

Chartered Accountants Regulatory Board

**Response to CP54 Review of Consumer Protection Code:
Consultation Paper issued by the Central Bank of Ireland**

22 July 2011

1 Introduction

The Chartered Accountants Regulatory Board (CARB) was established in 2007 by the Institute of Chartered Accountants in Ireland (the Institute) which is an approved professional body under the Investment Intermediaries Act 1995. CARB carries out this regulatory function on behalf of the Institute and is responsible for regulating the chartered accountants CARB has authorised to conduct investment business. In this role, CARB is committed to delivering a high quality risk based regulatory regime, independently, openly and in the public interest.

2 Initial Comments

CARB welcomes the opportunity provided to review and comment on the revised version of the proposed new Consumer Protection Code. As stated in our submission in response to CP47 CARB is fully supportive of the Central Bank's objective of strengthening consumer protection and our Investment Business Regulations have also been devised with this in mind. It is hoped that the final Consumer Protection Code can ultimately be adopted by CARB as part of our Investment Business Regulations, subject to any modifications that may be necessary to ensure compatibility with our professional standards.

3 Responses to Additional/Emerging Issues highlighted in CP54

This submission should be regarded as supplemental to CARB's response to CP47. Unless stated otherwise we support the proposals set out in section 2 of CP54. Our comments herein are confined to matters of relevance to CARB's regulatory jurisdiction and to those issues about which we have particular concerns or new points to make.

3.1 *Unsolicited Contact*

We submit that the provisions set out in the revised Consumer Protection Code in relation to unsolicited contact are somewhat unclear and should be clarified.

3.1.1 If our understanding of the revised code is correct, a regulated entity may make an unsolicited personal visit or telephone call for sales or marketing purposes to a personal consumer (subject to certain criteria) but the same is not permitted in respect of a consumer. Provision 3.34 only permits an unsolicited personal visit or telephone call to a consumer who holds a product which requires the regulated entity to maintain contact with the consumer in relation to that product. We are surprised that the provisions relating to consumers generally appear to be more restrictive than to those relating to personal consumers. We believe that if a consumer gives informed consent to being contacted by a regulated entity then contact should be permissible whether or not the consumer is a personal consumer.

3.1.2 Provision 3.34 and provision 3.38 seem to be inconsistent with one another. Whereas provision 3.34 seems to only permit a personal visit or telephone call to a consumer who holds a product which requires the regulated entity to maintain contact with the consumer in relation to that

product provision, provision 3.38 then goes on to set out the criteria for making a personal visit or telephone call to a consumer as a result of a business lead or referral – contact which would appear to be prohibited by provision 3.34.

We believe provision 3.38 is correct and appropriate and that provision 3.34 should be revised to permit personal visits or telephone calls in circumstances where the informed consent of the consumer has been obtained.

- 3.1.3 In addition to resolving or clarifying, what appear to be, the anomalies mentioned above, we would recommend that the provisions relating to personal consumers and the provisions relating to consumers generally be grouped together for clarity.

3.2 Errors Handling

We note that provision 10.3 requires a regulated entity to inform the Central Bank if an error has not been fully resolved (as outlined in provision 10.2) within 40 business days of its discovery; provision 10.2 requires that all errors be resolved within six months of their discovery.

We would welcome an explanation as to the reason for these two separate timescales. It is our view that an error should only become reportable if the regulated entity fails to resolve same in the prescribed manner within the six months allowed.

3.3 Conflicts of Interest

- 3.3.1 We submit that provision 3.24 should be amended to read '*where a regulated entity distributes its products through an intermediary, the regulated entity must not require the intermediary to introduce a specified level of business from consumers in order to retain a letter of appointment from the regulated entity*' and that the phrase '*in circumstances where this could create a conflict of interest between the intermediary and the consumer*' should be deleted.

This phrase introduces an undesirable element of subjectivity to this important provision; it is unclear who is to decide whether the arrangement might create a conflict of interest between the intermediary and the consumer. On the face of it any such arrangement is likely to give rise to a conflict of interest.

- 3.3.2 We strongly believe that the conflict of interest provisions set out in Chapter 3 may be seriously undermined by amendments made to Chapter 4 - provision of information about remuneration.

We are concerned in particular to note the absence of a general requirement for regulated entities to disclose in writing to consumers the existence, nature and amount of, any fee, commission or remuneration received in respect of that product or service, irrespective of the type of

product or service in question. We fail to understand why such requirement does not clearly apply to any fee, commission or remuneration received in relation to the sale of, for example, life insurance.

Under the CARB's Investment Business Regulations and Code of Ethics Chartered Accountants authorised to conduct investment business must disclose to their clients any such fee, commission or remuneration they may receive and we believe the same should apply under the Consumer Protection Code.

- 3.3.3 Furthermore, under CARB's Investment Business Regulations and Code of Ethics a client's informed consent is required in order to retain any fee, commission or remuneration received and we believe a similar requirement should be included in the Consumer Protection Code.