Banking & Payments Federation Ireland

Response to Central Bank of Ireland Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to Statutory Codes (CP 96)

30th September 2015

Banking & Payments Federation Ireland

www.bpfi.ie

1. Introduction

Banking & Payments Federation Ireland (BPFI) is the voice of banking and payments in Ireland. Representing over 70 domestic and international members institutions, we mobilise the sector's collective resources and insights to deliver value and benefit to members, enabling them to build competitive sustainable businesses which support customers, the economy and society.

We welcome the opportunity to respond to the publication of the Central Bank of Ireland Consultation on the Authorisation Requirements and Standards for Credit Servicing Firms and Consequential Amendments to Statutory Codes (CP 96). The Consultation was published following the enactment of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 on 8th July last.

The proposals included in the Consultation Paper are broadly in alignment with the existing framework currently in place for other categories of regulated firms. We believe that it is in the interest of a 'level playing field' for all firms and sectors in Ireland that there is maximum consistency across the requirements of the regulatory framework. This will also ensure that the consumer protection framework is clear and transparent to all.

Due to the importance of this area of activity, we propose that the Central Bank would develop and issue an industry communication which sets out the details of the new framework. This would include the scope of the Act, clarity on credit servicing activities, contact with consumers and the role of Credit Servicing Firms. We believe that such a communication will ensure all stakeholders implement the requirements of the new legislation and associated changes in a consistent way. We would welcome the opportunity to support the development of this communication along with other stakeholders.

2. Feedback on specific questions raised in the consultation

Question 1:

Do you have any comments on the proposed Authorisation Requirements and Standards for Credit Servicing Firms, in particular the requirements outlined above? If so, please refer to the specific requirement(s) which give rise to your comments and outline the nature of your specific concern together with your alternative proposal(s) and the reasons why you feel those proposals would be more appropriate.

5. Relationship with the Central Bank

In accordance with Part A 5.1. 3.1.2 of the Authorisation Requirements, a Credit Servicing Firm is required to notify the Central Bank in advance of taking on a new loan portfolio or client. We suggest that this is applicable to those portfolios/clients that are 'in scope' under the Credit Servicing Act. For example, if a Credit Servicing firm is taking on a loan portfolio to service on behalf of a regulated credit institution then the Credit Servicing Act would not apply and therefore there should be no requirement to notify the Central Bank.

A Credit Servicing Firm is required to obtain the prior approval of the Central Bank in respect of any proposed change of legal or trading name as set out in Part A 5.1, 3.1.4. Following the enactment of the Companies Bill, we understand that the concept of 'Trading Names' no longer exists in this jurisdiction. We believe that there is now a requirement to register 'Business Names' with the Companies Registration Office. However, as Business Names are a broader and less onerous registration construct we believe that prior approval from the Central Bank and the associated requirement to include such names on all disclosures should be removed.

Ownership –

As set out in Part A 6.1 of the Authorisation Requirements, a Credit Servicing Firm is required to notify the Central Bank in respect of any proposed material change of ownership of the Credit Servicing Firm i.e. proposed changes in direct and indirect qualifying shareholders. We believe that it would be appropriate that where change of ownership relates to the parent of a regulated

entity which is a plc and whose shares are therefore publicly traded on a listed stock exchange that the requirement to notify the Central Bank prior to the share change be removed. This recommendation is on the basis that the change of ownership is not within the control of the plc. Instead we propose that the requirement for such plc structures should be that notification occurs as soon the regulated entity becomes aware of a material change. We would propose the following wording for consideration:

A Credit Servicing Firm is required to notify the Central Bank in respect of any proposed material change of ownership of the Credit Servicing Firm i.e. proposed changes in direct and indirect qualifying shareholders. Where the change of ownership relates to shares in a publicly traded company, for example, the parent company of a regulated entity, any material change of ownership in such an entity should be notified to the Central Bank as soon as practical once details of the share transaction are known.

Question 2:

Are there any additional requirement(s) that you feel should be included in the Authorisation Requirements and Standards for Credit Servicing Firms? If so, please provide details and outline a rationale for including the requirement(s).

We have not identified any additional requirements for inclusion in the Authorisation Requirements and Standards for Credit Servicing Firms.

Consequential Amendments to the Central Bank Statutory Codes of Conduct

Do you have any comments on the proposed consequential amendments to the various Central Bank Statutory Codes outlined above? If so, please refer to the specific amendment(s) which give rise to your concerns and outline the nature of your concern.

The business model of a Credit Servicing Firm in the provision of credit servicing activities in scope under the Credit Servicing Act is fundamentally different to those of a Credit Institution although both types of firms may be authorised under the Act. The critical difference in terms of the business model is where a Credit Servicing Firm does not own or control the credit that has been provided. We recommend that such fundamental differences should be considered as part

of the proposed consequential amendments to the various Central Bank Statutory Codes. We would welcome clarification from the Central Bank on these areas in due course.

In addition, Credit Servicing Firms act on behalf of a range of clients who may have varying interpretations of certain elements of the Central Bank Statutory Codes. There may be an opportunity to explore the development of a consistent approach on key issues among Credit Servicing Firms and their clients in order to further support the current consumer protection framework. An example for consideration is the area of 'Arrears Management' and the associated credit decisions to fulfil regulatory obligations related to regulatory provisions. As the Credit Servicing Firm does not own the credit /loan book and is essentially acting on the instruction of loan owners when providing services, guidance is required on where the responsibility rests with granular decision making relating to the management of each loan as opposed to the strategic decision making relating to the management of the loan book. The purpose of such guidance is to ensure there is no ambiguity between loan book owners and Credit Servicing Firms irrespective of who owns the credit regarding authority on making granular loan credit decisions and how much, if any, involvement the loan book owner should have in both making credit decisions and in communicating them with their debtors.

Furthermore, Credit Servicing Firms may service a number of portfolios owned by several clients who have different approaches (e.g. offer different alternative repayment arrangements [ARAs] or variations of ARAs for borrowers in financial difficulty).

We have identified a small number of items included in the Consequential Amendments which require further consideration. We would welcome the opportunity to discuss the inputs in relation to this section in more detail.

7.1 Consumer Protection Code 2012 (CPC 2012)

The proposal to require the regulated firm, who sells loans subject to CPC 2012, to identify the firm who will be providing the 'regulated activity of credit servicing' requires further clarification. We believe that this proposal may be going beyond what is intended in the Credit Servicing Act. As "credit servicing" is now a regulated activity, it is the responsibility of the unregulated entity to ensure that the credit servicing activities which are undertaken are in compliance with the legislation i.e. are performed by a regulated Credit Servicing Firm on its behalf.

7.4 The Minimum Competency Code 2011 (MCC 2011)

We note the activities, listed under 7.4 MCC 2011. It is our understanding that Credit Servicing firms are being brought into the scope of MCC 2011 and that the activities which currently require adherence to MCC 2011 are not changing i.e. not all of the activities designated as 'Credit Servicing' under the Act are subject to MCC.