, and with renewal notices.

79. Where a regulated entity allows the consumer the option to pay for its services by means of a fee, the option of payment by fee and the amount of the fee must be explained in advance to the consumer. Where a regulated entity charges a fee and also receives commission in respect of the product or service provided to the consumer, it must explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

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

CHAPTER 5

KNOWING THE CONSUMER AND SUITABILITY

KNOWING THE CONSUMER

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 (which includes a lifetime mortgage), a regulated entity must use a Standard Financial Statement to obtain financial data from the consumer.

2. A regulated entity must gather and maintain a record of details of any material changes to a consumer's circumstances before providing that consumer with a subsequent product or service. Where there is no material change, this must be noted on a consumer's records.

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.

4. A regulated entity must endeavour to have the consumer certify the accuracy of the information it has provided to the regulated entity. Where the consumer declines to do so, the regulated entity must note this on the consumer's records.

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.

6. A mortgage intermediary must submit a signed declaration to the lender, for each mortgage application, to confirm that it has had sight of all such original documentation listed in Provision 5.
7. A regulated entity must be satisfied with the reasonableness of the information contained in and the authenticity of the documentation submitted by a consumer in support of a mortgage application.
8. A regulated entity must ensure that it has sight of an original valuation report before drawdown of the funds. **The valuation report must be independent of the regulated entity and must not be carried out by an employee or by a person who is paid a commission by the regulated entity.**
9. In the case of a standard PRSA, where an employer has chosen a provider and the regulated entity makes a presentation to employees, the minimum relevant information required by the regulated entity is to establish that the consumer is an employee of the firm, has no other form of pension provisions and intends to select the default investment strategy of the provider.

SUITABILITY

Assessing suitability

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.

11. A regulated entity must ensure that any product or service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware.

The following additional requirements apply:

- a) where a regulated entity offers a selection of product options to the consumer, the product options contained in the selection must represent the most suitable from the range available to the regulated entity; and

b) where a regulated entity recommends a product to a consumer, the recommended product must be the most suitable product for that consumer.

12. Before offering, arranging or recommending credit to a consumer, a regulated entity must fully assess the consumer's ability to service the repayments.

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.

Comment: Further criteria need to be inserted with regard to equity release products including reference to the fact that an alternative method of funding may be a suitable option to an equity release product.

This information must be provided to the consumer.

The lender must calculate the impact of the rate increase and must provide these calculations to the mortgage intermediary.

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.

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.

16. A regulated entity must not advise a consumer to carry out a transaction, or a series of transactions, with a frequency or in amounts that, when taken together, are deemed to be excessive and/or detrimental to the consumer's best interests. The regulated entity must make a contemporaneous record that it has advised the consumer that in its opinion the transaction(s) is/are excessive, if the consumer wishes to proceed with the transaction(s).

Comment: Same comment as above. Relevant information to be provided with regard to equity release products should be inserted here, including the calculation of compound interest, details of redemption charges, obligations on the consumer with regard to insurance, maintenance and repair of property and the position if there is negative equity at termination of the equity release agreement.

Statement of suitability

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;

d) in the alternative, if in the opinion of the regulated entity a service or product is not suitable this should be communicated to the consumer.

The written statement must include an outline of how the product meets the consumers 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.

The details of charges as specified in Para 71 in Chapter 4 above must also be specified.

18. The written statement must be dated on the day that it is completed and tailored to the particular circumstances of each consumer. In the case of personal motor and home insurance, a statement of suitability may be in a standard format.

19. The regulated entity must give a copy of this statement to the consumer before providing a product or service and retain a copy. In the case of non-life insurance policies, a statement of suitability may be issued to the consumer immediately after the product has been provided only in urgent situations.

Comment: This section on suitability needs to highlight the higher level of duty of care owed to a vulnerable consumer.

EXEMPTION FROM KNOWING THE CONSUMER AND SUITABILITY

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 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.

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

3A. Where a power of attorney is noted over a specified account, the statement must be issued separately to each attorney, if more than one.

Banking products

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.
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.
 6. A credit institution must 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.

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.

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.

9. A regulated entity must include the following information on all credit card account statements:

- a) opening balance;
- b) details of all transactions posted to the account;
- c) interest amount charged; and
- d) any outstanding balance due.

The statement must also include the following information presented in a separate summary box:

- e) details of the interest rate applied to the account during the period covered by the statement;
- f) details of any charges applied to the account;
- g) final payment dates applicable to postal, branch and telephone/internet payments; and
- h) the amount of stamp duty liable and a notification that this is due on 1 April annually or at the date of account closure.

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.

Investment products

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.

Comment: Under this chapter 'STATEMENTS' there should be an obligation on all regulated entities to issue statement in respect of any product which fall outside the definition of 'Banking product', 'Credit', and 'Investment product'. Such products would include life insurance products which do have a surrender or maturity value, an equity release product and others. In other words there should be an obligation for regulated entities to issues annual statements in respect of any product which they administer.

CHAPTER 7

TRANSFER OF RESIDENTIAL MORTGAGES

1. A loan secured by the mortgage of residential property may not be transferred to a third party without the written consent of the borrower. When seeking consent from a borrower, the lender must provide a statement containing sufficient information to enable the borrower to make an informed decision. This statement must include a clear explanation of the implications of a transfer and how the transfer might affect the borrower. Each borrower must be afforded three months to decide whether to give or to 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, if applicable;
- b) the nature of the relationship, if any, between the lender and the transferee;
- c) a description of the intended transferee and of 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 which will apply for the setting of the mortgage interest rate and for making repayments if the transfer takes place; and
- e) confirmation that, in the absence of the borrower's specific consent, the existing arrangements will continue to apply.

Comment: It should be made clear whether or not this applies to a life time mortgage.

2. Where the original lender will service the mortgage as an agent of any transferee, the lender must confirm in writing to the borrower that the transferee's policies for handling arrears and for setting interest rates will be the same as that of the original lender, and that the original lender will handle arrears as its agent.

3. The lender must advise the borrower if the transfer would result in the lender no longer having control in relation to the setting of interest rates, and/or the handling of arrears.

4. The terms of the transfer agreement shall require the transferee:

- a) to allow transferred mortgages to be redeemed without charging a redemption fee, unless permitted under Section 6 of the Buildings Societies Act, 1989 or approved under Section 121 of the Consumer Credit Act, 1995;

Comment: If an exemption to a redemption fee does not apply to lifetime mortgages, this fact should be clarified.

- b) to continue any existing mortgage protection insurance arrangements;
- c) to allow the borrower to arrange his/her own property insurance;

d) to adhere to the principles of Section 26 of the Building Societies Act, 1989, ("Sale of mortgaged property"); and

e) to comply with this Code in relation to any future transfer of these mortgages.

5. Provisions 1, 2, 3 and 4 do not apply to:

a) a transfer connected with the making of further advances to the borrower;

b) a transfer of engagements in whole or in part effected under Part X of the Building Societies Act, 1989;

c) a winding up effected under Part XII of the Building Societies Act, 1989; or

d) a transfer within the same corporate group or a transfer arising from serious business difficulties, where the lender satisfies the Central Bank that, in the circumstances, the application of this Code would not be appropriate and that the transfer is being effected on terms which are just and equitable and which a borrower would be reasonably entitled to expect.

CHAPTER 8

REBATES AND CLAIMS PROCESSING

PREMIUM REBATES

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

2. An insurance intermediary must transfer a premium rebate to a consumer within five business days after receiving payment of such rebate amount from a regulated entity or being notified by a regulated entity that such premium rebate is due to the consumer, as applicable.

3. An insurance intermediary may handle premium rebates due to consumers only where an express agreement exists whereby the insurance intermediary acts as agent of a regulated entity in passing rebates to consumers so that in handling the rebated premium the insurance intermediary does not become a debtor of the consumer.

4. An insurance intermediary must transfer the rebate amount to the consumer in full. Any charges that the consumer may owe the intermediary must not be recovered from the rebate amount due to the consumer without the prior written agreement of the consumer in each instance and a record of such agreement must be maintained by the intermediary. Where the consumer has agreed to the deduction of any charges these must be clearly outlined on the accompanying notification of the rebate to the consumer.

5. Where a premium rebate is due to a consumer, and the value of the rebate is €10 or less, the regulated entity may offer the consumer the choice of:

a) Receiving payment of the rebate; or

b) Receiving a reduction from a renewal premium or other premium due to that regulated entity; or

c) Agreeing that the regulated entity may make a charitable donation of the rebate amount.

In respect of options b) and c), the regulated entity must maintain a record of the consumer's decision.

6. Where an insurance intermediary has issued a rebate cheque to a consumer, and following a reasonable period of time the rebate cheque remains outstanding, the insurance intermediary must issue a reminder to the consumer. If the rebate continues to remain outstanding, the insurance intermediary must either:

a) return the rebate to the insurance company; or

b) retain the rebate in its client premium account as an amount due to be available for reimbursement should the consumer seek the rebate in the future.

7. A regulated entity must not benefit from any balance arising out of a premium rebate which cannot be repaid. Where a charitable donation has been made, the regulated entity must document the donation and retain a receipt from the relevant charity.

CLAIMS PROCESSING²

8. A regulated entity must take reasonable steps to verify the validity of a claim before making a decision on its outcome.

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.

10. An insurance intermediary who assists a consumer in making a claim must on receipt of the completed claims documentation, transmit such documentation to the relevant regulated entity without delay.

11. Where a regulated entity engages the services of a loss adjuster and/or expert appraiser it must inform the claimant in writing of the contact details of the loss adjuster and/or expert appraiser it has appointed to assist in the processing of the claim and that such loss adjuster and/or expert appraiser acts in the interest of the regulated entity.

12. In the case of motor insurance and property insurance claims, and other claims where relevant, the regulated entity must inform the claimant in writing that

² These provisions do not apply to health insurers where a method of direct settlement is used.

the claimant may appoint a loss assessor to act in their interests and that any such appointment shall be at the claimant's expense.

13. A regulated entity must be available to confer with the claimant in relation to the claim and to discuss assessment of liability and damages during normal office hours or outside of these hours if agreed with the claimant.

14. Where a method of direct settlement has been used, a regulated entity must not ask the claimant to certify any restitution work carried out by an expert appointed by the regulated entity.

15. A regulated entity must, within 10 business days of making a decision in respect of a claim, advise the claimant in writing of the outcome of the investigation explaining the terms of any offer of settlement. If the claim is denied, the reasons for the denial must be provided to the claimant in writing.

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.

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.

18. A regulated entity must provide a claimant with written details of any internal appeals mechanisms available to the claimant.

19. A regulated entity must pay all claims to the claimant within 10 business days, unless a method of direct settlement is being applied, once the following conditions have been satisfied:

- a) the insured event has been proven;
- b) all specified documentation has been received by the regulated entity from the claimant;
- c) the entitlement of the claimant to receive payment under the policy has been established; and
- d) the appropriate amount has been agreed subject to finalisation of legal costs, where applicable.

CHAPTER 9

ARREARS HANDLING

1. A regulated entity must have in place procedures for the handling of arrears cases.
2. Without prejudice to a regulated entity's regulatory and/or legal obligations and legal rights a regulated entity must:
 - a) give the consumer reasonable time, having regard to the circumstances of the case, to resolve an arrears problem; and
 - b) endeavour to agree an approach that will assist the consumer to resolve an arrears problem.
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.
4. Where the arrears situation persists, an updated version of this information must be provided to the consumer on a monthly basis.
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.

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.

7. Where a regulated entity reaches an agreement on a revised repayment amount or revised repayment schedule with a consumer, the full terms of the agreement must be confirmed with the consumer in writing.

8. Where a consumer makes an offer of a revised repayment amount or schedule that is rejected by the regulated entity, the regulated entity must formally document its reasons for rejecting the offer, and this must be communicated to the consumer in writing.

9. A lender must have a dedicated section on its website for consumers in or concerned about financial difficulties which must include:

- a) information on the level of charges to be imposed on borrowers in arrears; and
- b) a link to the MABS website.

The information on the website must be easily accessible from a prominent link on the homepage.

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.

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.

14. A regulated entity must inform the consumer, in writing, when it intends to appoint a third party, other than its legal advisers, to engage with the consumer in relation to arrears and must explain the role of the third party.

15. A regulated entity must ensure that the level of contact and communications from the regulated entity, or any third party acting on its behalf, with a consumer in arrears, is proportionate and not excessive.

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.

CHAPTER 10

ADVERTISING

GENERAL REQUIREMENTS

1. A regulated entity must ensure that all its advertisements are **clear** fair and not misleading.
2. An advertisement must not influence a consumer's attitude to the advertised product or service or the regulated entity either by inaccuracy, ambiguity, exaggeration or omission.
3. The name of the regulated entity publishing an advertisement must be clearly shown in all advertisements.
4. The nature or type of the advertised product or service must be clear and not disguised in any way.
5. An advertisement must be designed and presented so that any reasonable consumer knows immediately that it is an advertisement.
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 **including information on the benefits and risks of the product and the costs and fees the consumer incurs**. 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.
7. Warnings and product specific information must be clear and must not be obscured or disguised in any way by the content, design or format of the advertisement.
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.
9. Any statement or promise contained in an advertisement must be true and not misleading at the time it is made. Any assumptions on which the statement is based must be reasonable, up to date and stated clearly.
10. Any forecast contained in an advertisement must not be misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
11. An advertisement must not be misleading in relation to:
 - a) the regulated entity's independence or the independence of the information it provides;
 - b) the regulated entity's ability to provide the advertised product or service;
 - c) the scale of the regulated entity's activities;

- d) the extent of the resources of the regulated entity;
- e) the nature of the regulated entity's or any other person IS involvement in the advertised product or service;
- f) the scarcity of the advertised product or service;
- g) past performance or possible future performance of the advertised product or service.

12. An advertisement that promotes more than one product must set out clearly the different features of each product in such a way that a consumer could distinguish between the **products to include information on the benefits and risks of each product.**

13. Any recommendations or commendations quoted must be complete, fair, accurate and not misleading at the time of issue, and relevant to the advertised product or service.

14. A recommendation or commendation may not be used without the consent of the author and, if the author is an employee of the regulated entity or a connected party of the regulated entity, or has received any payment from the regulated entity or a connected party of the regulated entity for the recommendation or commendation, the advertisement must state that fact.

15. Comparisons or contrasts must be based either on facts verified by the regulated entity, or on reasonable assumptions stated within the advertisement and must be presented in a **clear** fair and balanced way; and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly.

16 It is not necessary to display the required warnings set out in this chapter if the advertisement does not refer to the features or benefits of a product or service but only names the product or service and invites a consumer to discuss the product or service in more detail with the regulated entity.

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.

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 **or if there are criteria which must be complied with to qualify for such minimum price or potential maximum savings such criteria must be clearly specified.**

LENDING

19. Where an advertisement includes an annual percentage rate, the advertisement must clearly state if the underlying interest rate is fixed or variable **or compounded**. 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 a charge to a compound annual rate is applicable details of how the rate is compounded must be given.**

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.

20A. An advertisement for a lifetime mortgage must give display the annual percentage rate, the compound annual rate and the total cost of credit over the lifetime of the loan.

21. Advertisements for a fixed-rate loan must, where applicable, state:

Warning: You may have to pay charges if you payoff a fixed-rate loan early.

22. An advertisement for personal lending must contain the following warning:

Warning: If you do not meet the repayments on your loan, your account will go into arrears. This may affect your credit rating.

23. Advertisements for the consolidation of two or more debts must, where sample figures are offered in the advertisement, indicate the difference between the total cost of credit of the consolidated mortgage and the total cost of credit of the individual debts that are the subject of consolidation.

24. An advertisement for a debt consolidation mortgage must carry the following warning:

Warning: This new loan may take longer to payoff than your previous loans. This means you may pay more than if you paid over a shorter term.

25. An advertisement for a variable-rate residential mortgage must contain the following warning:

Warning: The cost of your monthly repayments may increase - If you do not keep up your repayments you may lose your home.

26. An advertisement must not describe a product or service as free where only a proportion of the charges for the service or product are free of charge.

27. a) An advertisement for an interest-only mortgage must contain the following warning:

Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest-only period.

b) An advertisement for an lifetime mortgage or home reversion agreement must contain the following warning:

Warning: Purchasing this product may negatively impact on your ability to fund future needs.

An advertisement for a lifetime mortgage must clearly indicate that while no interest is payable during the period of the mortgage the interest rate is compounded on an annual basis and is payable in full at the end of the term of the lifetime mortgage. The advertisement must also indicate how negative equity is treated in such circumstances.

SAVINGS AND INVESTMENTS

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 **or accrued** on the interest earned.

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.

30. An advertisement for a product where the promised 'return of capital' is only applicable on a specific date, must contain the following warning:

Warning: If you cash in your investment before (specify the particular date) you may lose some or all of the money you put in.

31. An advertisement for a product where there is no access to funds for the term of the product must contain the following warning:

Warning: If you invest in this product you will not have any access to your money for (insert time required before the product matures).

32 Information about the past performance of the advertised product or service or of the regulated entity must:

- a) be based on a product similar to that being advertised;
- b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or service;
- c) state the source of the information;
- d) be based on actual performance;
- e) state clearly the period chosen, which must be related to the term of the product being advertised; where that term is open-ended, the longest term available should be included;
- f) include the most recent period;

g) indicate, where they arise, details of transaction costs, interest and taxation that have been taken into account; and

h) state, where applicable, the basis upon which performance is quoted.

33 An advertisement which contains information on past performance must contain the following warning:

Warning: Past performance is not a reliable guide to future performance.

34 Where the regulated entity has a position or holding in the product the subject of an advertisement by that regulated entity it must include a statement to this effect in the advertisement.

35 Information about the simulated performance of the advertised product or service or of a regulated entity must:

a) be based on a simulated performance that is relevant to the performance of the advertised product or service or of the regulated entity;

b) not be selected so as to exaggerate the success or disguise the lack of success of the advertised product or service or of the regulated entity;

c) state the source; and

d) indicate whether, and to what extent transaction costs, interest and taxation have been taken into account.

36 An advertisement which contains information on simulated performance must also contain the following warning:

Warning: These figures are estimates only. They are not a reliable guide to the future performance of this investment.

37 Where an advertisement describes a product as "guaranteed", the advertisement must also clearly state the level, nature and extent of limitations of the guarantee and the name of the guarantor **and whether the guarantee is exclusive of costs and fees.**

38 If an advertisement contains a reference to the impact of taxation, it must:

a) state the assumed rate of taxation **and state whether the charge arises under the income tax or capital gains tax code;**

b) state, where applicable, that the tax reliefs are those currently applying, and state that the value of the tax reliefs referred to in the advertisement apply directly to the consumer, to the provider of the advertised product or service or its provider, as appropriate;

c) state, where applicable, that the matters referred to are only relevant to a particular class or classes of consumer with particular tax liabilities, identifying the class or classes of consumer and the type of liabilities concerned;

d) state who has the responsibility for obtaining the tax benefits advertised;

e) not describe the advertised product or service as being free from any liability to income tax unless equal prominence is given to a statement, where applicable, that the income is payable from a product from which income tax has already been paid; and

f) not describe the advertised product or service as being free from any liability to capital taxation unless equal prominence is given to a statement, where applicable, that the value of the advertised product or service is linked to a product which is liable to capital taxation.

39 Where the product that is the subject of the advertisement can fluctuate in price or value, an advertisement must contain the following warning:

Warning: The value of your investment may go down as well as up. You may get back less than you put in.

40 Where the return on an advertised product or service is not set until a particular date (for example, the maturity date of the advertised product or service), this must be clearly stated.

41 Where a product the subject of an advertisement is described as being likely to yield income or as being suitable for a consumer particularly seeking income and where the income from such product can fluctuate, the advertisement must contain the following warning:

Warning: The income you get from this investment may go down as well as up.

42 Where a product the subject of an advertisement offers the facility of a planned withdrawal from capital as an income equivalent, a regulated entity must ensure that the effect of such a withdrawal upon such product is clearly explained in the advertisement.

43 Where an advertised product or service is denominated or priced in a foreign currency, or where the value of an advertised product or service may be directly affected by changes in foreign exchange rates, the advertisement must contain the following warning:

Warning: This [product/service] may be affected by changes in currency exchange rates.

44 An advertisement for a product which is not readily realisable must state that it may be difficult for consumers to sell or exit the product and/or obtain reliable information about its value or extent of the risks to which it is exposed.

45 An advertisement for a product that cannot be encashed prior to maturity or which incurs an early redemption charge must clearly state that this is the case.

46 An advertisement for a product subject to front-end loading must state that:

a) deductions for charges and expenses are not made uniformly throughout the life of the product, but are loaded disproportionately onto the early period, and

b) the consumer must be warned that, if the consumer withdraws from the product in the early period, the practice of front-end loading will impact on the amount of money which the consumer receives, and

c) if applicable, that a consumer may not get back the amount they invest.

CHAPTER 11

ERRORS AND COMPLAINTS

ERRORS

1. A regulated entity must review, monitor and test its internal control systems on a regular basis in order to provide reasonable assurance that the potential for errors is minimised and that any errors can be readily identified.

2. A regulated entity must have procedures in place for the effective handling of errors,

which must include procedures for the:

a) the identification of all affected parties;

b) appropriate analysis of patterns of errors;

c) proper control of the correction process; and

d) escalation of errors to compliance/risk units and senior management.

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.

4. A regulated entity must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.

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.

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.

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.

HANDLING COMPLAINTS

8. A regulated entity must take all reasonable steps to seek to resolve any complaints with consumers.

9. When a regulated entity receives a verbal complaint, it must offer the consumer the opportunity to have the complaint treated as a written complaint.

10. A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

- a) the regulated entity must acknowledge each complaint in writing within five business days of the complaint being received;
- b) the regulated entity must provide the complainant with the name one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be processed any further;
- c) the regulated entity must provide the complainant with a regular written update on the progress of the investigation of the complaint at intervals of not greater than 20 business days;
- d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity will inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and of the consumers right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, and will provide the consumer with the contact details of such Ombudsman; and
- e) within five business days of the completion of the investigation, the regulated

entity must advise the complainant in writing of: i) the outcome of the investigation;

ii) where applicable, the terms of any offer or settlement being made;

iii) the right to refer the matter to the Financial Services Ombudsman or the Pensions Ombudsman, and

iv) the contact details of such Ombudsman.

11. A regulated entity must maintain an up-to-date record of all complaints subject to the complaints procedure. This record must contain the details of each complaint, a record of the regulated entity's response(s), any other relevant correspondence or records and the action taken to resolve each complaint.

Comment: The Group suggest that there be a specific heading in this Chapter to the Financial Services Ombudsman and the Pensions Ombudsman and that the role of each be set out in detail.

CHAPTER 12

RECORDS AND COMPLIANCE

RECORDS

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.
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.
3. A regulated entity must ensure that, where it accepts an instruction from a consumer that is subject to any condition imposed by the consumer, it maintains a record of the condition to which the instruction is subject.
4. A regulated entity must maintain a list of its customers who are consumers as defined by this Code.
5. A regulated entity must maintain up-to-date records containing at least the following:
 - a) a copy of all documents required for consumer identification and profile;
 - b) the consumer's contact details;
 - c) all information and documents prepared in compliance with this Code;
 - d) details of products and services provided to the consumer;
 - e) all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;
 - f) all documents or applications completed or signed by the consumer;
 - g) copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; ~~and~~
 - h) all other relevant information concerning the consumer; **and**
 - i) any other relevant documentation concerning the consumer (eg deed of trust, power of attorney or court order in relation to guardianship).

6. Details of individual transactions must be retained for six years after the date of the transaction. All other records must be retained for six years from the date the relationship ends.

7. Records are not required to be kept in a single location but must be complete and readily accessible.

COMPLIANCE WITH THIS CODE

8. Where the Central Bank requires a regulated entity to provide information in respect of the regulated entity's compliance with this Code, such regulated entity is thereby required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any reasonable period of time or format that may be specified by the Central Bank.

9. Where the Central Bank requires information in respect of a regulated entity's compliance with this Code, and the Central Bank is of the opinion that a meeting with personnel of the regulated entity is necessary in order to procure such information in a satisfactory manner, the regulated entity must arrange for appropriate personnel to participate in such a meeting in order to provide the required information to the Central Bank.

10. A regulated entity must, upon being required by the Central Bank to do so, provide to the Central Bank records evidencing compliance with this Code for a period prior to such requirement as the Central Bank may specify (up to a maximum period of six years).

CHAPTER 13

DEFINITIONS

In this Code:

"advertisement" means any commercial communication in respect of a regulated entity, which is addressed to the consumer public or a section of it, the purpose being to advertise a product, service the subject of this Code or regulated entity which is covered by this Code, excluding name plaques, sponsorship material and a prospectus drawn up in accordance with the Prospectus Directive (2003/71jEC);

"advertised product or service" means the product or service that is the subject of an advertisement;

"associate" in relation to a person means:

a) an undertaking in the same group as that person;

b) any other person whose business, private or familial relationship with the first person or its associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties; or

c) any other persons whose business, private or familial relationship (other than as arises solely because that person is a client of the firm) with the first person is such that he or she has influence over that person IS judgment as to how to invest his property or exercise any rights attaching to his investments;

"associated undertaking" means an associated undertaking within the meaning of Regulation 34 of the European Communities (Companies Group Accounts) Regulations 1992;

"basic banking product or service" means a current account, a demand deposit account, or a term deposit account with a term of less than one year and where withdrawals are permitted;

"bundling" means the packaging of two or more products into a bundle, where each_of these products can be purchased separately on the market;

"business day" means any day except Saturday, Sunday, bank holidays and public holidays;

"certified person" has the meaning assigned to it by Section 55 of the Investment Intermediaries Act 1995;

"charges" means any cost or fee which a consumer must pay in connection with a product or service provided by a regulated entity;

"Chinese walls" means an arrangement within the organisation of the regulated entity (or between the regulated entity and any associate of that regulated entity) which requires information held by the regulated entity (or as the case may be, associate, or a particular operating unit within the regulated entity or associate in the course of carrying on one part of its business of any kind) to be withheld in certain circumstances from other operating units or from persons with whom it deals in the course of carrying on another part of its business of any kind;

"claimant" means a person making a claim under an insurance policy entered into by a consumer and can be a person, other than the policyholder;

"complaint" refers to an expression of grievance or dissatisfaction by a consumer, either verbally or in writing, in connection with:

- a) the provision of a product or service to a consumer by a regulated entity, or
- b) the failure of a regulated entity to provide a product or service to a consumer;

"compound annual rate" is the equivalent annual rate of interest (where interest is paid **or charged** on previously earned/**charged** interest as well as on the principal), payable at the end of the year, on a deposit **or payable at the end of the term in respect of a lifetime mortgage**;

"connected party" shall, except where otherwise stated, include a partner, officer, controller, associated undertaking, related undertaking or subsidiary undertaking or employee of the regulated entity, including any associate of the person concerned;

"consumer" means any of the following:

- a) a natural person acting outside their business, trade or profession;
- b) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million (for the avoidance of doubt a group of persons included partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate);
- c) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million); or
- d) a member of a credit union;

and includes where appropriate, a potential 'consumer' (within the meaning above);

"credit institution" means the holder of an authorisation issued by the Central Bank or by a competent authority of another Member State for the purposes of EU Directive 2006j48jEC relating to the taking up and pursuit of the business of credit institutions;

"customer" means any person to whom a regulated entity provides or offers to provide a service the subject of this Code, and any person who requests such a service;

"default investment strategy" has the meaning in Part X of the Pensions Act 1990;

"deposit agent" means any person who holds an appointment in writing from a single credit institution enabling him to receive deposits on behalf of that institution and prohibiting him from acting in a similar capacity on behalf of another credit institution;

"deposit broker" means any person who brings together with credit institutions persons seeking to make deposits in return for a fee, commission or other reward;

"employee" means a person employed under a contract of service or a person otherwise employed by a regulated entity;

"fair analysis of the market" means providing advice on the basis of a sufficiently large number of contracts and product producers available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to meet the consumer's needs;

"group" includes a company, its parent and its subsidiaries and any associated undertaking or related undertakings;

"home reversion agreement" has the meaning in Part V of the Central Bank Act 1997;

"inducement" means any gifts or rewards (monetary or otherwise) provided to a regulated entity but does not include:

a) disclosable commission; or

b) goods or services which can reasonably be expected to assist in the provision of services to consumers and which are provided or are to be provided under a soft commission agreement;

"Injuriesboard.ie" means the board known as such established under the Personal Injuries Assessment Board Act 2003, or any successor thereto;

"insurance intermediary" has the meaning in the European Communities (Insurance Mediation) Regulations 2005;

"insurance undertaking" has the meaning in the Insurance Act 1989;

"investment product" means an "investment instrument" within the meaning of Section 2 of the Investment Intermediaries Act, 1995 but does not include:

a) non-life insurance policies; and

b) life assurance products which do not have a surrender or maturity value;

"lifetime mortgage" means a loan secured on a borrower's home where:

a) interest payments are rolled up on top of the capital throughout the term of the loan;

b) the loan is repaid from the proceeds of the sale of the property; and

c) the borrower retains ownership of their home whilst living in it;

"limited analysis of the market" means providing advice on the basis of a limited number of contracts and product producers available on the market, i.e., not tied to one product product but not a fair analysis of the market;

"Member State" means a Member State of the European Economic Area;

Comment: Perhaps a definition of a mortgage would be helpful so that in interpreting the Code it is clear whether specific provisions apply to ordinary mortgage products or include lifetime mortgages.

"mortgage intermediary" has the meaning specified in Section 2 of the Consumer Credit Act 1995;

"MiFID Service" means any service or activity set out in Schedule I of the European Communities (Markets in Financial Instruments) Regulations 2007, but not including any service or activity of a person to whom such Regulations do not apply by virtue of Regulations 3, 4 and 5 of such Regulations;

"officer" in relation to a regulated entity, means a director, chief executive, manager or secretary, by whatever name called, or an office or position, the holder of which reports directly to a director, chief executive, manager or secretary;

"outsourced activity" is where a regulated entity employs another person (other than a natural person who is an employee of the regulated entity under a contract of service) to carry out an activity on its behalf;

"payment service" means any payment service or activity as defined in Schedule 1 to the European Communities (Payment Services) Regulations 2009;

"person" means a natural person or a legal person;

"power of attorney" includes a general power of attorney and an enduring power of attorney for the purposes of the Powers of Attorney Act 1996

"protection policy" for the purposes of this Code includes the following:

a) insurances of a class falling within the European Communities (Non-Life Insurance) Framework Regulations 1994; and

b) insurances of classes I, III and IV as set out in Annex I to the European Communities (Life Assurance) Framework Regulations 1994 where the purpose and intention of the policy is solely to provide protection;

"PRSA" has the meaning in Part X of the Pensions Act 1990;

"record" means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form;

"regulated activities" are services of a financial or investment nature that are subject to the regulation of the Central Bank of Ireland;

"regulated entity" means a financial services provider authorised, registered or licensed by the Central Bank or other EU or EEA Member State carrying out regulated activities in the State;

"related undertaking" means:

a) companies related within the meaning of section 140(5) of the Companies Act 1990;

b) undertakings where the business of those undertakings has been so carried on that the separate business of each undertaking, or a substantial part thereof, is not readily identifiable; or

c) undertakings where the decision as to how and by whom each shall be managed can be made either by the same person or by the same group of persons acting in concert;

"retail credit" means the provision of credit to relevant persons as defined in Section 28 of the Central Bank Act 1997;

"soft commission agreement" means any agreement under which a regulated entity receives goods or services, in return for which it agrees to direct business through or in the way of another person;

"sponsorship material" means material that only communicates the regulated entity's brand name or generic product/service types, rather than the promotion of a specific financial product/service;

"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;

Comment: There is minimum reference to the need to complete a SFS throughout the Code. Perhaps more emphasis should be given to the requirement for a SFS to enable a regulated entity to assess for example –

the suitability of an investment product – income stream v capital requirement

in advancing a loan the ability of the consumer to repay the loan (this assists with responsible lending and responsible borrowing)

"standard PRSA" has the meaning in Part X of the Pensions Act 1990;

"terms of business" means the document in which a regulated entity sets out the basis on which it will conduct business with consumers;

"tracker bond" means a deposit or life assurance policy which contains the following features:

a) a minimum payment, at the expiration of a specified period of time, of a specified percentage of the amount of capital invested by the consumer in the product; and

b) a potential cash bonus payable after a specified period of time, which is linked to, or determined by, changes over the period of investment in the level of one or more recognised stock market indices, commodity prices, any other recognised financial indices or the price of one or more securities specified at the outset or from time to time;

"tying" means the sale of two or more products together in a package and at least one of these products is not sold separately;

"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.

APPENDIX A

KEY FEATURES DOCUMENT FOR TRACKERS

HOW DOES THE XXXX (INSERT NAME) TRACKER BOND WORK?

This section must include:

- the name and address of the product producer(s);
- a brief description of the benefits promised by the tracker bond to the consumer, including the promised payment which applies. The compound annual rate equivalent of the promised payment, related to the total investment amount, must be shown;
- if averaging and/or any lock-in provisions can impact negatively on the promised benefits, as compared with an identical investment without such benefits, the way in which such an averaging or lock-in provision can lead to reduced returns (which must be disclosed prominently);
- whether or not the tracker bond will benefit from dividends payable on the underlying shares; if the tracker bond will benefit from such dividends, a clear statement of the extent to which the tracker bond will benefit; if the tracker bond will not benefit from such dividends, a clear statement that the tracker bond is suitable only as a capital growth investment;
- if the relevant credit institution or insurance undertaking benefits from any dividend or interest income arising from the investment used to secure the cash bonus promised to the consumer, a statement of this fact;
- if there is any currency risk to the consumer, in relation to the benefits promised, a statement of this risk; and
- the period to the date of the promised payment.

WHERE DOES MY INVESTMENT GO?

This section must show clearly the split of the investment amount (or a typical investment amount for this type of product if the disclosure is being made on a provisional or generic basis) into three components:

- the open market value, at the date of investment, of the payment promised to the consumer;
- the open market value, at the date of investment, of the cash bonus promised to the consumer; and
- charges representing the balance.

The implied compound annual rate of the amount promised to the consumer, relative to the total investment amount, should also be stated prominently.

The disclosure should take the following format:

Your proposed investment of €xx,xxx will be used, at the date of investment as follows: €XX,XXX, or xx%, will be used to secure the promised payment of €xx,xxx payable after xx years and yy months. This is equivalent to a promised return on this part of your investment of xx% pa, before tax is deducted.

€xx,xxx, or xx%, will be used to secure the cash bonus which may be payable after xx years and yy months.

€xx,xxx, or xx%, will be taken in charges. If applicable, intermediary remuneration must be disclosed in this section. €xx,xxx Total

If the cash bonus is zero, the promised payment will represent a return of x.x% pa, on your total investment over the period to the date of the promised payment before any tax is deducted.

The open market value referred to above is the open market cost of the benefit promised to the consumer at the date of investment net of the value of any commission or other reward or benefit payable to the credit institution or insurance undertaking and/or a connected party to that credit institution or insurance undertaking.

DO I HAVE ACCESS TO MY INVESTMENT?

In this section, the consumer must be informed of the limited nature of the promised payment, e.g. that it is payable on one specified date only.

This section must also include:

- whether or not the consumer can get access to part or all of their investment, before the date of the promised payment;
- if access is provided before this date, whether the encashment will be on promised terms or not; and
- whether or not the consumer is likely to suffer a penalty or financial loss if access is provided to part or all of their investment, before the date of the promised payment.

WHAT HAPPENS IF I DIE BEFORE THE TRACKER BOND MATURES?

This section must include:

- the circumstances, if any, in which the tracker bond may or must be encashed on death and the procedure for encashing it on death, if this is allowed; and
- the benefit payable on encashment of the tracker bond on death, when this benefit is payable, how this benefit is calculated, and whether there is any promised level of benefit payable on death.

WHAT ABOUT TAX?

This section must include:

- the tax that may be deductible by the regulated entity from benefits payable;
- the circumstances, if any, in which the tax referred to above, may not be deductible from the benefits payable;
- a general statement that a consumer should satisfy themselves in relation to revenue reporting requirements and the implications of non-disclosure where required.

APPENDIX B

PRSA (PERSONAL RETIREMENT SAVINGS ACCOUNT)

WHAT IS A PRSA?

A PRSA is a way of helping people provide for their retirement by saving now. It is a longterm investment product sold by financial institutions and intermediaries or brokers. It allows you to create a pension fund for yourself when you retire; you can vary the amount you pay into it over time and, if you change employment, you can continue to use the same PRSA. You can switch from one PRSA to another at any time free of charge.

Types of PRSA:

There are two types of PRSA:

- Standard PRSA - where the charges you have to pay are capped and where there are certain investment restrictions on how your money is invested.
- Non-Standard PRSA - where there is no maximum level of charges and there are fewer investment restrictions.

DO YOU NEED A PRSA?

To see if you need a PRSA you should ask yourself some questions:

- Can you join an existing pension scheme in your job? You should find out if there is a good scheme available to you through your job. If not, you will need to consider making provision for your retirement and should consider a PRSA. If you already have good pension arrangements you may not need to make any additional provisions or you may be able to top-up your benefits through making Additional Voluntary Contributions (AVCs).
- What if you are in a Defined Benefit Scheme? If you have a defined benefit pension scheme - this promises a pension related to your salary, for example, two thirds of final salary on retirement - you may not need to make any further pension provisions or you may already have a facility to make additional voluntary contributions (AVCs). Transferring from a defined benefit scheme into a PRSA involves a risk and should only be done after very careful assessment of your financial position and the advantages/disadvantages for you - you will be foregoing a defined salary related pension in retirement for an uncertain income.
- What if you are in a Defined Contribution Scheme? If you are in a defined contribution scheme you are already carrying the investment risk - your pension will depend on the contributions you make together with the investment performance of your fund less the charges involved. But your employer may be making a contribution to the Scheme - would this contribution continue if you transferred into a PRSA?
- Should you start a PRSA if you already have a Personal Pension Plan? You will need to take professional advice based on your personal circumstances.

WHAT TYPE OF PRSA IS BEST FOR YOU?

A standard PRSA is likely to meet the requirements of most people. You cannot be charged for more than the maximum allowed (5% of contributions paid and 1% per year of the PRSA assets).

The level of charges is very important. Charges reduce the fund you can build up. The size of your fund on retirement will depend on your contributions and the Investment performance less the charges deducted. Investment performance cannot be predicted, but higher charges are just like a weight handicap in a horse race - creating a need to produce a better investment performance just to remain level with products carrying lower charges.

Charges on Non-Standard PRSAs are not capped and, in most cases, are higher than on Standard PRSAs.

A second difference between Standard and Non-Standard PRSAs is in the way in which your money is invested. A standard PRSA invests only in pooled funds, where the risk is spread across a large number and type of investments. A Non-Standard PRSA can offer you a wider investment choice. If a Non-standard PRSA is offered to you on the basis of the investment choice it gives you, you need to be sure that you understand the investment choices, and that you understand why you need them. This is your pension, your income in your retirement years. If you do not understand how your pension will be invested then perhaps you should consider again if this particular product is the one for you.

You should keep the level of your contributions and the investment performance of your PRSA under regular review, so you can see if your PRSA will provide you with the pension you need.

If you are near retirement age this will have implications of the type of PRSA that you should choose.

BUYER BEWARE - WHAT TO LOOK OUT FOR

Where a Non-Standard PRSA is being offered, you should ask for a full explanation of the differences between this product and the Standard product, especially the additional costs to you.

Beware of promises of better returns on Non-Standard PRSAs. Predicting investment performance is notoriously difficult.

Beware if you are advised to abandon an existing pension plan in favour of a new PRSA - ask for details in writing why this would be the best course of action for you.

Make sure you can afford the level of monthly payment suggested and that it is the most effective payment for tax relief purposes.

The Central Bank has instructed the sellers of PRSA products to obtain a declaration, signed by themselves and by their customer, where a Non-Standard PRSA is recommended.

DO NOT PURCHASE A NON-STANDARD PRSA WITHOUT READING THE DECLARATION FULLY AND, ONLY IF SATISFIED, SHOULD YOU THEN SIGN IT

APPENDIX C

NON STANDARD PERSONAL RETIREMENT SAVINGS ACCOUNT

DECLARATION

SECTION A: TO BE COMPLETED BY THE CONSUMER

y I declare that I understand that the charges payable on a non-standard PRSA may be higher than those for a standard PRSA.

y I declare that I understand that the investment risks associated with non-standard PRSA may be higher than those for a standard PRSA.

y I declare that I understand that the Central Bank recommends that consumers should seek independent financial advice, before buying a non-standard PRSA.

y I declare that I am satisfied that I require a pension product and that, having reviewed the differences between standard and non-standard PRSAs, a non-standard PRSA is the most appropriate pension product for me.

Signed:

Date:

SECTION B: TO BE COMPLETED BY THE VENDOR (WHETHER PRODUCT PRODUCER OR INTERMEDIARY).

y I declare that in my opinion it is in the best interests of the above named to purchase a non-standard PRSA rather than a standard PRSA.

y I declare that in my opinion the non-standard PRSA I propose to sell the above named is the product most suited to this consumer from among all those I am able to advise on.

y I declare that I have fully explained to this consumer the differences between this nonstandard PRSA and standard PRSAs, and, where this is the case, focused on the fact that the charges are higher and the investment risks are greater for this nonstandard PRSA.

Signed:

Date:

Name of Firm:

Position Held: