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Central Bank of Ireland  
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**Re: Second Consultation on Review of Consumer Protection Code CP 54**

Dear Sir/Madam

We are writing in relation to Consultation Paper CP 54 *Second Consultation on Review of Consumer Protection Code*. AIB Group previously made a submission on CP 47, *Review of Consumer Protection Code*. We note that the Central Bank has finalised its position on some of the issues raised in CP 47 and that it is now proposing certain new or amended provisions on other issues. We further note that the Central Bank is not seeking comments on those issues on which it has already made a final decision.

We welcome the fact that the Central Bank has addressed a number of the concerns expressed by AIB Group in our previous submission. However, some of the new proposals in CP 54 raise other issues from both a consumer protection and a commercial perspective and we have set these out below. Some detailed comments are set out in the appendix.

**Timetable for Implementation of New Measures**

Before addressing our concerns on specific provisions of the proposed Code, we would like to highlight the practical difficulties regulated entities will have in meeting the proposed introduction of the new Code on 1 January 2012, with the final rules possibly not being published until October 2011. We understand and support the Central Bank's desire to strengthen the consumer protection measures already in place and to introduce changes in an early timeframe. However, we have serious concerns about the scale of work required to implement the new rules and the length of time this work will take. As pointed out in our submission on CP 47, many of the proposed rule changes will require detailed internal process and operational changes. We are particularly concerned about the level of IT development that will be required. Given the current pace of regulatory change and business transformation, our IT functions already have a very heavy workload. We suggest, therefore, that a minimum implementation period of nine months from the date of publication of the Code be provided. Where complex IT solutions are required and a nine-month timeframe may not be achievable, we suggest

that individual institutions liaise with the Central Bank to agree a realistic implementation schedule.

### **Unsolicited Calls**

We note that the Central Bank has decided to prohibit all marketing calls to personal consumers who are not existing customers of regulated entities. Given the contraction in the number of participants in the banking market in Ireland, we believe that this prohibition will stifle competition and inhibit the ability of regulated entities to legitimately compete for business, further narrowing consumer choice. It will, furthermore, serve as a significant barrier to entry for potential new entrants to the Irish market.

The proposed rules 3.32/3.33 require that a regulated entity obtain the written consent of an existing customer before contacting them by telephone or personal visit. A process for obtaining and updating customer consents for sales/marketing purposes was put in place in conjunction with the Data Protection Commissioner in 2004. This regulatory regime is working well and we need to be cautious about introducing another potentially conflicting regime in parallel.

The existing process allows financial institutions to obtain verbal consent from customers provided these consents are recorded on a durable medium and regularly updated where possible. We believe that these existing consents should remain valid for the purposes of the unsolicited calls rules.

Under the new rules, we propose that, in future, customer consent can be obtained in the following formats:

- (a) Written consent;
- (b) Electronic consent given that many products/services are now provided electronically, and
- (c) Verbally, by telephone, where this consent is recorded on a durable medium.

With respect to the proposed Rule 3.35, we suggest that this provision should be harmonised with other potentially overlapping legislation, such as the Consumer Credit Act, 1995. An absence of harmonisation can cause confusion in the mind of the consumer and creates additional complexity for the industry to implement. Accordingly we suggest that rule 3.35 should be amended to align with the permitted contact times as defined in Section 46 of the Consumer Credit Act 1995.

### **Basic Payment Account**

AIB Group supports the concept of a basic payment account as set out in the Report on a Strategy for Financial Inclusion. This Report is still in the consultation phase. We respectfully suggest, therefore, that the Central Bank should await finalisation of the arrangements for a basic payment account before introducing conduct of business rules in this area. For example, rules relating to the *suitability* of a basic payment account for consumers may be inappropriate where specified eligibility criteria must be met by consumers in order to qualify for access to such an account.

### **Notification of Changes to the Interest Rates on Loans**

The interest rates on some loans to personal consumers are based on market rates e.g. Euribor. In these cases, the interest rate is only set at rollover of the facility and it will not be possible to provide 30 days' notice of a change in the interest rate. We suggest

that loan facilities where the interest rate is directly related to market rates should be excluded from rule 4.34.

The European Communities (Consumer Credit Agreements) Regulations 2010 (the 'CCA Regulations') sets out requirements in respect of advising customers of changes where the loan is linked to a reference rate. For loan facilities greater than €75,000, and in order to ensure consistency with Regulation 14 of the CCA Regulations, we suggest that rule 4.34 be amended to allow parties to the loan agreement to agree as follows:

“notification of interest rate changes can be made periodically where the change in the borrowing rate is caused by a change in the reference rate and where the new reference rate is made publicly available e.g. through national newspapers and on the regulated entity’s website”.

### **Knowing the Customer/Suitability**

Proposed rule 5.27 now stipulates that investment products can never be sold on an execution-only basis i.e. Knowing the Consumer and Suitability checks must always be carried out when selling investment products. This proposal does not take into account the different levels of knowledge and experience of consumers. Neither does it take into account the different levels of complexity of investment products. In particular, the proposal is inconsistent with MIFID which allows non-complex products to be sold on an execution-only basis. We believe that rule 5.27 should be amended to be consistent with MIFID.

We also note that rule 5.27 no longer includes an exemption for current accounts and foreign currency services (i.e. basic banking products and services). This implies that these products can no longer be sold on an execution only basis. However, this is not appropriate given the basic nature of these products. It is doubtful that consumers will want to sit down with their financial advisor for a suitability assessment and receive a statement of suitability, when they simply wish to open a current account or exchange foreign currency. It is difficult to see the consumer protection objective of this change and we suggest that the existing exemption for “basic banking products and services” (as defined in CP 47) is reinstated.

### **Arrears Handling**

We understand that the Central Bank is not expressly inviting comments on the arrears handling provisions. However, we feel that it is critical that the arrears handling rules should only apply where the borrower is co-operating reasonably and honestly with the lender. This would be consistent with the provisions of the Code of Conduct on Mortgage Arrears (CCMA).

We also set out two further technical points in the Appendix.

### **Advertising**

We acknowledge the importance of ensuring that consumers are made aware of all of the terms, conditions and restrictions attaching to a product or service. The key point is that warnings must be prominent and must not be obscured in any way as set out in rule 9.11. We do not believe that a stipulation that warnings must be of a font size that is larger than the normal font size used in the advertisement is necessary to ensure the prominence of the warning. In fact, it may cause more confusion particularly given the fact that it is not always easy to determine which font size in an advertisement is, in fact, the “normal” size.

We would also welcome the development of a standard regulatory approach across all regulated entities to appropriate layout and font size in advertisements.

We welcome the opportunity to comment further on the development of the revised Consumer Protection Code and hope that the comments above will be helpful to your deliberations. We would be happy to discuss these comments with you at any stage.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Meagher', with a large, sweeping flourish extending to the right.

James Meagher  
Group Regulatory Compliance

## Specific Comments

- Rule 3.34** It is not clear what the regulatory intention is of Rule 3.34. We would suggest that the intention may be to reflect rule 32 (b) of Chapter 2 of the existing Code. If so we suggest the addition of ‘where the personal customer has not given consent in writing to being contacted by the regulated entity by means of a personal visit or telephone call’ to the first sentence in 3.34.
- Rule 4.25** This rule should not apply to the “offering” of products over the telephone. In these situations, it will not be possible to provide written information to consumers in advance of offering the product. For example, where consumers are shopping around for insurance products, they will seek a quotation for a premium (offer) over the telephone. Consumers already have the protection of the cooling off periods set out in the Distance Marketing Regulations.
- Rule 4.32** In order to ensure consistency with the Code of Conduct for Business Lending to Small and Medium Enterprises, we suggest that the word “request” be removed from this Rule. Only formal applications for credit require written explanations setting out why the credit was not approved.
- Rule 4.34** In order to ensure consistency, we suggest that the wording of Rule 4.34 be aligned in the context of credit facilities over €75k with Statutory Instrument 281/2010: the European Communities (Consumer Credit Agreements) Regulations 2010, Part 4, provision 14.
- Rule 5.19** Given that ‘advice’ is a defined regulatory term, we suggest changing the word ‘advised’ in the second paragraph to ‘notified’.
- Rule 6.3(viii)** This Rule should not apply to term deposits. These deposits are already subject to Rule 4.29 whereby consumers must be provided with 10 days’ notice of maturity. Consumers then have the opportunity to discuss options with the credit institution. In addition, consumers are likely to incur a penalty if they leave a term deposit early for the purposes of switching to another account with a more favourable interest rate.
- The interest rates payable on some term deposit accounts are subject to change in line with market reference rate fluctuations e.g. Euribor. All consumers with these accounts are provided with a matrix setting out how the rate payable on their account will change with changes to the reference rate. It is not necessary, therefore, to provide consumers with the detail required under Rule 6.3 (viii) for these types of deposit accounts.
- Finally, for all other deposit accounts, we suggest that a link or reference to the published interest rates on the credit institution’s or other suitable website (e.g. [itsyourmoney.ie](http://itsyourmoney.ie)) would be more appropriate than providing information on a statement.
- Rule 8.2** This Rule requires that regulated entities inform consumers about the “level of charges to be imposed on personal consumers in arrears”. As regulated entities will not know in advance the level of charges to be imposed, we suggest a change in wording to “details of any charges in

relation to arrears that may be applied". This would also be consistent with Rule 8.6.

**Rule 8.6** This Rule requires a regulated entity to immediately inform the consumer and any guarantor of the loan of the status of the account once the account is in arrears for 31 days. In order to ensure consistency with CCMA, we suggest that the rule be amended to allow communication to issue within three working days as opposed to immediately.

**Rule 11.8** We suggest re-inserting the word 'reasonable' before the phrase 'period of time' as set out in CP 47 and the existing Code.