The PIBA submission on the Review of the Consumer Protection Code
Consultation Paper CP 47

JANUARY 2011

The Professional Insurance Brokers Association (PIBA) is the largest independent representative body for insurance and mortgage brokers with nearly 900 member firms throughout Ireland. This submission outlines the response, on behalf of PIBA members, to the proposals contained in the consultation paper on the review of the Consumer Protection Code - CP 47 and other issues which we feel are appropriate to be considered as part of the review.

Overview

PIBA welcomes the review of the Consumer Protection Code. However, we firmly believe that the objectives of the Central Bank of Ireland should not be consumer protection only but also to ensure the proper and orderly conduct of the financial services industry which would include "fair competition" and a "level playing field" for all financial services providers. Therefore, we would like to see the review of Consumer Protection Code encompassing an examination and debate in the following areas:

Banks targeting clients by using the money transmission system

We have received numerous complaints from our members about the practice of Banks contacting clients on foot of monitoring bank account transactions and offering in house competing financial products (such as life assurance and investment bonds) to clients. This amounts to an abuse of the money transmission system.

Banks are in a privileged position and are abusing this by aggressively targeting clients using information gained from actively monitoring client's bank account transactions. This practice is clearly undermining the integrity of the financial services system, exposing consumers to predatory commercial practices by the banks involved and undermining independent advice. We would request that this issue is addressed as part of the review of the Consumer Protection Code.

We therefore call for a direct prohibition in the Code on credit institutions using client account information gleaned from the operation of the money transmission system for the purpose of promoting insurance or investment products and services to clients.

Dual pricing in the lending and insurance markets

Another issue of great concern to PIBA, which we feel is appropriate to be considered as part of the review of the Consumer Protection Code, is the practice of *dual pricing* by some credit institutions in the lending market, i.e. Lenders offer more favourable underwriting criteria and rates to borrowers

who deal directly through their branch network than to similar clients who seek to borrow similar funds from the same credit institution, using the services of an independent credit or mortgage intermediary. This is clearly disadvantaging consumers who wish to use the services of an independent credit or mortgage intermediary.

Dual Pricing in the insurance market is also another practice of concern to PIBA whereby Insurers offer lower premiums to consumers who deal directly with the insurer than to similar consumers who access the same insurance product through an independent insurance Broker. This is particularly prevalent in general insurance and especially in "hard markets" where the product is being rationed and distribution cut. It has also been used as a strategy by general insurers to increase their direct book which has a greater persistency and retention rate. This operation impedes competition and boosts prices in the long run for the consumer. In 2005, the Competition Authority's study of "Competition issues in the non-life insurance market" report pointed out that insurer's faced significantly higher price elasticity of demand for Broker business than direct business i.e. if they increased premiums, Brokers were more likely to search for alternatives for their consumers than direct consumers who were more likely to accept premium increases.

General insurers may retort that there are higher costs in dealing with Brokers compared with dealing direct. However, some of the differential figures that have been reported over the years make nonsense of this claim e.g. it has been common enough to hear motor insurance direct rates of €400 compared to Broker rates of €600 with commission of €45. Is it realistic to suggest that it costs €400 to deal directly with one client and yet to deal with a Broker with perhaps hundreds of clients with the insurer (and the cost of client interface is borne by the Broker) and is dealt with by the EDI system, the cost is €555 for the same risk?

It seems clear to us that dual underwriting and pricing allows general insurers and credit institutions to manipulate the market to suit its own ends. It means consumers are being discriminated against on the basis of the method of introduction to the provider. We believe the Central Bank of Ireland should take action to stamp out this insidious practice by insisting that products are delivered at the same "wholesale rate" for different channels. Where a provider offers different underwriting or pricing terms between direct and Broker channels, it should be required to justify this to the Central Bank on the basis of proven product, target market or distribution costs.

Applicability of the CPC to certified persons

The CPC does not currently apply to "*certified persons*". Instead certified persons are subject to conduct of business rules provided by their approved professional body. These rules are not readily available for independent inspection, are frequently years out of date, and do not reach the same standards as the CPC. Approved professional bodies tend to 'guard' their conduct of business rules, keeping them to themselves and their members.

Therefore there is an unequal playing field between MAIs and AAs, who must comply with the CPC when providing insurance and investment services to clients, and certified persons who do not have to comply with the CPC when providing similar services. Pending the conclusion of a review of the IMD at European level and its potential application to all persons involved in insurance mediation, including those involved on an incidental basis, we would urge the Central Bank of Ireland to:

- Require all approved professional bodies to place their current conduct of business rules on the Central Bank of Ireland website, available for public inspection.
- Use the powers provided to it by Section 58 of the Investment Intermediaries Act, 1995, to require all certified persons to comply with the CPC when providing relevant financial services in the State.

Proposed Changes

The concept of vulnerable consumers

PIBA does not believe that within the CPC it is correct in principle or indeed feasible in practice to attempt to create two different categories of consumers, i.e. vulnerable and non vulnerable, with vulnerable customers being provided with a '*greater* level of care and protection when being sold a financial product or service', for the following reasons:

- In principle, it suggests that non vulnerable consumers can be provided with a *lesser* duty of care than must now be applied to vulnerable consumers. There is no legal precedent or protection for providers to back up such a suggested differentiation of duty of care to consumers. All consumers are entitled legally to a similar level of duty of care.

The CPC is, therefore, erring in law in attempting to create two different levels of duty of care by providers to consumers. It has no legal basis for doing so as:

- There is no equivalent differentiation of duty of care to consumers in the IMD or MIFID.

- The term used, i.e. *'vulnerable'* customer, is a pejorative term, implying immediately the strong possibility of financial 'abuse' by the provider. Indeed CP47 itself refers to the 'incidence of financial abuse of older persons', without qualifying that a significant amount of such reported financial 'abuse' is in fact carried out by relatives and others in whose care the older person may be in, and not by regulated financial services providers.

The suggested categorisation of a consumer as 'vulnerable' is, therefore, likely to lead to a situation where the Courts and the Financial Services Ombudsman scheme may naturally attach considerable weight to such 'vulnerable' status when deciding on cases of alleged mis-selling of financial products and services. In effect, providers dealing with such 'vulnerable' consumers will be assumed to be 'guilty' until they can prove their 'innocence' in their dealings with such consumers.

The suggested definition of 'vulnerable' customer in the draft CPC is too wide ranging and is essentially a subjective definition, e.g. 'a consumer that is vulnerable because of ....*circumstances'*. The list of examples included contains terms that are not defined, e.g. '*low income*' and a '*low level of educational attainment'* and a '*substantial sum to invest*', etc. On a practical level, therefore, providers will have extreme practical difficulty in categorising clients as 'vulnerable' and 'non vulnerable', due to the very vague definition of a vulnerable consumer. In effect, all clients could potentially be classified as 'vulnerable' in some respect.

Because of the very wide ranging definition of 'vulnerable consumer' providers will be required to significantly enhance their current fact finding process to a level where it may well become intrusive and offensive to some consumers. Examples include:

- Providers will have to seek information from clients on their 'level of educational attainment'. Some clients may find this irrelevant or intrusive, given the type or nature of financial service being sought.

- How can a provider determine whether a particular client has a 'diminished mental capacity ..to make a decision'? What questions can a provider ask a client to determine where they have a diminished mental capacity'? How is 'diminished' to be judged ...on a relative or absolute basis?

We believe that because of the perceived higher level of protection afforded to vulnerable consumers, all clients may naturally agitate to be classified by the provider they are dealing with as being 'vulnerable'.

Consequently, clients not classified at the outset by a provider as 'vulnerable' may well later base an allegation of mis-selling by the provider on the basis that the provider failed to correctly categorise them as a vulnerable consumer and hence failed to take into account their particular 'vulnerable'

circumstances. Given the vague and wide ranging proposed definition of 'vulnerable consumer' many clients may well succeed with such complaints.

Providers may therefore be under significant pressure to categorise virtually ALL of their clients as 'vulnerable', which undermines the whole point of having such a category.

The likely reaction of providers to the vulnerable consumer categorisation will be:

- Avoidance of such clients, if possible, particularly if the level of financial reward for the provider in providing a service to such a consumer is low.
- Investment recommendations will be confined almost exclusively to deposits, as any other high risk investment recommendation effectively gives the client a put option against the provider, i.e. if the investment turns out right, the client won't complain, but if the investment loses money, the client is highly likely to go to Court or to the FSO basing their allegation of mis-selling heavily on their 'vulnerable' categorisation.

PIBA believes that the CPC (without the concept of vulnerable consumer) is robust enough to provide adequate protection to ALL consumers, e.g.

- The new product producer responsibilities for investment products in paragraph 43 of Chapter 3.
- The new expanded specific requirements a) to d) of Knowing the Consumer, in paragraph 1 of Chapter 5.

Provision of information to the consumer – verbal interactions (Chapter 12, provision 1)

PIBA questions the feasibility of the requirement for regulated entities to keep contemporaneous record of the detail of verbal interactions. We feel that it is more appropriate to keep contemporaneous notes of the salient points of the conversation rather than every single detail.

Power of attorney (Chapter 3, provision 8)

There are informal practices in relation to General Insurance products whereby children of elderly/vulnerable consumers assist them in filling out proposal forms. The proposed provision here should not interfere with this practice in any way.

Suitability (Chapter 5, provision 10)

PIBA believes that the provision of the Statement of Suitability/Reason Why letter should be permissible up to the conclusion of contract or expiry of cooling off period, if later. Members have consistently outlined that the current requirement is impractical. For example, if the consumer is being presented with options at the point of sale, the reason why letter will be a strategy statement with different options – what relevance will this be to the consumer if he is reviewing it in five years;

surely the specific option selected and salient details for this would be better to have in a post point-of- sale reason why letter?

Suitability (Chapter 4, provision 11)

PIBA does not believe that there should be a 'most suitable' requirement when a provider offers a range of product options to the consumer. IMD currently only requires an '*appropriate'* recommendation in relation to fair analysis advice, while MIFID only requires '*suitability'* where investment advice is being provided. Therefore, a 'most suitable' requirement is goldplating IMD and MIFID requirements.

In any event, 'most suitable' at the point of sale is a subjective judgement in the case of many pension and investment products, where future benefits may not arise for many years and will be dependant on future investment returns, which cannot be predicted in advance.

Suitability of Mortgages

PIBA believes that a clear distinction should be made in this section (Chapter 5, provisions 13 – 16) between the obligations of intermediaries and lenders. Intermediaries are not underwriters and they do not have the same access to client data as credit institutions have such as running a credit check. Intermediaries can only work within the parameters of the Lenders criteria and the requirements set down by the "Knowing the customer" and "Suitability".

Standard Financial Statement (SFS)

We do not see the merit in requiring intermediaries to complete a separate Standard Financial Statement (SFS). We propose that the information required in the SFS should be incorporated within the mortgage application to avoid duplication of inputting data.

Products Disclosure

We believe there needs to be a clear distinction of responsibilities in this area. We believe the majority of duties/responsibilities outlined here are those of product providers not intermediaries. The product provider / manufacturer should be required to do a risk assessment of its products and the strengths of guarantees attached to same. Intermediaries should be obliged to give this information to consumers. Whilst mindful of the need to promote consistency in the risk assessment of products, PIBA believes the first step should be to ensure that each Product Provider conducts a risk assessment of the product they manufacture and clearly communicates its views to Brokers and consumers. The provider must also be made stand over that view if challenged at a later stage.

We believe that a 1-7 scale system of risk rating, as provided under the UCITS Key Investor Information document, rather than the proposed traffic light system would be more meaningful. This means that product providers would risk rate their products from 1(low) to 7 (high). PIBA is currently conducting research on risk assessment following the Friends First ISTC bond debacle. We will be happy to share any insights we have with the Central Bank of Ireland once the research is finalised.

PRSAs

We believe that Appendices B and C in relation to PRSAs add little value to the consumer and are no longer required for the following reasons:

- The requirements effectively assume that a consumer is always better off with a Standard PRSA than with a non Standard PRSA, particularly in relation to charges. This is not necessarily accurate for a wide variety of reasons:
    - Some Standard PRSA products in the marketplace have higher charges than other non Standard products.
    - Non standard PRSA products offer a wider range of investment fund options, as Standard PRSA are legally confined to funds which meet the requirements of 'pooled funds' in the Pensions Act.
- The requirements duplicate existing PRSA disclosure and declaration requirements under the Pensions Act, 1990.
- Other provisions of the CPC, such as General Principles 1,2,3 and 6, already provide adequate protection for consumers against the potential risk of being mis-sold a non Standard PRSA.
- Not all PRSA providers offer both Standard and non Standard PRSAs; therefore there is not necessarily always a choice between recommending a Standard or Non Standard PRSA from the same PRSA provider.
- The requirement to explain the choice of non-standard PRSA is now separately noted for the statement of suitability.

Product Producer Responsibilities

PIBA welcomes the additional proposed responsibilities on product producers in relation to the design of investment products and the subsequent marketing of investment products. We believe profiling of target customers could be complimentary to appropriate risk disclosure which we again believe is primarily a product producer responsibility. We would not however welcome any notion of an oversight role from product producers to Independent Brokers.

Recommendations from the Review of the Intermediary Market

PIBA welcomes the recommendations of the review of the intermediary market particularly the re-introduction of the term "Broker" into the industry.

Under recommendation 8, pg 13, we suggest this be qualified by "where commission can be varied". In addition it may suit some consumers and firms to pay initial charges by fees and (because they are low) recurring charges by commission. The way the current fee based option is set out it may be interpreted as forcing the Broker to charge initial and renewal charges upfront to the customer. It would be preferable if this was clarified as follows:

"Where commission can be varied, the entity must allow the client the option to pay for its initial services by fee or commission and its recurring services by fee or commission; and"

Under question 15, we agree with the extension of non-cancellation of appointments on the grounds of levels of business introduced to non-insurance product providers. We believe that there are even lower maintenance charges for non insurer product producers with Broker appointments and we believe this is a key principle to enable Brokers to act with independence and in the best interest of their clients.

Under question 16, PIBA are concerned that this may create a duplication of disclosure requirements for life assurance. Life products are already subject to commission disclosure under the Life Assurance (Provision of Information) Regulations, 2001. We believe that Chapter 3, clause 74 should be extended to include life & non- life insurance product to avoid duplication of requirements. For other (non-insurance) products we feel that the system for general insurance products should be adopted i.e. disclosure of the existence of commission arrangements and disclosure that these amounts paid are available on request. If there are different regimes for life and non-life disclosure and non insurance product disclosure, this would be far too complex for both consumers and Brokers.

In relation to Fair Analysis, PIBA refers to the attached Fair Analysis clarification document on the practical application of Fair Analysis and exchange of correspondence between PIBA and the Financial Regulator on the matter. It should be noted that it was PIBA's view which was expressed in the Intermediary Working Group that the concept of Fair Analysis was not to be aligned to the Authorised Advisor concept but instead be a benchmark level of search that is consistent with market norms, letting competition and consumer choice drive the actual extent of search beyond this.

Unsolicited Contact

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

PIBA agrees with the current code times for Monday to Friday (9am to 9pm) cold calling restrictions rather than the proposed 7pm cutoff. We would suggest an earlier finish Saturdays (5pm) – the current code allows until 9pm.

We believe the restrictions outlined at chapter 3, provision 33 are unnecessary. A period of 2 or 3 business days should suffice as a limit from the first call. We would question the rationale for having any outer limit on when the ultimate sale is made, but if there is to be one it should be in the region of 3 – 6 months from initial contact (otherwise the salesperson could end up in and endless series of initial meetings and sales meetings with the potential client).

We also believe provision 34 should be deleted as unnecessary.

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?

PIBA feels that the coldcalling requirements should be amended to allow cold calling for pensions given that clients are protected in any event from a sale being concluded on the first unsolicited visit or telephone call. The government have prioritised the extension of pension coverage so it makes sense to permit calling for pensions. In addition, business calling is no longer permitted as a separate entry. Since most current calling to businesses would have highlighted pension planning for business owners or employees, admitting pensions to the approved list for calls will ensure this activity is not restricted.

Again, we urge the Central Bank of Ireland to look at the current practice of banks using information gleaned from operation of the money transmission system to target clients for other financial products and services, as part of this section of the code.

Comments regarding revised code with incorporated changes

Chapter 3: Common Rules – General Requirements

Provision 2 - PIBA believes that it is unnecessary to insert the second sentence in this requirement and see no rationale for its inclusion. The two business day's restriction is unrealistic and obligating firms to write to clients to explain the reason for a delay will only serve to further delay acting on the instruction. Many times intermediaries are reliant on Product Providers to action client requests which consumers may have submitted via the intermediary. These providers may have different timeframes for different service deliverables and the Broker will endeavour to give the client a reasonable estimate of when he expects a service to be delivered.

Provision 5 - This is a requirement which many of our members have expressed frustration at having to comply with. PIBA believes that the requirement to receipt direct debit mandates is completely unnecessary and is of no benefit to the consumer where the regulated entity is not a bank, as direct debits are not negotiable instruments. We request that this requirement is removed in relation to intermediaries or rationale given as to why this requirement is necessary. We would suggest that an alternative to the requirement to issue this receipt would be that where the intermediary provides a copy of the application which also has the copy of the completed mandate there is no requirement to issue an acknowledgement.

Provision 43 - The definition of investment products here captures open ended or whole of life protection policies with a residual value and savings plans. We suggest the focus of this initiative be initially confined to lump sum investments. We also suggest that the product producer conduct an assessment of any guarantee attached to the product not just name the guarantor.

Provision 44 – While Provision 43 requires product producers to 'identify' the target market for an investment product, etc. it does not require the product producer to provide that information to intermediaries who may be selling the product to consumers. We therefore, suggest that Provision 44 be extended to require explicit disclosure to the intermediary of the information outlined in Provision 43 in respect of investment products.

Chapter 4: Information about regulatory status

Provision 10 & 11 - PIBA believes that the requirement to include the disclosure warning statement as outlined by a previous Central Bank communication is sufficient rather than obliging firms to have two separate letterheads or two separate websites, which will mean additional costs for intermediaries. The requirement to display the relevant warning achieves the desired consumer

protection more effectively than a separate website which has no warnings and the consumer may be unaware that it falls out of the remit of regulation by the Central Bank of Ireland.

Provision 26 - We believe that this provision should be extended to require that the following warning be included on all marketing literature of Banks & Direct Sales:

Warning: You are only been offered advice in relation to one Product Provider. You may wish to seek independent advice.

Provisions 27 – this information should be referenced under Chapter 3, provision 44 (analogous to provision 32).

Provision 29 - If this refers to contract options, responsibility should lie with product producers.

Provision 45 - Two months seems a long time – the consumer could miss a desired fixed rate.

Provision 52 - Underwriting will generally be necessary before insurance loadings are known i.e. these will not be known at quotation stage.

Provision 53 - We would question the rationale for identifying underwriters on quotations and renewal notices. General Insurance Brokers usually conduct search for clients and send the best option to the client – sometimes without the underwriter identified. The proposal here would force disclosure of search options and allow the client to "free ride" on the Broker services and perhaps complete the insurance elsewhere.

Provision 56 – We have concerns over the wording in this provision albeit an existing code provision. The nature of serious illness cover is that cover is limited to illnesses defined by the policy. The words "restrictions, conditions and exclusions" could apply to every conceivable event outside these definitions. The word "conditions" could apply to every policy term in the policy document. The key information that a consumer needs to know is that cover is limited to illnesses defined in the policy and attention should be brought to specific policy exclusions.

We therefore suggest that provision 56 be amended to read as follows:

"A ***regulated entity*** providing serious illness policies must, before completing a proposal form, explain clearly to the ***consumer*** that cover is limited to illnesses defined in the policy document and explain clearly any express exclusions that attach to that policy. "

Provision 57 - This should be dated from point of policy issue. We would suggest 15 days from policy issue with an obligation on product producers to send documents to Brokers within 5 days of issue if they are passing them to clients.

Provision 61 - It should be an option to use "will" rather than "may" in the warning where it is certain the premium will rise.

Also this provision needs to clarify that the premium increase referred to is an increase in premium for the *same* benefits, and hence does not cover policies where the premium will increase where the cover is also increased, e.g. automatic indexation of cover and premium under term assurance policies which have guaranteed premiums for the term of the policy.

Information about remuneration

Provision 74 - Does this replace the Life Disclosure regulations? For products other than insurance products the disclosure regime should be similar to that proposed for non-life insurance.

Provision 75 - We do not believe it is appropriate that the Central Bank of Ireland to force intermediaries to outline services they will conduct for the customer in return for recurring commissions. For a start, the basis of recurring remuneration may be deferred initial commission or for services conducted for the product producer. The wide variety of policies and amounts of recurring payments would make any description of services meaningless, generic and generalised.

Provision 80 - This is not an appropriate provision for the intermediary market. Fees are a tiny fraction of the intermediary market – even for fee based brokers whose clients invariably choose the commission option.

Chapter 5: Knowing the Consumer & Suitability

Exemption from knowing the consumer and suitability

PIBA believes an insertion should be made into the Consumer Protection Code to allow for a Basic Insurance products exemption from the knowing the customer and suitability requirements similar to the Basic Bank product exemption. We note the proposed amendment to the Statement of Suitability for personal motor and home insurance; however, we feel that the requirement should be removed completely for these types of insurance policies; as these are demand driven products, where the consumer can (in most instances) define much of their own needs and price competition regulates the market effectively. This is especially the case given that these products are annually renewed giving consumers the opportunity to change providers every year. Regulatory requirements

for reason why letters are of limited value to consumers and serve to undermine independent advice over tied sales (as it is easier to define execution only needs for personal lines insurance when only one provider is offered).We feel the most appropriate framework for motor and house insurance is to be regulated analogous to the provisions for basic banking products.

Provision 3 - The information sought may not be critical to assess suitability and there may be "work around questions" with the client where certain information is withheld.

We believe the regulated entity should be allowed, in the circumstances outlined in Provision 3, to proceed with a product recommendation, subject to an appropriateness test, similar to that applying under MIFID to execution only business.

Provision 5 – We do not believe it should be mandatory for the lender to sight documentation evidencing the consumer's identity where intermediaries have complied with provision 6 and have signed a declaration confirming they have sighted original ID documents. Consumers may be wary of sending original sources of ID such as passports, driver's licences to lenders, where they would have not have access to the documents for a number of weeks whilst the lender is processing the application.

Provision 17 - It could be offensive to outline in writing in the reason why letter how a product is suitable for a consumer given their vulnerabilities. The option should be given to have this as a file requirement. We refer to our previous comments on the concept of vulnerable consumer.

Provision 20(a) - PIBA feels that the criteria for determining execution-only sales be expanded to include where a client determines their own need and advice is only provided in relation to the choice of provider.

Provision 20(c) - PIBA believes that the basic banking product exceptions should be limited to accounts with balances under €10,000. We also believe there should be restrictions on rolling over or automatically renewing deposit accounts e.g. they would not be considered basic banking products if renewed continuously for two years.

Chapter 8: Rebates and Claims Processing

Provision 5 - PIBA would like clarification that it is sufficient for a firm to outline within their Terms of Business the treatment of rebates and provided the client signs an acknowledgement of this, the provision is satisfied.

Provision 6 – PIBA believes that the obligation for a reminder to be sent to a client by an intermediary is superfluous and it should not be the responsibility of the Insurance intermediary to remind the client about the cashing of a rebate cheque once they have sent the rebate cheque in the first instance.

Chapter 10 – Advertising

Provision 17 requires acronyms to have a "clear and understandable definition". This may be challenging for some regulatory required disclosures, where the use of such terms is not standardised in the industry, e.g. CAR and AER are used interchangeably.

We suggest that the Central Bank provide a list of clear and understandable definitions for commonly used acronyms used in the financial services industry, and such definitions be included in the CPC.

Definitions

Basic banking product or service

We believe term deposit accounts should be limited to €10,000 or less and rolled over for a maximum of two years to be considered basic banking products.

Complaint

The current definition is far too wide by including any *'expression of grievance or dissatisfaction'* by the consumer including verbal ones. In practice, many regulated entities use a materiality test to determine whether a verbal expression of dissatisfaction by a consumer is or is not a 'complaint' for the purposes of the CPC.

Therefore, we suggest the term 'or dissatisfaction' be deleted from the definition, as well as the insertion of a materiality test for verbal complaints.

Conclusion

PIBA welcomes the opportunity to contribute to the review of the Consumer Protection Code. PIBA and its members support balanced and proportionate regulation. From a consumer protection perspective it is important that a level playing field is ensured between all financial service providers – this ensures competition delivers real benefits to consumers. However the importance of a level playing field in regulation is more fundamental than economic benefits, as without fair play regulation can not have integrity.

It is important that any new requirements introduced are practical in nature and proportional to the level of potential consumer detriment avoided in order to avoid administrative burden and to avoid other unwanted side effects of the introduction of wide ranging provisions across a diverse industry.

We believe that the Central Bank of Ireland should always apply the principle that the costs of regulation must be substantially outweighed by their benefit, since ultimately it is the consumer who must pay for such regulation. Good regulation is good for Brokers – it ensures a level playing field, it gives consumers confidence and it helps keep professional indemnity and other costs low. PIBA are happy to discuss any part of this submission with the Central Bank of Ireland as it finalises the revised Code.

Review of Intermediary Market

Fair Analysis

Broker

The term 'broker' may be used by an insurance or mortgage intermediary that offers consumers a "fair analysis" of the market.

A 'fair analysis of the market' entails providing advice on the basis of a sufficiently large number of contracts and providers available on the particular market to enable the broker to make a recommendation, in accordance with professional criteria, regarding which contract would be adequate to meet the customer's needs.

Clarification

The concept of fair analysis is derived from the Insurance Mediation Directive. It describes the extent of the choice of products and providers offered by a broker within a particular category of life assurance, general insurance, mortgages, and/or specialist area. The number of contracts and providers considered must be sufficiently large to enable a broker to recommend a product that would be adequate to meet the consumer's needs.

The term 'sufficiently large' must be considered in the context of the product or service provided and the extent of the relevant market. The number of providers that constitutes 'sufficiently large' will vary depending on the number of providers operating in the market for a particular product or service and their relative importance in and share of that market. Firms must consider the extent of the market and select an appropriate amount of providers that would constitute a fair analysis of that market.

The extent of fair analysis must be such that could be reasonably expected of a professional conducting business, taking into account the accessibility of information and product placement to brokers and the cost of search.

It is expected that fair analysis will evolve as a concept over time. However, in order to ensure that the number of contracts and providers is sufficiently large to constitute a fair analysis of the market, firms should consider the following criteria:

- the needs of the customer,
- the size of the customer order;
- the number of providers in the market that deal with brokers,
- the market share of each of those providers,
- the number of relevant products available from each provider,
- the availability of information about the products,
- the quality of the product and service provided by the provider,
- cost, and
- any other relevant consideration.

Fair analysis refers to a reasonable amount of choice given the product and the market circumstances. It does not oblige brokers to deal with all firms and the broker retains the commercial freedom not to engage with certain firms should it so wish for valid commercial reasons. However to achieve fair analysis a firm should ordinarily take into account the products of a reasonable majority of the product providers accessible to it in the relevant market (specialist providers with a small market share may be disregarded for this purpose).

Where a broker excludes one or more product providers with a significant market share in the relevant market from the analysis, the broker must explain this clearly to the consumer.

The number of products and providers considered is a matter of professional judgement and will vary depending on the extent of the market. A broker must be in a position to justify the extent of market search when acting on the basis of a fair analysis of the market.

This clarification is without prejudice to the obligations of brokers under the Consumer Protection Code.

PIBA

3rd February 2009

Mary O'Dea,
Acting Chief Executive,
Financial Regulator,
PO Box 9138,
College Green,
Dublin 2

Dear Mary,

I am writing to you in relation to the Review of the Intermediary Market report.

PIBA notes the insertion "reasonable majority" in relation to the number of product providers a Broker must survey to provide fair analysis. We feel that 60% would be the appropriate minimum benchmark letting competition between Brokers drive choice up from this minimum level. We will advise our members of our view on this but that 60% is just a guideline and the Broker must use his/her professional judgement, take account of the individual circumstances and have regard to the factors mentioned in the clarification document.

We have given a commitment to working with the Financial Regulator to ensure that the Broker definition will be updated where necessary. We too would expect the Financial Regulator to consult closely with our Association and other Broker bodies on any future alterations to the Broker system.

With these understandings and the clarification document agreed, PIBA approve the Working Group document.

Yours sincerely

Diarmuid Kelly

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cc Mr. Donnie Kennedy, Financial Regulator
Ms. Deirdre Norris, Financial Regulator

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5 February 2009

Dear Mr Kelly

I acknowledge receipt of your letter of 3 February 2009 and wish to advise that the contents have been noted.

Yours sincerely

p.p. Mary M'Keogh

Mary O'Dea
Acting Chief Executive