



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

June 2011

Second Consultation on Review of Consumer Protection Code

Consultation Paper CP 54



SECOND CONSULTATION ON REVIEW OF CONSUMER PROTECTION CODE

CONSULTATION PAPER CP 54

BACKGROUND

1.1 The Central Bank of Ireland is committed to the provision of a comprehensive consumer protection framework which sets out requirements for regulated firms when dealing with consumers. On 28 October 2010, the Central Bank of Ireland published Consultation Paper CP 47 *Review of Consumer Protection Code* (CP47) setting out proposed new and amended requirements in order to strengthen the existing Consumer Protection Code (the Code) which was introduced in July 2006, with an Addendum issued in May 2008.

1.2 Our overriding objective continues to be the strengthening of the consumer protection framework and the introduction of revised measures which will benefit consumers in their dealings with regulated firms. To this end, the revised Code, once implemented, will provide a number of additional protections for consumers of financial services along with enhancements to existing provisions.

ANALYSIS TO DATE

1.3 51 submissions were received in response to CP47, all of which are available on our website at www.centralbank.ie. The submissions received represented a cross section of interest from consumer representative bodies, financial institutions, trade bodies, representatives from the voluntary and community sector, regulatory bodies, individuals and academics. We would like to thank all those who made submissions to us on this very important topic.

1.4 We have undertaken a robust analysis of comments received during the consultation process in addition to undertaking some further research and analysis of the issues under consideration. We believe that, the approach now proposed in this consultation paper on many of the topics and issues raised in CP47 strikes the right balance between listening to

the views expressed in the submissions received and improving the consumer protection framework.

1.5 A key element of our work in developing our position in the revised Code has been the consideration of the conduct of business provisions contained in a number of EU Directives covering financial services that have been transposed into Irish law since the publication of the original Code, namely:

- the Payments Services Directive (PSD);
- the Consumer Credit Directive (CCD); and
- the Electronic Money Directive (EMD).

The purpose of these directives is to harmonise European laws in the various financial sectors covered by them to ensure that, once transposed, national laws do not create a barrier to entry for the financial services providers that operate in the relevant sectors. Inherent in this policy is that consistency of rules across Member States creates a level playing field and increases competition, which, in turn, is for the benefit of consumers.

Consumer protection measures that are harmonised in EU Directives are not repeated in this proposed revised Code. The Scope of the proposed revised Code sets out the additional requirements, which will apply to regulated firms when providing the activities covered by the three EU Directives listed above.

ENHANCED CONSUMER PROTECTION

1.6 Once implemented, the revised Code will provide for a range of new and expanded consumer protection benefits over and above the protections contained in the current Consumer Protection Code, including:

- enhanced “knowing the consumer” and “suitability” provisions which set out in greater detail the information to be gathered and considered by regulated firms before offering, recommending or selling financial products to consumers. This is intended to improve the process of providing financial products and services to

consumers, and to better match consumer needs and financial objectives based on the information provided by consumers to regulated firms;

- increased focus on the necessity for lenders to assess the affordability of mortgages for consumers;
- additional protections for consumers who are identified as being vulnerable when seeking financial services, which will require regulated firms to provide reasonable arrangements and/or assistance, as necessary, to facilitate such consumers when carrying out their financial affairs;
- a requirement for regulated firms to obtain proof of the existence of a power of attorney, and to operate within the limitations set out in the power of attorney, in circumstances where a person presents themselves as acting for a consumer under a power of attorney;
- further protection for guarantors who must be informed, in writing, if an account for which they are acting as guarantor is still in arrears 31 days after arrears first arise;
- addressing the complexity of information on a range of financial products and services through expansions in the provision of information requirements to assist consumers in making fully informed decisions;
- further requirements on information provided to consumers, which must be clear, accurate, up to date, written in plain English, and the font size used must be clearly legible;
- enhanced advertising information and display requirements which are intended to ensure that all advertisements are clear, fair and not misleading, including restrictions on use of small print in all types of advertisements;
- further restrictions on unsolicited personal visits and phonecalls by regulated firms to existing customers and a prohibition on personal visits and phonecalls to

consumers who are not existing customers, in order to provide greater protection against pressurised selling;

- further protection for consumers with arrears through the inclusion of arrears handling provisions for loans, separate to those covered in the *Code of Conduct on Mortgage Arrears*, in order to provide consistent protections for consumers who are experiencing financial difficulties with loan repayments;
- obligations on product producers to identify the target market of consumers for their investment products and to provide this information to intermediaries, along with information on the key characteristics and features of the product, to assist intermediaries in understanding the product that they are selling;
- restrictions on intermediaries in relation to the use of the terms ‘broker’ and ‘independent’;
- enhanced conflict of interest provisions, and significant new requirements in the area of remuneration disclosure, for example, the requirement that a mortgage intermediary must disclose the existence, nature and amount of any fee, commission or other remuneration received in relation to the product provided to the consumer;
- enhancements to the claims processing provisions, such as the requirement that regulated firms ensure that any claim settlement offer is fair, and represents the firm’s best estimate of the claimant’s reasonable entitlement under the policy.

RESPONDING TO CONSULTATION PAPER CP54

1.7 We are firmly of the view that, in the interests of consumers, all enhancements proposed need to be put in place as early as possible and consequently, a move to swift implementation and monitoring of compliance with our revised Code is a key priority for us. Therefore, this second consultation is specific in its purpose, responses required and timeframe to achieve our objective of prompt introduction on 1 January 2012.

1.8 **Purpose**

The purpose of this second consultation is three-fold:

- i) to outline the position we have reached on some of the issues and questions posed in CP47;
- ii) to highlight a number of new or amended provisions that we have included on the remaining issues that were posed in CP47, and the additional and emerging issues which have come to our attention as part of our analysis of the submissions received in response to CP47 and also as a result our ongoing regulatory work which has identified issues that we believe warrant the inclusion of further protection for consumers through additional Code provisions; and
- iii) to give a final opportunity to our stakeholders to review a full version of the proposed new Code.

1.9. **Responses Sought**

While we are providing an opportunity for all interested parties to review the latest version of the revised Code, we are only seeking comments on certain proposals. In this regard:

- Section 1 below outlines the analysis undertaken and the decisions reached on some of the specific areas where we requested responses as part of CP47. This Section is for information only and we are not seeking further responses to these issues.
- Section 2 below outlines areas where we are seeking comment from interested parties. This Section outlines new proposals not included in the first consultation which have come to light as part of our analysis of submissions received or through ongoing regulatory work, and also outlines significant amendments to provisions that were contained in the first consultation.

SECTION 1: OUR POSITION ON ISSUES/QUESTIONS RAISED IN CP47

1.10 In CP47, we outlined a number of areas where we sought specific views and comment. In some cases, we outlined our intention in CP47 to include additional rules in the new Consumer Protection Code. For example, we outlined the provisions that would be included in the revised Code arising from the Review of the Intermediary Market. These provisions are now embedded in the version attached to this document and no further comments are sought.

1.11 In relation to other matters raised in CP47, we have now reached a final position which will result in the strengthening of consumer protection and will provide a better outcome for consumers in their dealings with regulated firms. Consequently, we are not seeking any further comment from interested parties on these issues. Our position is as follows:

a) *Vulnerable Consumers*

In CP47, we outlined our view that there are consumers who, due to certain vulnerabilities, may require additional protection in their dealings with regulated firms when carrying out their financial affairs and we raised questions for consideration in this area. While most respondents agreed with the general principle that certain consumers may need a greater level of care and assistance when making financial decisions, a number of respondents raised practical difficulties with the implementation of the provisions as proposed.

In response to the points raised and as a result of further research, we are now introducing a revised approach in the Code for identifying and dealing with consumer vulnerability in the financial services sector. Firstly, our definition of vulnerable consumer now identifies two categories of vulnerable consumer, those capable of making decisions and those with limited capacity to make decisions. A common sense approach is required to the assessment of capacity. Assessments should be based on a consumer's ability to make a particular decision at the time it needs to be made, and not on their ability to make decisions in general. Secondly, a new Common Rule has been included requiring that regulated firms provide vulnerable consumers with such reasonable arrangements or

assistance that may be necessary to facilitate their dealings with a regulated firm. We expect regulated entities to carry out the 'Knowing the Consumer' and 'Suitability' requirements in the Code and to use this as the basis for determining, with common sense, whether there is any evidence of consumer incapacity. This amended approach provides for additional protections for vulnerable consumers while, at the same time, providing a practical approach for regulated firms in their approach to identifying and dealing with vulnerable consumers.

b) *Suitability of Mortgages*

We sought views on proposed additional provisions in this area, including the assessment of the consumer's ability to repay, a prohibition on the acceptance of self-certified declarations of income, a requirement that a lender satisfy itself that, in the case of interest-only mortgages the consumer can repay the principal amount at the end of the mortgage term, and whether their introduction would result in a greater level of responsible lending. We also asked if the Standard Financial Statement (SFS) which is in place under the Code of Conduct for Mortgage Arrears should be used when assessing whether a mortgage is affordable for a consumer.

In response, we have retained the provisions on interest-only mortgages and the prohibition on self-certified declarations of income, and expanded the provisions covering the assessment of a consumer's ability to repay. While not being prescriptive in introducing a form similar to the SFS for mortgage affordability, we are requiring that a lender's assessment of affordability must include:

- consideration of information gathered under the "Knowing the Consumer" provision,
- the impact of a known future change in the consumer's personal circumstances; and
- the outcome of a test on the consumer's ability to repay on the basis of a 2% interest rate increase above the interest rate offered.

Simultaneously, we are inputting our views on the area of the provision of mortgages to the EU Commission as part of the development of the Mortgage Credit Directive.

c) Information about Products

Consumers are often confused by the complexity of financial products. It is our view that enhanced provision of information requirements are necessary to ensure that consumers are provided with sufficient and relevant information on financial products so that they can make an informed decision on the product or service they are considering. These enhanced information disclosure requirements as set out in CP47, such as the requirement to provide information about the main features of an investment product, including the risks attaching to the product, are now included in the revised Code. We have not made a final determination in relation to risk disclosure methodologies such as a traffic light system. We intend to undertake research on the development and implementation of a consistent approach to risk disclosure by regulated firms, and on approaches that would assist consumers with identifying their own risk appetite, to determine the best way forward in the longer term.

d) Product Producer Responsibilities

While the gathering of information under the 'Knowing the Consumer' provisions and the subsequent assessment of the suitability of a product for a consumer rests squarely with the regulated firm that has the point of sale relationship with the consumer, we consider that product producers must take on increased responsibilities for providing information to intermediaries in relation to the investment products which they sell on behalf of the product producers. Consequently, for the most part, we have retained the provisions as outlined in this area in CP47.

e) Arrears Handling

Any consumer facing financial difficulties or arrears must be treated sympathetically by their lender. The Central Bank introduced its *Code of Conduct for Mortgage Arrears (CCMA)* in January 2009, and we have substantially expanded it since January 2011. The CCMA provides a framework for how lenders must engage with residential mortgage consumers when they find themselves in a pre-arrears or arrears situation. The treatment of arrears on other loans is also a significant issue and protections for consumers will now be significantly expanded through this revised Code outlining how consumers must be treated by lenders when faced with difficulties in repaying loans, including credit card debt.

f) Transfer of Mortgages

It is vital that in cases where a consumer's residential mortgage is transferred to another firm, the existing protections available to that consumer are not diluted. Consumers should receive the full protection of all relevant codes of conduct issued by the Central Bank, particularly the CCMA, in circumstances where residential mortgages are transferred to another legal entity, regardless of the reason for, or the structure of, the transfer. Following our analysis of CP47 proposals and further consideration of the provisions in the CCMA and this revised Code, we are satisfied that, between them, strong statutory protections are in place for consumers when dealing with regulated entities.

SECTION 2: ADDITIONAL/EMERGING ISSUES

In addition to the views expressed in the submissions received on the CP47, we have given consideration to a number of issues that have come to our attention, primarily arising from recent themed inspections, and also from the new Consumer Advisory Group, established under the Central Bank Reform Act, 2010. To address these issues, we have included additional and expanded provisions in this consultation paper. Comments are invited from interested stakeholders on the issues outlined below.

There are a number of additional and expanded provisions included throughout the revised Code. However, we would draw your attention specifically to the following:

i) Basic Payment Account

In recent weeks, the Department of Finance published a report for consultation on a *Strategy for Financial Inclusion*. The Central Bank is a member of the Steering Group involved in the preparation of this report. We strongly support the financial inclusion agenda and the development, as proposed, of a basic payment account as described in the *Strategy for Financial Inclusion*. In order to support this proposed Strategy, we are now proposing a number of new provisions in Chapter 3 of the Code relating to the promotion and accessibility of basic payment accounts, while accepting that many rules relating to the operation of a basic payment account will be covered by the EU Payments Services Directive, and any future EU initiative covering the provision of basic payment accounts.

ii) Complaints Resolution

In light of our recent themed inspection work in this area and our ongoing work with the Financial Services Ombudsman, we are proposing to further extend the requirements on regulated firms in relation to complaints handling and resolution. In particular, we are proposing that regulated firms will be required to analyse complaints in order to identify if any patterns of consumer complaints are emerging. This analysis must be escalated to the regulated entity's compliance/risk function and senior management.

iii) Unsolicited Contact

Pressurised selling of financial products to consumers, under any circumstances, is of particular concern to the Central Bank in light of the consumer detriment which can occur. Where unsolicited contact is allowed, strict rules must be in place covering the circumstances of how and when it is allowed in the interest of protecting consumers from unwanted selling tactics which can be perceived as aggressive and overly intrusive or pushy. Consequently, we have decided to further restrict the circumstances in which unsolicited contact can be made with consumers. In particular, we are proposing that the informed consent of the consumer is required before any contact can be made to sell or market a financial product or service to an existing customer. In addition, we are proposing that regulated firms will not be allowed in any circumstances to make an unsolicited personal visit or telephone call to a consumer who is not an existing customer.

iv) Provision of credit to SMEs

In February 2009, the Central Bank introduced a *Code of Conduct for Business Lending to Small and Medium Enterprises* (SME Code) covering various aspects of the business lending process and the relationship between the regulated firm and the SME during that process. The Code also contains provisions that provide protection to consumers when seeking credit. Under the Code, such consumers, as defined, include SMEs.

The protection measures set out in the Consumer Credit Directive covering the provision of credit to natural persons acting outside their business, trade or profession are harmonised, and consequently cannot be repeated in the revised Code. We have reviewed the provisions in the Code which relate to credit and have confined their application to 'personal consumers'¹, thus reflecting the approach taken by the Consumer Credit Directive.

It is our view that the remaining population of consumers, i.e., persons who fall within the definition of consumer in the Code, other than natural persons, continue to warrant protection when seeking credit products. To ensure the continuation of these protections, we are proposing to incorporate the relevant provisions relating to credit currently

¹ A 'personal consumer' means a consumer who is a natural person acting outside his or her business, trade or profession.

contained in the Code into the SME Code. The scope of the SME Code will have to be widened to cover bodies such as partnerships, clubs, trusts etc which are not currently included in the definition of SME.

It is our belief that this approach will bring greater clarity to the treatment and regulation of credit under both codes.

A full review of the SME Code will commence at the earliest possible opportunity.

v) General Principles

We have included a proposed revision to General Principle 2.4 to require firms to undertake staff training and quality control checks to ensure compliance with the Code.

vi) Advertising

In CP47, we raised concerns about the amount of information included in the small print in advertisements. We advised that, in our view, key information should not be included in the small print and we requested views on our proposals. Interested parties will note that we have retained, and expanded, the provision that key information must be included in the main body of an advertisement. In addition, this information must not be obscured or disguised in any way. The definition of key information has been amended to mean '*any information which is likely to influence a consumer's actions with regard to a product or service.*' We also included a provision restricting the type of information that can appear in the small print of an advertisement. Where small print or footnotes are used, they must be of sufficient size and prominence to be clearly legible and should not be directly related to the product or service being advertised.

In addition to the concerns that we raised in CP47 on small print in advertisements, the Central Bank remains concerned that the advertising of financial products and services is not meeting the overriding requirement that advertisements must be clear and not misleading and must contain all relevant information. Consequently, a number of additional provisions are now proposed for regulated firms to adhere to, including requirements that:

- a) advertisements must clearly state any qualifying criteria of a product or service,
- b) warnings must appear alongside the benefits of the product to which they refer,
- c) the annual equivalent rate set out in an advertisement must not be misleading and any assumptions used to calculate it must be reasonable and up to date, and,
- d) more detailed disclosure requirements be included in advertisements.

vii) Errors Handling

Any consumer affected by a charging or pricing error identified in a regulated firm must be refunded in the most efficient and speedy manner possible. While accepting that there may be systems issues around the identification of both the error itself, and the resulting population of consumers affected, our view is that errors need to be identified, rectified and resolved promptly. Consequently, while we have taken on board some of the operational issues identified in responses to CP47, we remain of the view that the requirements as proposed, with some amendments, must be implemented in the interests of consumers who may be impacted by errors.

viii) Claims Processing

A number of additional provisions are proposed in the revised Code in relation to Claims Processing. In addition to the requirements relating to direct settlement of claims, of particular note are new proposals in the following areas:

- a claimant must be informed in writing of the reasons why a regulated firm decides to refuse a claim; and
- a regulated entity must ensure that a claim settlement offer to a claimant is fair and represents the firm's best estimate of the claimant's reasonable entitlement under the relevant policy.

ix) Conflicts of Interest

Additional requirements are proposed in relation to conflicts of interest. Suitable products and services should be sold to consumers on the basis of a consumer's circumstances, needs and objectives. We are concerned that consumers' best interests may not be protected if remuneration arrangements in place are focussed solely on sales volume. Interested parties should particularly note provisions 3.23 to 3.25 in this regard. The impact of these

provisions is that regulated entities must ensure that their remuneration arrangements support the aims and objectives of the Code particularly in relation to ensuring sales are suitable and that remuneration arrangements are not structured in such a way as to have the potential to impair the regulated entity's obligations to act in the best interests of consumers when providing, arranging or recommending products or services.

Attached to this paper is the latest version of the revised Consumer Protection Code.

Making a Submission

The closing date for submissions is **22 July 2011**. Any submissions received after this date will not be considered. We welcome comments from all interested parties. As indicated above, those issues outlined in Section 1 above are now concluded and we are not seeking any further comments or views on these parts.

Please send all responses to code@centralbank.ie or by post to:

Consumer Protection Codes Division

Central Bank of Ireland

PO Box 559

Dame Street

Dublin 2

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.

The Central Bank will not publish any information which it deems potentially libellous or defamatory.

The Central Bank will accept no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result.

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 a consistent 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 authorisation of **retail credit** firms and home reversion firms, an Addendum to the Code was issued in May 2008.

The Consumer Protection Code has been updated and this revised Consumer Protection Code replaces the original Consumer Protection Code introduced in 2006 and is effective from dd/mm/yy.

LEGISLATIVE BASIS

This Code is issued pursuant to powers under the following legislation:

- (a) Section 117 of the Central Bank Act 1989;
- (b) Section 23 and Section 37 of the Investment Intermediaries Act 1995;
- (c) Section 8(H) of the Consumer Credit Act 1995; and
- (d) Section 61 of the Insurance 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.

Any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any provision of the Consumer Protection Code that applied prior to the issue of this Code may be continued, and any breach of any provision of the Consumer Protection Code that applied prior to the issue of this Code may subsequently be the subject of a legal proceedings, investigation, disciplinary or

enforcement action by the **Central Bank** or other person, as if the provision had not been amended or deleted and as if the Code had not been updated and re-issued.

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:

- financial services providers authorised, registered or licensed by the Central Bank; and
- 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 2 (General Principles) applies in respect of all **customers** in the State and the other chapters of the Code apply in respect of **customers** in the State who fall within the definition of **consumer** used in this Code.

Where **regulated entities** are providing credit under credit agreements which fall within the scope of the European Communities (Consumer Credit Agreements) Regulations 2010 (S.I. No. 281 of 2010), only the following sections of the Code apply:

- Chapter 2, General Principles: except for General Principles 2.5 and 2.6
- Chapter 3, Common Rules
- Chapter 4, Provision of Information: Provisions 4.9 to 4.13, and 4.35 and 4.36
- Chapter 8, Arrears Handling
- Chapter 10, Errors and Complaints Resolution
- Chapter 11, Records and Compliance.

Where **regulated entities** are providing payment services within the meaning of the European Communities (Payment Services) Regulations 2009 (S.I. No. 383 of 2009) and/or issuing electronic money within the meaning of the European Communities (Electronic Money) Regulations 2011 (S.I. No. 183 of 2011) to **customers** (in relation to Chapter 2) and to **consumers** (in relation to the remainder of the Code which applies as set out below), only the following sections of the Code apply:

- Chapter 2, General Principles: except for General Principles 2.5 and 2.6
- Chapter 3, Common Rules: Provisions 3.12 to 3.17, 3.22 to 3.38 and 3.53 to 3.57
- Chapter 4, Provision of Information: Provisions 4.9 to 4.13
- Chapter 8, Arrears Handling
- Chapter 9, Advertising: Provisions 9.1 to 9.23

- Chapter 10, Errors and Complaints Resolution
- Chapter 11, Records and Compliance: Provisions 11.5 to 11.10

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;***
- Payment Institutions;
- Electronic Money Institutions;
- Credit Unions, when acting as insurance intermediaries;
- ***Regulated entities*** providing ***retail credit***; and
- Home Reversion Firms.

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;
- The provision of credit to a ***consumer*** other than a ***personal consumer***;
- The provision of credit involving a total amount of credit of less than €200; 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:

- 2.1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;
- 2.2 acts with due skill, care and diligence in the best interests of its **customers**;
- 2.3 does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service;
- 2.4 has and employs effectively the resources and procedures, systems and control checks, including quality control checks, and staff training that are necessary for compliance with this Code;
- 2.5 seeks from its **customers** information relevant to the product or service requested;
- 2.6 makes full disclosure of all relevant material information, including all **charges**, in a way that seeks to inform the **customer**;
- 2.7 seeks to avoid conflicts of interest;
- 2.8 corrects errors and handles **complaints** speedily, efficiently and fairly;
- 2.9 does not exert undue pressure or undue influence on a **customer**;
- 2.10 ensures that any **outsourced activity** complies with the requirements of this Code;
- 2.11 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
- 2.12 complies with the letter and spirit of this Code.

CHAPTER 3

COMMON RULES

GENERAL REQUIREMENTS

- 3.1 Where a **regulated entity** could reasonably be expected to be aware that a **personal consumer** is a **vulnerable consumer**, the **regulated entity** must ensure that the **vulnerable consumer** is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate them in their dealings with the **regulated entity**.

A **regulated entity** must assess whether a **personal consumer** is a **vulnerable consumer** on the basis of his or her ability to make a particular decision at the time it needs to be made (and not on their ability to make decisions in general).

A **regulated entity** shall be taken to be aware by virtue of any information the **regulated entity** is required to seek, any assessment the **regulated entity** is required to carry out or any other action required of the **regulated entity** by or under this Code, whether or not the **regulated entity** sought such information, carried out such assessment or took such other action in the case in question.

- 3.2 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.
- 3.3 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are processed properly and promptly.
- 3.4 A **credit institution** must ensure that any funds received by it to be lodged to a **consumer's** term or notice deposit account directly or via a **deposit agent**, are credited to that account by close of the **business day** on which the funds are received. Where the funds are not credited on the day they are received, credit for those funds must be backdated to the day the funds were received.
- 3.5 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 of the **consumer** who furnished the instrument or payment, or on whose behalf the instrument or payment is furnished;

- 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, where relevant.
- 3.6 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.
- 3.7 Where a **regulated entity** deals with a **person** who is acting for a **consumer** under a **power of attorney**, the **regulated entity** must:
- a) obtain a certified copy of the **power of attorney**;
 - b) ensure that the **power of attorney** allows the **person** to act on the **consumer's** behalf; and
 - c) operate within the limitations set out in the **power of attorney**.
- 3.8 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

- 3.9 A **regulated entity** must not offer unsolicited pre-approved credit.
- 3.10 A **regulated entity** may only increase a **personal consumer's** credit limit with the agreement of the **personal consumer**.

- 3.11 Where a **regulated entity** intends to impose a **charge** in respect of the provision or arrangement of a loan to a **personal consumer**, and it is proposed that this **charge** is incorporated into the amount advanced to the **consumer**, a **regulated entity** must give the **personal consumer** the right to pay this charge separately and not include it in the loan.

Bundling and Contingent selling

- 3.12 A **regulated entity** must not make 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**.
- 3.13 Where a **credit institution** requires a **consumer** to open 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 only activated if requested by the **consumer**; and
 - d) these conditions must be communicated clearly to the **consumer**.
- 3.14 A **regulated entity** is prohibited from **bundling** except where it can be shown that there is a cost saving for the **consumer**.
- 3.15 Prior to the sale of a bundled product, a **regulated entity** must provide the **consumer** with information in writing on:
- a) the cost to the **consumer** of the bundle;
 - b) the cost to the **consumer** of each product separately;
 - c) how to switch products within the bundle;
 - d) how to exit the bundle; and
 - e) any **charges** to the **consumer** of exiting the bundle.
- 3.16 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**, apart from the loss of any loyalty discount.
- 3.17 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 or service (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

- 3.18 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; and
 - b) a combined application form may not be used.

Remuneration

- 3.19 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 entity specifically exempted by law from requiring an authorisation, licence or registration to carry out the **regulated activity** in respect of which the fee, commission, other reward or remuneration is to be paid;
 - e) an authorised credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or
 - f) 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.

Deposit agents

- 3.20 A **deposit agent** must not retain in its possession an account passbook of a **consumer**.
- 3.21 A **deposit agent** must not operate from the same premises as a **deposit broker**.

CONFLICTS OF INTEREST

- 3.22 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 **regulated entity**. The conflicts of interest policy must:
- a) identify, with reference to the **regulated activities** carried out by or on behalf of the **regulated entity**, the circumstances which constitute or may give rise to a conflict of interest between (i) the **regulated entity** or a **related undertaking** of the **regulated entity** and its **customers** who are **consumers** or (ii) a **customer** who is a **consumer** and another **customer** of the **regulated entity** or a **related undertaking** of the **regulated entity**; and
 - b) specify procedures to be followed, and measures to be adopted, in order to manage such conflicts.
- 3.23 A **regulated entity** must not knowingly create situations that may give rise to a conflict of interest whose existence may damage the interests of a **consumer**, including in relation to remuneration arrangements.
- 3.24 Where a **regulated entity** distributes its products to **consumers** 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 that **regulated entity** in circumstances where this could create a conflict of interest between the intermediary and the **consumer**.
- 3.25 A **regulated entity** must ensure that its remuneration arrangements with **employees** in respect of providing, arranging or recommending a product or service to a **consumer**, are not structured in such a way as to have the potential to impair the **regulated entity's** obligations:
- a) to act in the best interests of **consumers**; and
 - b) to satisfy the suitability requirements set out in Chapter 5 of this Code.
- 3.26 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 he/she is aware of the conflict of interest and still wants to proceed.
- 3.27 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.

- 3.28 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**.
- 3.29 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 gifts or rewards (monetary or otherwise) likely to conflict with any duties of the recipient, or the **regulated entity**.
- 3.30 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;
 - 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**; and
 - 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.

PERSONAL CONTACT WITH CONSUMERS

Unsolicited contact

- 3.31 A **regulated entity** may only make an unsolicited personal visit or telephone call to a **personal consumer** who is an existing **customer**.
- 3.32 A **regulated entity** must not, for sales or marketing purposes, make an unsolicited personal visit or telephone call, at any time, to a **personal consumer** who is an existing **consumer** unless that **personal consumer** has given informed consent in writing to being contacted by the **regulated entity** by means of a personal visit or telephone call.
- 3.33 In order to comply with Provision 3.32 above, a **regulated entity** must have obtained the consent of the **personal consumer** in a separate document or separate section of a document, which includes a requirement for the **personal consumer** to sign that section/document and which sets out:
- a) the purposes for which a personal visit or telephone call may be made if the **personal consumer** consents, and

- b) the times and days for the proposed contact, which must be within the times and days specified in Provision 3.35.
- 3.34 A **regulated entity** may only make an unsolicited personal visit or telephone call to a **consumer** who is an existing **consumer** if the **consumer** holds a product which requires the **regulated entity** to maintain contact with the **consumer** in relation to that product. In relation to arrears, the limits set out in Provision 8.14 apply.
- 3.35 A **regulated entity** may only make a personal visit or telephone call to a **personal consumer** between 9.00 a.m. and 7.00 p.m. Monday to Friday (excluding bank holidays and public holidays), except where:
- a) the purpose of the contact is to protect the **personal consumer** from fraud or other illegal activity, or
 - b) the **personal consumer** requests, in writing, contact at other times or in other circumstances, or
 - c) the contact is permitted at other times under the Consumer Credit Act 1995.
- 3.36 When making a 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; and
 - c) inform the **consumer** that the telephone call is being recorded, if this is the case.
- 3.37 Where the personal visit or telephone call is for sales or marketing purposes in accordance with Provision 3.32 above, a **regulated entity** must:
- a) establish if the **personal consumer** wishes the call/visit to proceed, and, if not, he/she must end the contact immediately; and
 - b) abide by a request from a **personal consumer** not to make a personal visit or telephone call for sales or marketing purposes to him/her again and this request must be recorded by the **regulated entity**.
- 3.38 Where a personal visit or telephone call to a **consumer** other than a **personal consumer** is as a result of a business lead or referral, a **regulated entity** must:
- c) disclose to the **consumer** the source of the business lead or referral supporting the contact, and
 - d) retain a **record** of the business lead or referral.

PREMIUM HANDLING

- 3.39 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".
- 3.40 An **insurance intermediary** must operate separate client premium accounts in respect of life and non-life business.
- 3.41 A **regulated entity** must ensure that all payments from a client premium account clearly state that the payment emanated from a client premium account.
- 3.42 A **regulated entity** must ensure that a client premium account is never overdrawn.
- 3.43 The following are the only debits and credits that may be passed through a client premium account:
- a) **Credits (money in)**
 - i) money received from the **consumer** 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**;
 - ii) money received from a **regulated entity** representing premium rebated for onward transmission to the **consumer**;
 - iii) transfers from another client premium account operated by the **insurance intermediary** for the same form of insurance;
 - iv) 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);
 - v) proceeds received from a **regulated entity** in respect of the settlement of a claim for onward transmission to the **claimant**;
 - vi) bank interest, if appropriate; and
 - vii) where mixed remittances are received, the total amount must first be lodged to the appropriate client premium account.
 - b) **Debits (money out)**
 - i) 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**;
 - ii) money paid to a **consumer** representing rebates of premiums received from **insurance undertakings**;

- iii) commissions and fees paid to the **insurance intermediary** for which there is documentary proof that the funds are properly due to the **insurance intermediary**;
- iv) transfers to another **client premium account** operated by the **insurance intermediary** for the same form of insurance;
- v) payments of claims settlement amounts to a **consumer**;
- vi) bank interest, if appropriate;
- vii) 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
- viii) payments in respect of charitable donations.

3.44 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.

3.45 Where an **insurance intermediary** uses the same client premium account for **consumers** and for **customers** that are not **consumers**, it must comply with Provisions 3.39 to 3.44 in respect of the operation of the account.

PRODUCT PRODUCER RESPONSIBILITIES

3.46 Where a **product producer** distributes its products to **consumers** through an intermediary and imposes target levels of business or pays commission to an intermediary 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**.

3.47 In relation to a new **investment product** designed by a **product producer** to be sold to **consumers**, the **product producer** must provide the following details to an intermediary:

- a) The key characteristics and features of the product;
- b) The **target market** of **consumers** for the product;
- c) The nature and extent of the risks inherent in the product; and
- d) The level, nature, extent and limitations of any guarantee attaching to the product and the name of the guarantor.

3.48 When selling an **investment product** to **consumers** through an intermediary channel, a **product producer** must provide information to the intermediary about the **investment product** that is clear, accurate, up to date and not misleading, and includes the information outlined in Provisions 3.47 and 4.62. The information must be provided in plain English.

- 3.49 The **product producer** must provide an ongoing facility to the intermediary to ask questions and obtain information on an **investment product** in relation to which information is provided to the intermediary pursuant to Provisions 3.47 and 4.62. The **product producer** must:
- a) provide this facility to the intermediary for the duration of the period in which that product is offered for sale by the **product producer**; and
 - b) inform the intermediary of his / her right to that ongoing facility.
- 3.50 Within the first year of launching an **investment product** which is sold to **consumers**, and annually thereafter, a **product producer** must update the information required under Provision 3.47 and provide that updated information to the intermediary. Where the **product producer** establishes that the **target market** of **consumers** for the **investment product** has changed, the **product producer** must:
- a) immediately update the information it provides under Provision 3.47 above; and
 - b) notify the **Central Bank**.
- 3.51 A **regulated entity** must maintain a publicly accessible register of all **mortgage intermediaries** to which it has issued a current appointment.
- 3.52 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 3.51.

BASIC PAYMENT ACCOUNTS

Provisions 3.53 to 3.57 apply where a **regulated entity** offers a **basic payment account** to **personal consumers**.

- 3.53 A **regulated entity** must bring to the attention of **personal consumers** the fact that it offers **basic payment accounts** to **personal consumers** and include details of its **basic payment account** in its promotional material for any other payment accounts available from that **regulated entity**.
- 3.54 A **regulated entity** must ensure that a **personal consumer** is provided with such reasonable assistance that may be necessary to assist the **consumer** when the **consumer** is providing the information necessary for the assessment of whether or not a **basic payment account** may be suitable for that **consumer**.
- 3.55 Where the **personal consumer** refuses to give information necessary for the assessment of whether or not a **basic payment account** may be suitable, the **regulated entity** must inform the **personal consumer** that it does not have

the necessary information to assess the suitability of a **basic payment account** for their needs and cannot offer that product unless and until such information is provided.

- 3.56 If a **regulated entity** refuses to open a **basic payment account** for a **personal consumer**, it must give that **personal consumer** the reason(s) for the refusal, in writing.
- 3.57 A **regulated entity** must not refuse to provide a **basic payment account** to a **personal consumer** solely on the basis of that **personal consumer's** poor credit history or that he / she is, or was, previously bankrupt.

CHAPTER 4

PROVISION OF INFORMATION

GENERAL REQUIREMENTS

- 4.1 A **regulated entity** must ensure that all information it provides to a **consumer** is clear, accurate, up to date, and written in plain English. **Key information** must be brought to the attention of the **consumer**. The method of presentation must not disguise, diminish or obscure important information.
- 4.2 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:
- the urgency of the situation; and
 - the time necessary for the **consumer** to absorb and react to the information provided.
- 4.3 Where a **regulated entity** intends to amend or alter the range of services it provides, it must give notice to affected **consumers** at least one month in advance of the amendment being introduced.
- 4.4 Where a **regulated entity** intends to withdraw a product or service provided to a **consumer**, the **regulated entity** must inform the **consumer** in writing two months in advance of the withdrawal, of the proposed withdrawal and the reason for the withdrawal.
- 4.5 Where a **regulated entity** intends to cease operating, merge with another, or to transfer all or a part of its **regulated activities** to another **regulated entity** it must:
- notify the **Central Bank** immediately;
 - provide at least two months notice to affected **consumers** to enable them to make alternative arrangements;
 - ensure all outstanding business is properly completed prior to the transfer, merger or cessation of operations; and
 - in the case of a merger or transfer of **regulated activities**, inform the **consumer** that their details are being transferred to the other **regulated entity**, if that is the case.
- 4.6 When intending to close, merge or move a branch, a **credit institution** must:
- notify the **Central Bank** immediately;
 - provide at least two months notice to affected **consumers** to enable them to make alternative arrangements;
 - ensure all business of the branch is properly completed prior to the closure, merger or move; and

- d) notify the wider community of the closure, merger or move in the local press in advance.
- 4.7 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**.
- 4.8 A **regulated entity** must ensure that the font size used in all printed information provided to **consumers** is:
- a) clearly legible, and
 - b) appropriate to the type of document and the information contained therein.

INFORMATION ABOUT REGULATORY STATUS

- 4.9 A **regulated entity** must only use a regulatory disclosure statement as set out in Provision 4.12, in the following circumstances:
- a) on its business stationery used in connection with its **regulated activities**;
 - b) on the section of its website that relates to its **regulated activities**; and
 - c) on electronic communications with **consumers** (excluding SMS messages) where such communications are in connection with its **regulated activities**.
- 4.10 Where a **regulated entity** is corresponding with a **consumer** otherwise than in relation to a **regulated activity**, the **regulated entity** shall refrain from including the regulatory disclosure statement in that correspondence.
- 4.11 A **regulated entity** must have separate sections on any website it operates, for **regulated activities** and any other activities which it carries out.
- 4.12 A **regulated entity** must use a regulatory disclosure statement in either of the following formats, depending on the **Member State** where it has been authorised, registered or licensed:
- a) “[Full legal name of the **regulated entity**, trading as (*insert all trading names used by the regulated entity*)] is regulated by the Central Bank of Ireland”; or
 - b) “[Full legal name of the **regulated entity**, trading as (*insert all trading names used by that regulated entity*), is authorised/licensed or registered and regulated by [*insert name of the competent authority from which it received its authorisation or licence, or with which it is registered*] in [*insert name of the Member State where that competent authority resides*] and is regulated by the Central Bank of Ireland for conduct of business rules.”

No additional text may be inserted into the wording of the regulatory disclosure statements as set out above.

- 4.13 A **regulated entity** must ensure that its regulatory disclosure statement is not presented in such a way as to appear to be an endorsement by the Central Bank of Ireland or other relevant EU competent authority of the **regulated entity** or its products or services.

INFORMATION ABOUT THE REGULATED ENTITY AND ITS REGULATED ACTIVITIES

- 4.14 A **regulated entity** must draw up its **terms of business** and provide each **consumer** with a copy prior to providing the first service to that **consumer**.
- 4.15 The **terms of business** must set out the basis on which the **regulated entity** provides its **regulated activities** and must include at least the following:
- a) the legal name, trading name(s), address, and contact details of the **regulated entity**;
 - b) if the **regulated entity** is part of a **group**, the name of the **group** to which the **regulated entity** belongs;
 - c) confirmation that the **regulated entity** is authorised, licensed or registered and the name of the competent authority that has authorised, licensed or registered it;
 - d) a statement that it is subject to the [insert names of the **Central Bank's** Code(s) of Conduct which the firm must comply with] which offers protection to **consumers** and that the Code(s) can be found on the Central Bank's website www.centralbank.ie;
 - e) a description of the **regulated activities** that the **regulated entity** provides;
 - f) if the **regulated entity** acts as an intermediary, a description of the level of service it provides for each product type, i.e., whether **fair analysis of the market** or **limited analysis of the market** and an explanation of that type of service in a way that seeks to inform the **consumer**;
 - g) if the **regulated entity** is tied for any of the services outlined in e) above, it must specify the name of each of the product(s) and/or service(s) for which it is tied and the name of the **regulated entity** to which it is tied for those product(s) and/or service(s);
 - 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 statutory 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 **terms of business** document.
- 4.16 A **regulated entity** must provide its **terms of business** to a **consumer** as a stand-alone document.
- 4.17 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.
- 4.18 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 regulated activities** are provided.
- 4.19 The term 'independent' may only be used by an intermediary in its legal name, trading name or any other description of the firm where the intermediary:
- a) provides all of its **regulated activities** on the basis of a **fair analysis of the market**; and
 - b) allows the **consumer** the option to pay in full for its services by means of a fee.
- 4.20 The term 'independent' may only be used in any trading name or other description of a **regulated activity** where the intermediary:
- a) provides the **regulated activity** on the basis of a **fair analysis of the market**; and
 - b) allows the **consumer** the option to pay in full for the **regulated activity** by means of a fee.
- 4.21 The term 'broker' may only be used by an intermediary in its legal name, trading name or any other description of the firm where the intermediary provides all of its services on the basis of a **fair analysis of the market**.
- 4.22 The term 'broker' may only be used in any trading name or other description of a **regulated activity** provided by an intermediary where the intermediary provides that **regulated activity** on the basis of a **fair analysis of the market**.
- 4.23 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.

- 4.24 Where an intermediary is tied to a single **product producer** for a particular product or service, it must disclose this fact to the **consumer** in all communications with the **consumer** in relation to that particular product or service.

INFORMATION ABOUT PRODUCTS

- 4.25 Before offering, arranging or recommending a product, a **regulated entity** must provide information to the **consumer** in writing about the main features and restrictions of the product to assist the **consumer** in understanding the product.
- 4.26 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.
- 4.27 When a **regulated entity** publishes a notice regarding a change in interest rates, the notice must state the old rate and the new rate and the date from which the changes will apply.
- 4.28 Where a **regulated entity** changes the interest rate on accounts, it must update that information on information services, including telephone helplines and websites as soon as the change comes into effect.

Term and Notice Deposit Accounts

- 4.29 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 and the maturity date. This provision does not apply where the maturity date of the fixed term deposit is less than 30 days.
- 4.30 A **regulated entity** must, before it opens a joint account for two or more **consumers**:
- a) warn such **consumers** of the consequences of opening and operating such a joint account;
 - b) specify the particular operations of the account for which consent is and is not required from all account holders;
 - c) ascertain from the **consumers** whether statements are to be issued separately to each of the joint account holders; and
 - d) ascertain from the **consumers** any limitations that they wish to impose on the operations of the account.

Credit

- 4.31 Prior to credit being approved, a **regulated entity** must explain to a **personal consumer** the effect of missing any of the scheduled repayments. The implications and effects of missing the scheduled repayments must be highlighted in all credit agreement documentation provided to the **personal consumer** and the following warning statement must also appear in the documentation:

Warning: If you do not meet the repayments on your credit agreement, your account will go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.

- 4.32 Where a **personal consumer's** request or application for credit is turned down by the **regulated entity**, it must clearly outline in writing to the **personal consumer** the reasons why the credit was not approved.
- 4.33 Where a **regulated entity**:
- offers credit on a fixed interest rate to a **personal consumer**, or
 - offers a **personal consumer** the option to fix their rate or to switch to a fixed rate, on an existing credit agreement,
- the **regulated entity** must provide the **personal consumer** with a worked example of the early redemption **charge** in monetary terms and details in relation to the calculation of this **charge** in the credit documentation.
- 4.34 A **regulated entity** must notify affected **personal consumers** in writing 30 days in advance of any change in the interest rate on a loan, except in the case of a tracker interest rate. This notification must include:
- the date from which the new rate applies;
 - details of the old and new rate;
 - the revised repayment amount; and
 - an invitation for the **personal consumer** to contact the lender if he/she anticipates difficulties meeting the higher repayments.

In the case of a mortgage where a revised repayment arrangement has been put in place in accordance with the Code of Conduct for Mortgage Arrears, the notification must clearly indicate the revised repayment amount required in Part c) that applies to the original mortgage agreement as well as the revised repayment amount that applies to the revised repayment arrangement.

In the case of a change in a tracker interest rate, a **regulated entity** must notify the **personal consumer** of any change in the tracker interest rate as soon as possible, and no later than 10 **business days** after the change has been announced. The notification must include the information contained in this provision.

- 4.35 Where credit is being offered to a **personal consumer** by a **regulated entity** 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 pay off the debt amount, the interest and all associated charges up to the level of your guarantee if the borrower(s) do(es) not. Before you sign this guarantee you should get independent legal advice.

- 4.36 Where a **regulated entity** has advanced credit to a **personal consumer** subject to a guarantee, the **regulated entity** must notify the guarantor in writing if the terms of the credit agreement change.

- 4.37 Where

- a) a **personal consumer** requests to change from an existing tracker interest rate; or
- b) a **regulated entity** offers a **personal consumer** the option to move from a tracker interest rate to an alternative rate on their existing loan, for any reason;

the lender must provide the **personal consumer** with the following information in writing at least one month before the proposed change:

- i) indicative comparisons of the cost of the monthly loan repayments at the **personal consumer's** current tracker interest rate and each of the alternative rate(s) being offered;
- ii) an indicative comparison of the total cost of the loan if the **personal consumer** continues with the existing tracker interest rate and the total cost of the loan for each of the alternative rate(s) and terms being offered. Any assumptions used must be clearly stated and must be reasonable and justifiable; and
- iii) details of the advantages and disadvantages for the **personal consumer** of the tracker interest rate compared to each of the other rate(s) being offered.

The following warning statement should also appear with the information above, in circumstances where a **personal consumer** will not be able to revert to a tracker rate if they move to an alternative rate:

Warning: If you switch to an alternative interest rate, you will not be contractually entitled to go back onto a tracker interest rate in the future.

This provision does not apply to a mortgage on a primary residence covered by the Code of Conduct for Mortgages Arrears which is in "arrears" or "pre-arrears" as defined in the Code of Conduct for Mortgage Arrears.

- 4.38 Where a **personal consumer** waives the one month period provided for in Provision 4.37 a **regulated entity** must receive written confirmation from the **personal consumer**, prior to the proposed change, confirming that:
- a) the **personal consumer** has been provided with the information required under Provision 4.37; and
 - b) the **personal consumer** understands that they are waiving a one month period to consider this information.
- 4.39 Prior to offering, arranging or recommending a loan to a **personal consumer** for the purpose of consolidating other loans or credit facilities, the **regulated entity** must provide the **personal consumer** with a written indicative comparison of the total interest they will pay if they continue with the existing facilities and the total interest payable over the term of the consolidated facility on offer. Any assumptions made must be reasonable and justifiable and clearly stated.
- 4.40 A **regulated entity** must publish on its website the interest rates for mortgages which are currently available from that **regulated entity**.
- 4.41 Where a **regulated entity** offers a mortgage to a **personal consumer**, the **regulated entity** must include in the offer document:
- a) the amount of the mortgage;
 - b) the interest rate that applies to the mortgage at the date of offer;
 - c) where there is a possibility that the interest rate set out in the offer document may not be the interest rate applicable when the mortgage is drawn down, this must be clearly highlighted in the offer document. The document must also outline the circumstances that would result in such a change to the interest rate; and
 - d) the length of time for which the mortgage offer is valid, assuming that all details provided by the **personal consumer** are correct and do not change.
- 4.42 Where a **regulated entity** offers an incentive to a **personal consumer** on an existing mortgage, the **regulated entity** must provide the **personal consumer**, in writing, with the information needed to consider the incentive offered.

This information must:

- a) Quantify the implications for the **personal consumer** of availing of the incentive including an indicative cost comparison of the total cost of the existing mortgage if they do not avail of the incentive and the total cost of the mortgage if they avail of the incentive;
- b) Clearly set out any assumptions used, which must be reasonable and justifiable;
- c) Set out the advantages and disadvantages to the **personal consumer** of availing of the incentive;

- d) Include other **key information** which the **personal consumer** should have available to them when considering the incentive; and
- e) Include a statement that the **personal consumer** may wish to seek independent advice before availing of the incentive.

Insurance products

- 4.43 A **regulated entity** providing an insurance quotation to a **consumer** must include the following information in the quotation, assuming that all details provided by the **consumer** are correct and do not change:
- a) the monetary amount of the quotation;
 - b) the length of time for which the quotation is valid; and
 - c) the full legal name of the relevant underwriter.
- 4.44 A **regulated entity** must set out clearly in the quotation any warranties or endorsements that apply to the policy. Where the quotation is provided in writing, this information must not be in a smaller font size than other information provided in the document.
- 4.45 A **regulated entity** providing an insurance quotation to a **consumer** must clearly identify any discounts or loadings that have been applied in generating the quotation.
- 4.46 A **regulated entity** must, when offering a motor insurance policy to a **consumer**, specify to the **consumer** the basis on which an **insurance undertaking** may calculate the value of the vehicle for the purposes of settling a claim where the vehicle is deemed to be beyond economic repair following a road traffic accident, fire or theft.
- 4.47 A **regulated entity** must state the full legal name of the relevant underwriter on all insurance policy documentation and renewal notices issued to a **consumer**.
- 4.48 A **regulated entity** must explain to a **consumer**, at the proposal stage, the consequences for the **consumer** of failure to make full disclosure of relevant facts, including:
- a) the **consumer's** medical details or history;
 - b) previous insurance claims made by the **consumer** for the type of insurance sought.

Such consequences must include, where relevant,

- i) that a policy may be cancelled if such information were to come to light;
- ii) that claims will not be paid;
- iii) the difficulty the **consumer** may encounter in trying to purchase insurance elsewhere; and,

- iv) in the case of property insurance, that the failure to have property insurance in place could lead to a breach of the terms and conditions attaching to any loan secured on that property.
- 4.49 Before a **consumer** completes a proposal form for a permanent health insurance policy, a **regulated entity** must explain to the **consumer**:
- a) the meaning of disability as defined in the policy;
 - b) the benefits available under the policy;
 - c) the general exclusions that apply to the policy; and
 - d) the reductions applied to the benefit where there are disability payments from other sources.
- 4.50 Before a **consumer** completes a proposal form for a serious illness policy, a **regulated entity** must explain clearly to the **consumer** the restrictions, conditions and general exclusions that attach to that policy.
- 4.51 When offering a property or motor insurance policy to a **consumer**, a **regulated entity** must, where relevant, highlight to the **consumer** that, in the event of a claim, the **regulated entity** may appoint its own builder or other expert to undertake restitution work on a property or motor vehicle.
- 4.52 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 where the **consumer** renews an existing policy.
- 4.53 Where an **insurance undertaking** refuses to quote a **consumer** for property or motor insurance, it must, within five **business days** of the refusal issue the **consumer** with its refusal and its reasons for refusing cover, in writing.
- a) In the case of motor insurance, this document must also notify the **consumer** of their right to refer the matter to the Declined Cases Committee and the method of doing so.
 - b) In the case of property insurance, this document must also notify the **consumer** that failure to have property insurance in place could lead to a breach of terms and conditions attaching to any loan secured on that property.
- 4.54 When a **consumer** notifies a **regulated entity** of the intention to use an insured vehicle in another **Member State**, the **regulated entity** must provide the **consumer** with contact details of the **regulated entity's** appointed claims representative for that **Member State**.
- 4.55 Where a secondary market exists for a life assurance policy, and when the holder of such a life assurance 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.

- 4.56 Before offering an insurance policy where the premium may be subject to review during the term of the policy, other than as a result of an alteration to the policy that is initiated by the **consumer**, a **regulated entity** must:
- explain clearly to the **consumer** the risk that the premium may increase;
 - provide the **consumer** with details of the period for which the initial premium is fixed; and
 - include the following warning on the application form for the product:

Warning: The current premium may increase after [insert period of time for which the premium is fixed].

Lifetime mortgages and home reversion agreements

- 4.57 Prior to offering, arranging or recommending a **lifetime mortgage** to a **personal consumer**, a **regulated entity** must inform the **personal consumer** of the consequences of purchasing a **lifetime mortgage**, and provide the following information to the **personal consumer** in writing:
- the circumstances in which the loan will have to be repaid;
 - details of the interest rate that will be charged;
 - an explanation of the impact of the rolling up of the interest over the duration of the loan;
 - an indication of the amount required to repay the loan at maturity;
 - the effect on the existing mortgage, if any; and
 - at several intervals of five years or less over the duration of the loan, an indication of the likely early redemption costs which would be incurred if the loan was redeemed at those times.
- 4.58 Prior to offering, arranging or recommending a **home reversion agreement** to a **personal consumer**, a **regulated entity** must inform the **personal consumer** of the consequences of entering a **home reversion agreement** and provide the following information to the **personal consumer** in writing:
- the circumstances in which the agreement comes to an end;
 - the effect on the **personal consumer's** existing mortgage, if any; and
 - in the case of a **variable-share contract**, an indication of the potential change in the breakdown of the ownership of the property between that held by the home reversion company and the **personal consumer**, over the duration of the agreement.
- 4.59 Any assumptions used by the **regulated entity** to generate the information required by Provisions 4.57 and 4.58 above, must be clearly stated.
- 4.60 Prior to offering, arranging or recommending a **lifetime mortgage** or a **home reversion agreement** to a **personal consumer**, a **regulated entity** must

ensure that the **personal consumer** is made aware of the importance of seeking independent legal advice regarding the proposed transaction.

- 4.61 A **regulated entity** must include the relevant warning statement set out below on the following, where they contain information regarding a **lifetime mortgage** or **home reversion agreement**:
- a) an application form;
 - b) any other document provided to the **personal consumer**; and
 - c) on its website.

For **lifetime mortgages**:

Warning: While no interest is payable during the period of the mortgage, the interest is compounded on an annual basis and is payable in full in circumstances such as upon death, permanent vacation of, or sale of the property.

For **home reversion agreements**:

Warning: The money you receive may be much less than the actual market value of the share in your home.

Investment Products

- 4.62 Before offering, arranging or recommending an **investment product** the **regulated entity** must provide the **consumer** with the following information, where relevant, in a stand-alone document:
- a) capital security;
 - 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;
 - 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;
 - j) the potential volatility in price, fluctuation in interest rates, and/or movements in exchange rates on the value of the investment; and
 - k) the level, nature, extent and limitations of any guarantee and the name of the guarantor.

Parts (g) and (i) are not required to be disclosed in this document for life assurance products, where such information is already required to be disclosed under the Life Assurance (Provision of Information) Regulations 2001 or any other regulations made under Section 43D of the Insurance Act

1989 concerning provision of information for life assurance policies.

- 4.63 A **regulated entity** must include the following warning statement with all illustrations:

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

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

- 4.65 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 a 100% return of a **consumer's** 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.
- 4.66 A **product producer** of a **tracker bond** must produce and issue a “Key Features Document” of a type referred to in Appendix A to this Code to any intermediary that offers that **tracker bond** to **consumers**. Where the information required by the Key Features Document is already provided to the **consumer** under the Life Assurance (Provision of Information) Regulations 2001 or any other regulations made under Section 43D of the Insurance Act 1989 requiring the provision of information to **consumers** regarding life assurance policies, the **regulated entity** is not obliged to include that information in the Key Features Document.
- 4.67 A **regulated entity** must provide a **consumer** with a Key Features Document before the **consumer** signs an application form for a **tracker bond**.
- 4.68 A **product producer** of a **tracker bond** must produce and issue a document, within three **business days** of the start of the **tracker bond**, to any **consumer** to whom it has sold its **tracker bond** or to any **intermediary** that has sold its **tracker bond** 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 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 4.66;
 - f) the date the investment will mature; and
 - g) if a **consumer** has the right to cancel the **tracker bond** within a certain period of time from the sale, the cooling off period of [*insert number*] days starts from [*insert date: the commencement of the investment date/date of receipt of policy document*].

The intermediary must, within three **business days** of receiving this document, provide it to the **consumer(s)** who purchased the **tracker bond**.

- 4.69 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 only the fixed interest rate offered by the lender for the period to the date of the promised payment under the **tracker bond** must 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**.
- 4.70 Prior to offering, arranging or recommending a **tracker bond**, where relevant, the **product producer** of a **tracker bond** must explain to the **consumer** in writing that the **consumer's** return will be capped/limited and that the **product producer** and / or a third party will retain the excess of earnings over that cap/limit.
- 4.71 Before offering, arranging or recommending a Personal Retirement Savings Account ('**PRSA**'), a **regulated entity** must provide the **consumer** with the information set out in Appendix B to this Code. Where a non-standard **PRSA** is offered or recommended to a **consumer** the **regulated entity** must complete the declaration set out in Appendix C to this Code.

INFORMATION ABOUT CHARGES

- 4.72 A **regulated entity** must:
- a) prior to providing a product or service to a **consumer**, provide the **consumer** with a written breakdown of all **charges**, including third party **charges**, which will be passed on to the **consumer**. Where such **charges** cannot be ascertained in advance, the **regulated entity** must notify the **consumer** that such **charges** will be levied as part of the transaction;
 - b) notify affected **consumers** of increases 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, notify **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.
- 4.73 A **regulated entity** must notify in writing **consumers** who have been charged penalty charges, including surcharge interest, of the methods by which these penalties may be mitigated.
- 4.74 Where a **regulated entity** intends to impose a **charge** in respect of the provision or arrangement of a loan to a **personal consumer**, the **regulated**

entity must, prior to the **personal consumer** signing an application form for a loan:

- a) inform the **personal consumer** of their right to pay such a **charge** up-front; and
- b) where the **personal consumer** opts to include the **charge** in the sum borrowed, provide the **personal consumer**, in writing, with the total cost of this **charge** over the term of the loan.

4.75 A **regulated entity** must make a schedule of its fees and **charges** publicly available. If the **regulated entity** has a website, its schedule of fees and **charges** must also be made publicly available through placing it on its website.

INFORMATION ABOUT REMUNERATION

4.76 Prior to offering, arranging or providing a product or service a **mortgage intermediary** and a firm authorised under the Investment Intermediaries Act 1995 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.

This provision does not apply where the product or service relates to an insurance policy.

4.77 Where remuneration is to be received by an intermediary from a **product producer** on an ongoing basis in respect of a product or service, the intermediary must disclose to the **consumer** in writing, prior to the provision of that product or service, the nature of the service to be provided to the **consumer** in respect of this remuneration.

4.78 In the case of non-life insurance:

- a) An **insurance intermediary** must disclose in general terms to a **consumer** that it is paid for the service provided to the **consumer** by means of a remuneration arrangement with the **product producer**.
- b) An **insurance intermediary** must disclose to a **consumer** the range of commission earned, either in percentage terms or the actual amount, in respect of each product type.
- c) Prior to the sale of a product, an **insurance intermediary** 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.

- 4.79 An intermediary must disclose in general terms to a **consumer** 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 intermediary to that **product producer** or that may be perceived as having the potential to create a conflict of interest.
- 4.80 The disclosure required at Provisions 4.78 and 4.79 must be in the **terms of business** or through some other suitable mechanism, and with renewal notices.
- 4.81 Where an intermediary 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 the intermediary 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.

CHAPTER 5

KNOWING THE CONSUMER AND SUITABILITY

KNOWING THE CONSUMER

5.1 A **regulated entity** must gather and record sufficient information from the **consumer** before it offers, arranges or recommends 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 details of the **consumer's**:

- a) Needs and objectives including, where relevant:
 - i) the length of time for which the **consumer** wishes to hold a product,
 - ii) need for access to funds, need for emergency funds,
 - iii) need for accumulation of funds.

- b) Personal circumstances including, where relevant:
 - i) age,
 - ii) health,
 - iii) knowledge and experience of financial products,
 - iv) dependents,
 - v) employment status,
 - vi) potential future changes to his/her circumstances.

- c) Financial situation including, where relevant:
 - i) income,
 - ii) savings,
 - iii) financial products and other assets,
 - iv) debts and financial commitments.

- d) where relevant, attitude to risk, in particular, the importance of capital security to the **consumer**.

The **regulated entity** is only required to seek the information set out at a) to d) above where it is relevant to the assessment of suitability to be carried out under this Chapter.

5.2 In the case of a standard Personal Retirement Savings Account (**PRSA**), where an employer has chosen a provider and the **regulated entity** makes a presentation to **employees**, the **regulated entity** must gather and record the following minimum relevant information namely, that the **consumer**:

- a) is an **employee** of the firm;
- b) has no other form of pension provisions; and

- c) intends to select the **default investment strategy** of the provider.
- 5.3 A **regulated entity** must gather and maintain a **record** of details of any material changes to a **consumer's** circumstances before offering, arranging or recommending a subsequent product or service to the **consumer**. Where there is no material change, this must be noted on a **consumer's records**.
- 5.4 A **regulated entity** must ensure that, where a **consumer** refuses to provide information sought in compliance with Provisions 5.1 and 5.3, the refusal is noted on that **consumer's records**. The **regulated entity** must inform the **consumer** that as it does not have the relevant information necessary to assess suitability it cannot offer the **consumer** the product or service sought.
- 5.5 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**.

Mortgages

- 5.6 Before providing a mortgage to a **consumer**, a mortgage lender must have had sight of all original supporting documentation evidencing the **consumer's** identity and ability to repay. A declaration signed by the **consumer**, (or his representative), certifying income and/or ability to repay is not sufficient evidence for these purposes.
- 5.7 A **regulated entity** must be satisfied with the reasonableness of the information contained in the documentation submitted by a **consumer** in support of a mortgage application and take all reasonable steps to ensure that the documentation submitted is legitimate and authentic.
- 5.8 A **regulated entity** must ensure that it has had sight of an original valuation report for the property which will act as security for the mortgage, before providing a mortgage.

SUITABILITY

Assessing affordability of credit

- 5.9 Before a credit product is offered, arranged or recommended to a **personal consumer**, a lender must carry out an assessment of affordability to ascertain the **personal consumer's** likely ability to repay the debt, over the duration of the agreement, taking into account any known future changes and any reasonably foreseeable changes to the **personal consumer's** circumstances at the time the credit was sought.

The lender must notify the relevant intermediary of the results of the assessment of affordability if any.

- 5.10 An affordability assessment must include consideration of:
- a) the information gathered under parts b) and c) of Provision 5.1, and
 - b) the impact of a known future change and any reasonably foreseeable changes to the **personal consumer's** personal circumstances.

- 5.11 In the case of all mortgage products provided to **personal consumers**, the lender must test the **personal consumer's** ability to repay the instalments, over the duration of the agreement, on the basis of a 2% interest rate increase, at a minimum, above the interest rate offered to the **personal consumer**. This test does not apply to mortgages where the interest rate is fixed for a period of five years or more.

Where the lender offers an **introductory interest rate**, it must carry out this 2% interest rate test on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the **introductory interest rate** or the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known.

- 5.12 Before offering, arranging or recommending a variable interest rate mortgage, a **regulated entity** must provide a **personal consumer** with figures reflecting the revised instalment amount following a 2% interest rate increase above the variable interest rate offered.

Where the lender is offering an **introductory interest rate**, the revised instalment amounts must reflect an increase of 2% on the variable interest rate to be applied after the introductory period has ended if known at the time of the offer of the **introductory interest rate** or the current variable interest rate, if the variable interest rate to be applied after the introductory period has ended is not yet known.

- 5.13 In the case of an interest only mortgage, in addition to the requirements outlined in Provision 5.11 above, the lender must be satisfied that the **personal consumer** will be able to repay the principal at the end of the mortgage term.

- 5.14 Before offering, arranging or recommending a mortgage on an interest-only basis for a limited duration, a lender must be satisfied that the **personal consumer** will be able to meet the capital and interest mortgage instalments at the end of the interest-only period.

- 5.15 A **mortgage intermediary** must submit the information obtained under Provisions 5.1 and 5.3 to the relevant lender to enable the affordability assessment(s) to be carried out.
- 5.16 Where the result of the affordability assessment suggests that a **personal consumer** is unlikely to be able to repay the debt in the manner required under the credit agreement, a **regulated entity** must not make the credit available to the **personal consumer** for that amount and duration.

Assessing suitability

- 5.17 When assessing the suitability of a product or service for a **consumer**, the **regulated entity** must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1:
- a) the product or service meets that **consumer's** needs and objectives;
 - b) the **consumer**:
 - i) is able to meet the financial commitment associated with the product on an ongoing basis;
 - ii) is financially able to bear any reasonably foreseeable risks attaching to the product or service;
 - iii) in the case of credit products, has the ability to repay the debt in the manner required under the credit agreement, on the basis of the outcome of the assessment of affordability, and,
 - c) the product or service is consistent with the **consumer's** attitude to risk.
- 5.18 A **regulated entity** must ensure that any product or service offered or recommended 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**.
- 5.19 A **regulated entity** must not advise a **consumer** to carry out an **investment product** transaction, or a series of **investment product** 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.

Where a **consumer** instructs a **regulated entity** to carry out an **investment product** transaction, or series of **investment product** 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 and/or detrimental to the **consumer's** best interests, if the **consumer** wishes to proceed with the transaction(s).

- 5.20 A lender must carry out further affordability and suitability assessment prior to advancing additional credit to a **personal consumer**, whether by way of a top-up on an existing loan or by a new agreement to provide credit.

Statement of suitability

- 5.21 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 the product options contained in a selection of product options offered to a **consumer** are considered to be the most suitable to that **consumer**; or
 - c) the reasons why a recommended product is considered to be the most suitable product for that **consumer**.

The reasons set out in the statement must reflect the information gathered under Provision 5.1 to assist the **consumer** in understanding how the product(s) or service(s) offered or recommended meets, where relevant, the **consumer's**:

- i) needs and objectives,
- ii) personal circumstances, and
- iii) financial situation.

The written statement must also include an outline of the following, where relevant:

- iv) how the risk profile of the product is aligned with the **consumer's** attitude to risk; and
- v) how the nature, extent and limitations of any guarantee attached to the product is aligned with the **consumer's** attitude to risk.

The **regulated entity** must sign the statement and give a copy of this statement, dated on the day on which it is completed, to the **consumer** before providing a product or service, and retain a copy.

- 5.22 A **regulated entity** must include the following notice at the beginning of the statement of suitability:

Important Notice – Statement of Suitability

This is an important document, which sets out the reasons why the product(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

- 5.23 A **regulated entity** must inform the **consumer** that he/she has the right to ask questions about the information in the statement of suitability.
- 5.24 Where a **regulated entity** has provided an oral explanation to the **consumer** to assist the **consumer** in understanding the product(s) offered or recommended, a **regulated entity** must include a record of the detail of such explanation in the statement of suitability.
- 5.25 In the case of travel, motor and home insurance provided to a **personal consumer**, the statement of suitability may be in a standard format.
- 5.26 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, where immediate cover is required.

EXEMPTION FROM KNOWING THE CONSUMER AND SUITABILITY

- 5.27 Provisions on Knowing the Consumer and Suitability do not apply where:
- a) the **consumer** has specified both the product and the **product producer** by name and has not received any assistance from the **regulated entity** in the choice of that product and/or **product producer**; or
 - b) the **regulated entity** has established that the **consumer** is seeking a term deposit of less than one year or a notice deposit account and has alerted the **consumer** to any restrictions on the account.
 - c) where **consumers** other than **personal consumers** are seeking credit.

The above exemption in Provision 5.27 a) does not apply where:

- i) a **personal consumer** is seeking:
 - a. credit amount above €75,000,
 - b. a mortgage,
 - c. a **home reversion agreement**.
- ii) a **consumer** is seeking an **investment product**.

CHAPTER 6

STATEMENTS

- 6.1 A **regulated entity** may provide statements or make statements available electronically to a **consumer**, provided that the statements are provided through a **durable medium**. However, if requested by a **consumer**, the **regulated entity** must issue statements in paper format to the **consumer's** last known postal address.
- 6.2 In relation to a joint account, and when a **consumer** is a **personal consumer** under this Code, statements must be provided or made available separately to each of the joint account holders in the following circumstances:
- a) where there are different postal addresses for each joint account holder;
or
 - b) where a joint account holder has requested that a separate statement be issued to each account holder.

Term and Notice Deposit Accounts

- 6.3 a) A **credit institution** must, at least annually, provide or make available statements of transactions on all term and notice deposit accounts with a balance in excess of €20.

This statement must include, where applicable:

- i) the opening balance;
- ii) all additions;
- iii) all withdrawals;
- iv) all **charges**;
- v) all interest credited;
- vi) the closing balance;
- vii) details of the interest rates applied to the account during the period covered by the statement; and
- viii) details of the interest rates that are being applied to other similar accounts available to the **consumer** from that **credit institution**;
- ix) where tax is deducted from interest credited, provide information on the tax deducted or inform **consumers** how they may obtain a certificate detailing the tax paid.

b) Where the term of the account is less than one year, the **regulated entity** must provide or make available a closing statement which contains this information.

Credit

- 6.4 A **regulated entity** must, at least annually, issue a statement of account in respect of a loan, unless otherwise agreed with the **personal 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.

Investment products

- 6.5 A **regulated entity** must issue statements for each **investment product** held with it at least on an annual basis, in respect of the previous 12 month period. 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.

In the case of an **investment product** which is not covered by the Life Assurance (Provision of Information) Regulations 2001, the above information must be provided to the **consumer** on a forecast basis in respect of the next 12-month period, if requested by the **consumer**.

CHAPTER 7

REBATES AND CLAIMS PROCESSING

PREMIUM REBATES

- 7.1 A **regulated entity** must issue a premium rebate to a **consumer** within five **business days** of the rebate becoming due. Where the **regulated entity** is an intermediary, the premium rebate becomes due when:
- the **insurance intermediary** has received the premium rebate from the relevant **insurance undertaking**; or
 - the **insurance undertaking** has notified the **insurance intermediary** that such rebate is due and permits the **insurance intermediary** to issue the rebate from the funds held by the **insurance intermediary** which are due to the **insurance undertaking**.
- 7.2 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**.
- 7.3 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**.
- 7.4 Where a premium rebate is due to a **consumer**, and the value of the rebate is €10 or less, the **regulated entity** must offer the **consumer** the choice of:
- receiving payment of the rebate;
 - receiving a reduction from a renewal premium or other premium currently due to that **regulated entity**; or
 - the **regulated entity** making a charitable donation of the rebate amount to a registered charity.
- In respect of options b) and c), the **regulated entity** must maintain a **record** of the **consumer's** decision.
- 7.5 Where an **insurance intermediary** has issued a rebate cheque to a **consumer**, and the rebate cheque has not been presented for payment within six months from the date of issue, the **insurance intermediary** must issue a reminder to the **consumer**.

If the rebate has not been presented for payment within six months from the date of issue, the **insurance intermediary** must return the rebate to the **insurance undertaking**. Should the **consumer** seek the rebate in the future, it must be issued by the **insurance undertaking** or by the **insurance intermediary** in accordance with Provision 7.1 above.

- 7.6 Where the **consumer** has agreed under Provision 7.4 c) that a premium rebate will not be paid to the **consumer** and that a charitable donation can be made, the **regulated entity** must document the donation and retain a receipt from the relevant charity.

CLAIMS PROCESSING²

- 7.7 A **regulated entity** must take steps to verify the validity of a claim before making a decision on its outcome.
- 7.8 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 **Personal Injuries Assessment Board** information leaflet (*reference no.*) is issued to the **claimant** as soon as the **regulated entity** is notified of the claim;
 - 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 five **business days** of receiving notice of a claim;
 - d) the **regulated entity** must offer to assist in the process of making a claim, including, where relevant, alerting the **consumer** to policy terms and conditions that may be of benefit to the **consumer**;
 - e) details of all conversations with the **claimant** in relation to the claim must be noted; and
 - 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.
- 7.9 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.

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

- 7.10 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**.
- 7.11 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 the **claimant** may appoint a loss assessor to act in their interests but that any such appointment will be at the **claimant's** expense.
- 7.12 At the **claimant's** request and with the **claimant's** written consent, a **regulated entity** must engage with a third party which a **claimant** has appointed to act on his/her behalf in relation to a claim.
- 7.13 A **regulated entity** must be available to discuss all aspects of the claim with the **claimant**, including assessment of liability and damages, during normal office hours, or outside of these hours if agreed with the **claimant**.
- 7.14 Where an **insurance undertaking** appoints a third party to undertake restitution work in respect of a claim, the **insurance undertaking** must provide the **claimant** in advance and in writing, with details of the scope of the work that has been approved and the cost.
- 7.15 Where a method of direct settlement has been used, a **regulated entity**:
- a) must not ask the **claimant** to certify any restitution work carried out by a third party appointed by the **insurance undertaking**; and
 - b) must certify in writing to the **claimant** that the restitution work carried out by the third party appointed by the **insurance undertaking** has been carried out to restore the **claimant's** property to the standard that existed prior to the insured event.
- 7.16 A **regulated entity** must ensure that any claim settlement offer made to a **claimant** is fair, taking into account all relevant factors, and represents the **regulated entity's** best estimate of the **claimant's** reasonable entitlement under the policy.
- 7.17 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.
- 7.18 The **claimant** must be allowed at least 10 **business days** to accept or reject the offer. Where the **claimant** waives this right and accepts the settlement offer within this timeframe, the **regulated entity** must retain a **record** of this decision.

- 7.19 If the **regulated entity** decides to refuse the claim, the reasons for that decision must be provided to the **claimant** in writing.
- 7.20 Where the policyholder is not the beneficiary of the settlement 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 the details of the settlement. Where applicable, the policyholder must be informed that the settlement of the claim will affect future insurance contracts of that type.
- 7.21 A **regulated entity** must provide a **claimant** with written details of any internal appeals mechanisms available to the **claimant**.
- 7.22 A **regulated entity** must pay a claim to the **claimant** within 10 **business days** from the date the **claimant** has agreed to accept the offer made by the **regulated entity** offering to pay a particular amount in discharge of a claim, 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 8

ARREARS HANDLING

The provisions in this Chapter only apply in respect of loans (including credit cards) held by a **personal consumer**.

The provisions in this Chapter do not apply where a lender is applying the provisions of the Code of Conduct for Mortgage Arrears to a mortgage account.

In this Chapter 'arrears' arise where a **personal consumer**:

- a) has not made a full repayment, or only makes a partial repayment, as set out in the original loan account contract, by the scheduled due date; or
- b) in the case of a credit card account, has not made the minimum repayment by the due date.

General

- 8.1 A **regulated entity** must have in place procedures for the handling of arrears.
- 8.2 A **regulated entity** must have a dedicated section on its website for **consumers** in or concerned about arrears which must include:
 - a) general information to encourage a **personal consumer** to deal with arrears;
 - b) relevant contact details of the **regulated entity** for dealing with arrears;
 - c) information on the level of **charges** to be imposed on **personal consumers** in arrears; and
 - d) a link to the Money Advice and Budgeting Service (MABS) website.

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

- 8.3 Where an account is in arrears a **regulated entity** must seek to discuss and agree an approach that will assist the **personal consumer** in resolving an arrears problem.
- 8.4 As soon as an account goes into arrears, a **regulated entity** must communicate promptly and clearly with the **personal consumer** to establish in the first instance why the arrears have arisen.
- 8.5 At the **personal consumer's** request and with the **personal consumer's** written consent, a **regulated entity** must liaise with a third party nominated by the **personal consumer** to act on his / her behalf in relation to an arrears

situation. This does not prevent the **regulated entity** from contacting the **personal consumer** directly.

Provision of Information

- 8.6 Where an account remains in arrears 31 days after the arrears first arose, a **regulated entity** must immediately inform the **personal consumer** and any guarantor of the loan, in writing, of the status of the account. This information must include the following:
- a) the date the account fell into arrears;
 - b) the number and total amount of repayments (including partial repayments) missed (this information is not required for credit card accounts);
 - 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 **personal consumer** engaging with the **regulated entity** in order to address the situation;
 - g) relevant contact points;
 - h) the consequences of continued non-payment;
 - i) if relevant, any impact of the non-payment on other accounts held by the **personal consumer** with that **regulated entity** including the potential for off-setting of accounts, where there is a possibility that this may occur under existing terms and conditions; and
 - j) the contact details of the **personal consumer's** nearest MABS office and/or the link to the MABS website and a statement to the effect that the involvement of MABS could help the **personal consumer** if they are experiencing financial difficulty.
- 8.7 Where a **personal consumer** has purchased payment protection insurance (PPI) from the **regulated entity** in relation to the loan account or credit card account in arrears, the communication required under provisions 8.6 must also advise the **personal consumer** of the following:
- a) that the **personal consumer** has purchased PPI;
 - b) the **personal consumer's** policy number; and
 - c) that the **regulated entity** will provide the **personal consumer** with a copy of the policy on request.
- 8.8 Where the arrears situation persists, an updated version of the information required in Provision 8.6 must be provided to the **personal consumer** in writing every three months.
- 8.9 In respect of a mortgage, where a third full or partial repayment is missed and remains outstanding and an alternative repayment arrangement has not been put in place, a **regulated entity** must notify the **personal consumer**, in writing, of the following:

- a) the potential for legal proceedings and proceedings for repossession of the property, together with an estimate of the costs to the **personal consumer** of such proceedings;
- b) the importance of seeking independent advice, for example from MABS; and
- c) that, irrespective of how the property is repossessed and disposed of, the **personal consumer** will remain liable for the outstanding debt, including accrued interest, **charges**, legal, selling and other related costs, if this is the case.

8.10 A **regulated entity** must inform the **personal consumer**, in writing, when it intends to appoint a third party to engage with the **personal consumer** in relation to arrears and must explain the role of the third party.

Revised Repayment Arrangements

8.11 Where a **regulated entity** reaches an agreement on a revised repayment arrangement with a **personal consumer**, the **regulated entity** must, within five **business days**, provide the **personal consumer** in writing, with a clear explanation of the revised repayment arrangements.

8.12 Where arrears arise on an account and where a **personal consumer** makes an offer of a revised repayment arrangement that is rejected by the **regulated entity**, the **regulated entity** must formally document its reasons for rejecting the offer and communicate these to the **personal consumer** in writing.

Communications

8.13 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 **personal consumer** in arrears, is proportionate and not excessive.

8.14 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 **personal consumer** in respect of an arrears situation. The three unsolicited communications include any communication that has not been requested by, or agreed in advance with, the **personal consumer** and any communication where contact is not made with the **personal consumer**.

Any communications to the **personal consumer** which are required by this Code or other regulatory requirements are not included in this unsolicited communications limit.

CHAPTER 9

ADVERTISING

GENERAL REQUIREMENTS

- 9.1 A **regulated entity** must include a regulatory disclosure statement, which meets the requirements set out in Provision 4.12, in all **advertisements**.
- 9.2 A **regulated entity** must ensure that all its **advertisements** are clear, fair and not misleading.
- 9.3 A **regulated entity** must ensure that an **advertisement** does not influence a **consumer's** attitude to the **advertised product or service** or the **regulated entity** either by inaccuracy, ambiguity, exaggeration or omission.
- 9.4 The name of both the **regulated entity** publishing an **advertisement** and the **regulated entity** providing the product or service must be clearly shown in all **advertisements**.
- 9.5 A **regulated entity** must ensure that the nature or type of the **advertised product or service** is clear and not disguised in any way.
- 9.6 A **regulated entity** must ensure that an **advertisement** is designed and presented so that any reasonable **consumer** knows immediately that it is an **advertisement**.
- 9.7 A **regulated entity** must ensure that **key information**, in relation to a product or service, is included in the main body of the **advertisement** for that product or service. This information must not be obscured or disguised in any way by the content, design or format of the **advertisement**.
- 9.8 A **regulated entity** must ensure that small print or footnotes are only used to supplement or elaborate on the **key information** in the main body of the **advertisement**. Where small print or footnotes are used, they should be of sufficient size and prominence to be clearly legible and should not be directly related to the product or service in the **advertisement**.
- 9.9 A **regulated entity** must ensure that any qualifying criteria in relation to:
- a) availing of the **advertised product or service**;
 - b) obtaining a minimum price for the **advertised product or service**; or
 - c) benefiting from a potential maximum savings relating to the **advertised product or service**
- must be included in the main body of the **advertisement**.

- 9.10 A **regulated entity** must ensure that the design and presentation of an **advertisement** allows it to be clearly understood.
- 9.11 A **regulated entity** must ensure that warnings appear alongside the benefits of the product or service to which they refer. They must not be obscured or disguised in any way by the content, design or format of the **advertisement**.
- 9.12 A **regulated entity** must ensure that all warnings required by this Code are prominent i.e. they must be in a box, in bold type and of a font size that is larger than the normal font size used throughout the **advertisement**. In the case of non-print media, it is sufficient that the warning statements are outlined at the end of the **advertisement**.
- 9.13 A **regulated entity** must ensure that an **advertisement** that uses promotional or **introductory interest rates** clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter.
- 9.14 A **regulated entity** must ensure that any statement or promise contained in an **advertisement** is 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.
- 9.15 A **regulated entity** must ensure that any forecast contained in an **advertisement** is not misleading at the time it is made and any assumptions on which it is based must be reasonable and stated clearly.
- 9.16 A **regulated entity** must ensure that an **advertisement** is not 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's** 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**.
- 9.17 A **regulated entity** must ensure that an **advertisement** that promotes more than one product sets out clearly the **key information** relating to each product in such a way that a **consumer** can distinguish between the products.
- 9.18 A **regulated entity** must ensure that any recommendations or commendations quoted are complete, fair, accurate and not misleading at the time of issue, and relevant to the **advertised product or service**.

- 9.19 A **regulated entity** must ensure that a recommendation or commendation may not be used in an **advertisement** without the consent of the author. 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.
- 9.20 Where an intermediary is tied to a single provider for a particular product it must disclose this fact in all **advertisements** for that particular product.
- 9.21 A **regulated entity** must ensure that comparisons or contrasts are based either on facts verified by the **regulated entity**, or on reasonable assumptions stated within the **advertisement**. They should 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.
- 9.22 It is not necessary for a **regulated entity** 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**.
- 9.23 A **regulated entity** must ensure that an **advertisement** which contains an acronym (AER, EAR, CAR, APR etc.) also includes an explanation of what the letters in the acronym stand for.

CREDIT: ADVERTISING TO PERSONAL CONSUMERS

- 9.24 A **regulated entity** must ensure that where an **advertisement** includes an annual percentage rate, the **advertisement** must clearly state if the interest rate is fixed or variable. In the case of a fixed interest rate, the term of the fixed interest rate must be displayed and an indication must be given of the rate that will apply thereafter.
- 9.25 A **regulated entity** must ensure that an **advertisement** for a term loan, if displaying the annual percentage rate and the term, also displays the total cost of credit by means of an example. 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.
- 9.26 A **regulated entity** must ensure that **advertisements** for a fixed-rate loan, where applicable, state:

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

- 9.27 A **regulated entity** must ensure that an **advertisement** for personal lending contains the following warning:

Warning: If you do not meet the repayments on your loan, your account may go into arrears. This may affect your credit rating, which may limit your ability to access credit in the future.

- 9.28 A **regulated entity** must ensure that **advertisements** for the consolidation of two or more debts, where sample figures are offered in the **advertisement**, indicate the difference between the total cost of credit of the consolidated credit facilities and the total cost of credit of the individual credit facilities that are the subject of the consolidation.

- 9.29 A **regulated entity** must ensure that an **advertisement** for a debt consolidation mortgage carries the following warning:

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

- 9.30 A **regulated entity** must ensure that an **advertisement** for a variable-rate residential mortgage contains 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.

- 9.31 A **regulated entity** must ensure that an **advertisement** only describes a product or service as free where the product or service in its entirety is available free of **charge** to the **consumer**.

- 9.32 A **regulated entity** must ensure that;

- a) An **advertisement** for an interest-only mortgage contains 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 a **lifetime mortgage** contains the following warning:

Warning: While no interest is payable during the period of the mortgage, the interest is compounded on an annual basis and is

payable in full in circumstances such as, upon death, permanent vacation of or sale of the property.

and;

- c) An **advertisement** for a **home reversion agreement** contains the following warning:

Warning: The money you receive may be less than the actual market value of the share in your home.

SAVINGS

- 9.33 A **regulated entity** must ensure that where an interest rate for a savings or deposit account is displayed in an **advertisement**, it clearly states the following:

- a) whether the interest rate quoted is fixed or variable, 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 on the interest earned.

INVESTMENTS

- 9.34 A **regulated entity** must ensure that an **advertisement** for a product where the **consumer** may not get back 100% of the initial capital invested contains the following warning:

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

- 9.35 A **regulated entity** must ensure that an **advertisement** for a product where the promised 'return of capital' is only applicable on a specific date, contains 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.

- 9.36 A **regulated entity** must ensure that an **advertisement** for a product where there is no access to funds for the term of the product contains 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].

- 9.37 Where a **regulated entity** gives information about the past performance of the **advertised product or service** or of the **regulated entity**, this information 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.
- 9.38 A **regulated entity** must ensure that an **advertisement** which contains information on past performance contains the following warning:

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

- 9.39 Where a **regulated entity** has a position or holding in the product or service the subject of an **advertisement** by that **regulated entity**, it must include a statement to this effect in the **advertisement**.
- 9.40 Where a **regulated entity** gives information in an **advertisement** about the simulated performance of the **advertised product or service** or of a **regulated entity**, this information 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.

- 9.41 A **regulated entity** must ensure that an **advertisement** which contains illustrations or 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.

- 9.42 A **regulated entity** must ensure that an **advertisement** must not describe a product as guaranteed or partially guaranteed unless:
- a) there is a legally enforceable agreement with a third party who undertakes to meet, to whatever extent is stated in the **advertisement**, the **consumer's** claim under the guarantee;
 - b) *the regulated entity* has made, and can demonstrate that it has made, an assessment of the value of the guarantee;
 - c) it clearly states the level, nature and extent of limitations of the guarantee and the name of the guarantor; and
 - d) where it is the case, the **advertisement** must state that the guarantee is from a **connected party** of the **regulated entity**.
- 9.43 A **regulated entity** must ensure that where an **advertisement** contains a reference to the impact of taxation, it must:
- a) state the assumed rate of taxation;
 - 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.
- 9.44 A **regulated entity** must ensure that where the product or service that is the subject of the **advertisement** can fluctuate in price or value, an **advertisement** contains 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.

9.45 A **regulated entity** must ensure that 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 is clearly stated.

9.46 A **regulated entity** must ensure that 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** contains the following warning:

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

9.47 Where a product that is 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 the withdrawal upon such a product is clearly explained in the **advertisement**.

9.48 A **regulated entity** must ensure that 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** contains the following warning:

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

9.49 A **regulated entity** must ensure that an **advertisement** for a product which is not readily realisable, states 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.

9.50 A **regulated entity** must ensure that an **advertisement** for a product that cannot be encashed prior to maturity, or which incurs an early redemption **charge** if encashed prior to maturity, clearly states that this is the case.

9.51 A **regulated entity** must ensure that an **advertisement** for a product subject to front-end loading states 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,

- 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 full amount they invested.

9.52 Where a **regulated entity** advertises an interest rate relating to a proportion of the **tracker bond** to be placed on deposit, the **advertisement** must also clearly state the following:

- a) whether the rate quoted is fixed or variable, and if fixed, for what period and, where relevant, an indication of the rate that will apply thereafter;
- b) the relevant **compound annual rate** of this deposit over the full term of the **tracker bond**; and
- c) whether any tax is payable on the interest earned.

Each rate provided to a **consumer** under this provision must be of equal font size and prominence.

9.53 Where a **regulated entity** advertises a projected return on investment for a **tracker bond**, the value of that return must be expressed and shown as prominently as the equivalent **compound annual rate**.

9.54 Where a **regulated entity** advertises a projected return on investment for a **tracker bond**, the **advertisement** must also include the value of the total return of all the combined parts of the **tracker bond** for the full term of the **tracker bond** and this must be expressed and shown as prominently as the equivalent **compound annual rate**.

CHAPTER 10

ERRORS AND COMPLAINTS RESOLUTION

ERRORS

- 10.1 A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**. At a minimum, these procedures must provide for the following:
- the identification of the cause of the error;
 - the identification of all affected **consumers**;
 - the appropriate analysis of the patterns of the errors, including investigation as to whether it was an isolated or systemic error;
 - proper control of the correction process; and
 - escalation of errors to compliance/risk functions and senior management.
- 10.2 A **regulated entity** must resolve all errors within six months of the date the error was first discovered, including:
- correcting any systems failures;
 - ensuring effective controls are implemented to prevent any recurrence of the identified error;
 - effecting a refund (with appropriate interest) to all **consumers** who have been affected by the error, where possible; and
 - 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, where possible.
- 10.3 Where an error has not been fully resolved (as outlined in Provision 10.2) within 40 **business days** of the date the error was first discovered, a **regulated entity** must inform the **Central Bank** in writing within five **business days** of that deadline.
- 10.4 A **regulated entity** must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.
- 10.5 A **regulated entity** must maintain a log of all errors which affect a **consumer**. This log must contain:
- details of the error;
 - the date the error was discovered;
 - an explanation of how the error was discovered;
 - the period over which the error occurred;
 - the number of **consumers** affected;
 - the monetary amounts involved;
 - the status of the error;

- h) the date the error was resolved;
 - i) the number of **consumers** refunded; and
 - j) the total amount refunded.
- 10.6 A **regulated entity** must maintain a **record** of all steps taken to resolve an error which affects a **consumer**, 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.

COMPLAINTS RESOLUTION

- 10.7 A **regulated entity** must seek to resolve any **complaints** with **consumers**.
- 10.8 When a **regulated entity** receives an oral **complaint**, it must offer the **consumer** the opportunity to have the **complaint** treated as a written **complaint**.
- 10.9 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 of 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 progressed 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**, starting from the date on which the **complaint** was made;
 - 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** must inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint** and must inform the **consumer** that they can refer the matter to the relevant Ombudsman, and must 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 **consumer** in writing of:
 - i) the outcome of the investigation;
 - ii) where applicable, the terms of any offer or settlement being made;

- iii) that the **consumer** can refer the matter to the relevant Ombudsman, and
- iv) the contact details of such Ombudsman.

10.10 A **regulated entity** must maintain an up-to-date log of all **complaints** from **consumers** subject to the **complaints** procedure. This log must contain:

- a) details of each **complaint**,
- b) the date the **complaint** was received,
- c) a summary of the **regulated entity's** response(s),
- d) details of any other relevant correspondence or **records**,
- e) the action taken to resolve each **complaint**,
- f) the date the **complaint** was resolved, and
- g) where relevant, the current status of the **complaint** which has been referred to the relevant Ombudsman.

10.11 A **regulated entity** must maintain up to date and comprehensive **records** for each **complaint** received from a **consumer**.

10.12 A **regulated entity** must undertake an appropriate analysis of the patterns of **complaints** from **consumers** on a regular basis including investigating whether **complaints** indicate an isolated issue or a more widespread issue for **consumers**. This analysis of **consumer complaints** must be escalated to the **regulated entity's** compliance/risk function and senior management.

CHAPTER 11

RECORDS AND COMPLIANCE

RECORDS

- 11.1 A **regulated entity** must ensure that all instructions from or on behalf of a **consumer** are properly documented and the date of both the receipt and transmission of the instruction is recorded.
- 11.2 A **regulated entity** must ensure that any decision in the exercise of its discretion on behalf of a **consumer** with respect to a product is recorded.
- 11.3 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.
- 11.4 A **regulated entity** must maintain a list of its **customers** who are **consumers** as defined by this Code.
- 11.5 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 and documentation concerning the **consumer**.
- 11.6 Details of individual transactions must be retained for six years after the date on which the particular transaction is discontinued or completed. All other **records** must be retained for six years from the date on which the **regulated entity** ceased to provide any product or service to the **consumer** concerned.
- 11.7 **Records** are not required to be kept in a single location but must be complete and readily accessible.

COMPLIANCE WITH THIS CODE

- 11.8 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 required to provide information which is full, fair and accurate in all respects and not misleading and to do so in any period of time or format that may be specified by the **Central Bank**.
- 11.9 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**.
- 11.10 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 which the **Central Bank** may specify (up to a maximum period of six years).

CHAPTER 12

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 **regulated activity** or a **regulated entity** excluding name plaques, **sponsorship material** and a prospectus drawn up in accordance with the Prospectus Directive (2003/71/EC);

“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’s** 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 payment account” is a payment account, which will normally have the following features:

- a) Salary, welfare benefits, pension can be paid directly into the account;
- b) Cheques and cash can be lodged to the account;
- c) No credit or cheque writing feature;
- d) It will have a budgeting feature;
- e) Bills can be paid by direct debit and/or standing order;
- f) No **charges**;
- g) No minimum or monthly balance required; and
- h) the account balance can be accessed or withdrawn from the account at any time.

“bundling” means the packaging of two or more distinct products into a bundle, where each of these products can be purchased separately from or through the **regulated entity**;

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

“Central Bank” means the Central Bank of Ireland;

“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, any **associate** of that **regulated entity**, or a particular operating unit within the **regulated entity** or any **associate** of that **regulated entity** 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 orally or in writing, in connection with:

- a) the provision or the offer of the provision of a product or service to a **consumer** by a **regulated entity**, or
- b) the failure or refusal 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 on previously earned interest as well as on the principal), payable at the end of the year, on a deposit;

“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 **person** or **group** of **persons**, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (for the avoidance of doubt a **group** of **persons** includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate) or
- b) 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);

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

"credit institution" means a credit institution within the meaning of Article 4(1) of EU Directive 2006/48/EC 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 product or service the subject of this Code, and any **person** who requests such a product or 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;

"durable medium" means any instrument that enables a **consumer** to store information addressed personally to the **consumer** in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

"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 services 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 undertaking**;

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

"Personal Injuries Assessment Board" means the Personal Injuries Assessment Board established under the Personal Injuries Assessment Board Act 2003 and now known as InjuriesBoard.ie, or any successor thereto;

“insurance intermediary” has the meaning given to it in the European Communities (Insurance Mediation) Regulations 2005;

“insurance undertaking” has the meaning given to it in the Insurance Act 1989;

“introductory interest rate” is an interest rate favourable to the **consumer** that applies for a specified period of time at the beginning of the contract;

“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;

“key information” means any information which is likely to influence a **consumer’s** actions with regard to a product or service;

“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 services on the basis of a limited number of contracts and **product producers** available on the market, i.e., while not tied to one **product producer** the services are not provided on the basis of a **fair analysis of the market**;

“Member State” means a Member State of the European Economic Area;

“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 1 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 5(1), 5(2) and 5(3) 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;

“person” means a natural person or a legal person;

“personal consumer” means a **consumer** who is a natural **person** acting outside his or her business, trade or profession

“power of attorney” has the meaning assigned to it in the Powers of Attorney Act, 1996;

“product producer” means any **regulated entity** that produces, manufactures or packages a product of a financial or investment nature, and is not limited to a product producer as defined in the Investment Intermediaries Act, 1995;

“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 the provision of products or services that are provided in this State by a **regulated entity** and which are subject to the regulation of the **Central Bank** and a **“regulated activity”** is the provision of any one such product or service;

“regulated entity” means a financial services provider authorised, registered or licensed by the **Central Bank** or other EU or EEA **Member State** that is providing **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 is carried on in such a way 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 (as defined in Section 28 of the Central Bank Act 1997) 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, rather than the promotion of a specific financial product/service;

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

“target market” for an **investment product** means the profile of the group of **consumers** at which the **regulated entity** aims a particular **investment product**;

“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 has either or both of the following features:

- a) it provides for 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;
- b) it provides for 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;

“variable-share contract” means a **home reversion agreement** where the portion of the property held by the **regulated entity** changes during the term of the **home reversion agreement**;

“vulnerable consumer” means a natural **person** who, a **regulated entity** could be reasonably expected to be aware,

- a) has the capacity to make his or her own decisions but who, because of individual circumstances, may require assistance to do so (for example, hearing impaired or visually impaired **persons**); and/or
- b) has limited capacity to make his or her own decisions and who requires assistance to do so (for example, **persons** with intellectual disabilities or mental health problems).

A natural person must be assumed to have capacity unless it is established that they lack capacity. Capacity is always defined in relation to a specific decision at a specific time.

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:

| | |
|--|--|
| <i>Your proposed investment of €xx,xxx will be used, at the date of investment, as follows :</i> | |
| <i>€xx,xxx ,</i> | <i>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.</i> |
| <i>€xx,xxx ,</i> | <i>or xx%, will be used to secure the cash bonus which may be payable after xx years and yy months.</i> |
| <i><u>€xx,xxx</u>,</i> | <i>or xx%, will be taken in charges. If applicable, intermediary remuneration must be disclosed in this section.</i> |
| <i>€xx,xxx</i> | <i>Total</i> |
| <i>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.</i> | |
| <i>Insert information required under Provision 4.70</i> | |

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 long-term investment product sold by financial institutions and intermediaries. 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 i.e. there is a maximum level of charges allowed 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 – 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 level of charges 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.

BUYER BEWARE – WHAT TO LOOK OUT FOR

Where a Non-Standard PRSA is being offered or recommended to you, make sure you understand the differences between this product and a Standard PRSA, in particular the charges and investment choices of each product.

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

Beware if it is suggested, or you are advised, to abandon an existing pension plan in favour of a new PRSA make sure that you understand the reasons why this would be the best course of action for you.

APPENDIX C

NON STANDARD PERSONAL RETIREMENT SAVINGS ACCOUNT

DECLARATION

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

Name of Consumer to whom a non-Standard PRSA has been offered or recommended:
(Print name in block capital letters)

Name of Non-Standard PRSA offered to the Consumer:

Name of Non-Standard PRSA Product Producer:

- I declare that I have explained to this consumer that there are differences between a Non-Standard PRSA and Standard PRSA, and focused on the fact that the charges may be higher and the investment risks are greater for this non-Standard PRSA.
- I declare that in my opinion it is in the best interest of the above named consumer to purchase this non-Standard PRSA.
- I declare that in my opinion the non-Standard PRSA I have offered/recommended to the above named consumer is the PRSA product most suited to this consumer from among all those I am able to provide.

Signature of Salesperson:

Name of Salesperson (in block capitals)

Position Held:

Name of Regulated Entity:

Date of completion of the declaration:



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland**