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Intermediary Times

Issue 1: February 2013

Welcome to the Intermediary Times

Welcome to the Central Bank's first newsletter of 2013 for brokers/retail intermediaries. During our engagement with the sector in 2012, firms requested more information on key aspects of the Minimum Competency Code, the Consumer Protection Code and other regulatory requirements. We have taken this on board for our first edition of 2013, which covers the following topics:

- Consumer Protection Code 2012 Guidance Document
- Minimum Competency Code 2011 – Grandfathering Arrangements
- Special focus on the Advertising Requirements of the Consumer Protection Code
- Legal Obligations - The Investor Compensation Scheme
- What's Coming Up?

We hope you find this newsletter useful and, as always, we value your feedback.

Patricia Moloney
Head of Insurance, Investment and Intermediaries Division
Consumer Protection Directorate

Look back on 2012

In 2012, the Consumer Protection Director along with Retail Intermediary and Policy team officers held 5 **Intermediary Road Shows** in Cork, Sligo, Limerick, Galway and Dublin. We received positive feedback and high levels of attendance at each of these events. 4 editions of the **Intermediary Times** were issued in February, May, July and September. We hope that you find these initiatives helpful in improving standards of compliance and welcome your suggestions for other ways in which we might engage with the members of your sector.

Contact Details

Online Annual Return Queries	**brokers@centralbank.ie** or **01-2244545** (Regulatory Transactions Division)
Authorisations	**retailintermediaries@centralbank.ie** or **01-2244595**
Revoking an Authorisation	**revoke@centralbank.ie** or at **01-2244375**
Amending an Authorisation	**retailintermediaries@centralbank.ie** or **01-2244595**
General Queries - Intermediaries	**brokers@centralbank.ie** or at **01-2244547**
Online Individual Questionnaire	**fitnessandprobity@centralbank.ie**
Advertising Standards	**advertising@centralbank.ie**

Our codes can be accessed on our website at this link: **Regulatory Requirements**
If you have feedback, please contact **brokers@centralbank.ie**

Notices to Firms

Consumer Protection Code Guidance Document

An updated version of the Guidance Document was recently published on our website and is accessible at this **link**. It contains additional clarifications to the Code, including:

Rebates
To comply with Provision 7.4, an insurance intermediary must obtain the prior written agreement from the consumer every time it intends to deduct any charges from a premium rebate. This requirement would not be satisfied by obtaining such agreement in the terms of business signed by the consumer.

Telephone Contact
Provision 3.43 of the Consumer Protection Code 2012 refers to telephone contact with a consumer, which may only be made between 9 a.m. and 9 p.m. Monday to Saturday, unless otherwise agreed with the consumer. We would not consider that a firm which sends a text message to a consumer outside of these hours would be in violation of this provision.

Minimum Competency Code 2011 ('MCC') – Grandfathering Arrangements

Grandfathering assessments
Under the MCC, grandfathering assessments could only be carried out up to **31 December 2012**. Therefore, regulated firms cannot undertake any further assessments for grandfathering purposes.

Statement of Grandfathered Status
All regulated firms should now have a Statement of Grandfathered Status (Statement) completed and signed by the firm for every grandfathered person acting on their behalf. The Statement must be held on file by the firm together with the necessary supporting documentation to confirm that the person meets the criteria for grandfathering.

A Statement must be provided to each grandfathered person when that person ceases employment with the firm or at any time the grandfathered person requests it. Firms proposing to employ grandfathered persons in the future should ensure that they obtain the original Statement of Grandfathered Status in order to satisfy themselves that the person has been grandfathered in respect of the functions to be undertaken. The firm should retain a copy of the Statement on file. The Statement will provide confirmation of the functions (or part functions) in respect of which the person has availed of the grandfathering arrangements. It will not provide confirmation that the person has completed the required number of hours of Continuing Professional Development (CPD). Separate confirmation of compliance with this requirement should be obtained by the firm, either by reviewing the potential employee's own records, or seeking confirmation from the potential employee's previous employer or the relevant professional educational body.

The original Statement is an important document. Grandfathered persons must be able to provide the original Statement to any new employers in the future, for as long as the grandfathered person needs to rely on his/her grandfathered status. Both firms and grandfathered persons should be aware of the importance of ensuring that the original Statement is held safely and securely. In the event that the original is mislaid, it may be difficult, or in some cases impossible, to obtain a duplicate from the issuing firm, for example, if that firm had subsequently ceased trading. The absence of a signed Statement may have implications for the ability of both firms and grandfathered persons to demonstrate compliance with the standards set out in the MCC.

Firms that have issued a Statement should ensure they are in a position to provide a duplicate in the future, if required by the grandfathered person.

The Advertising Requirements of the Consumer Protection Code 2012

The Advertising Requirements are needed to ensure consumers are appropriately protected and in receipt of all the required information in an advertisement. Our preference is to avoid costly withdrawals of and/or amendments to advertisements being required. We plan to consult with industry in advance of developing Industry Guidance, and we have recently commenced consumer research on financial services advertising to inform our work in this area.

In the interim, however, we have identified a number of issues that frequently arise during the course of our work, which may help clarify some advertising issues for you.

We have dealt with a number of regulated entities who continue to use an **incorrect regulatory disclosure statement.**

Where a firm carries out both regulated and unregulated activity, a regulatory disclosure statement must only be used in connection **with the regulated activity that the firm is authorised to carry out**. This is particularly important for websites where the distinction needs to be made clear to consumers.

We also note a number of firms stating that they are '**independent**' while failing to meet the requirements of Chapter 4.16 and 4.17 of the Code (which clarify the requirements for using this term).

"Savings of"

"Prices from"

We have particular concerns regarding some styles of advertising, for example, where terms such as "savings of", "prices from" and "save up to" are used. Where any such phrases are used, the qualifying criteria for availing of the price must be prominently displayed in the main body of the advertisement and not in the small print.

"Save up to"

We also had concerns around the potential for an advertisement to be construed as misleading in its overall content and presentation. Consumers often rely on **Key Information** and **Eligibiliy Criteria** to make informed decisions.

Key Information in relation to the product or service in a number of advertisements was not sufficiently prominent and was included in the small print of the advertisement which is contrary to the rules.

Advertisements have also been identified where the **Eligibility Criteria** are not included in the main body of the text, alongside the minimum price or potential maximum saving.

Key Information and **Eligibility Criteria** should be stated with the minimum price or potential maximum saving, in the main body of the advertisement and must be prominent.

The Advertising Requirements of the Consumer Protection Code 2012 (continued)

Regulated entities must be cognisant of the differing sizes of proposed advertisements, and consider how they may appear in their final formats. While the size of the qualifying criteria or smaller print may appear sufficiently prominent in some formats of an advertisement, it may not be clearly legible in the final format. For example, an advertisement on a bus or billboard may require the key information to be given greater prominence than the same advertisement in print media.

There has been an increased focus on advertising monitoring by the Central Bank during 2012. This is due to

- The introduction of the revised Consumer Protection Code;
- More proactive measures we have introduced to strengthen our supervisory work; and
- The credible threat of enforcement action.

The majority of firms complied with our request of amending or withdrawing advertisements. However, a small number of persistent or serious cases meant that the Central Bank had to issue Letters of Direction and formal Letters to Withdraw an advertisement.

The Advertising Requirements of the Code prescribe specific requirements for individual products to help you when designing your advertisement.

The Central Bank would like to remind regulated entities' of the requirements of the Code, particularly:

- Provision 2.4
- Provision 4.10
- Provision 4.16
- Provision 4.17
- Provision 9.2
- Provision 9.6
- Provision 9.7

Legal Obligation to pay ICCL Contribution – Investment Firms

If your firm is currently registered or authorised with the Central Bank, you are legally obligated under the Investor Compensation Act, 1998, to contribute to the Investor Compensation Scheme on an annual basis. It is the legal responsibility of the intermediary to ensure that their contribution is paid on time annually (either directly themselves or by a third party on their behalf). If your contribution has not been paid, please contact the Investor Compensation Company Limited payments team on (01) 224 4955.

The Act provides for the imposition of interest on late payments and for the recovery of unpaid contributions (including interest) as a simple contract debt. While the ICCL recognises the difficulties the current financial climate presents to firms, the non-payment of contributions is unfair on those who remain compliant, and could eventually increase the financial burden placed on them. In view of this, the ICCL has recently initiated legal proceedings against a number of intermediaries seeking Judgment for the non-payment of annual contributions.

A number of Judgments have recently been obtained, and published, against investment firms. Details of these can be found **here**. The Act also provides the Central Bank with the power to issue a direction ordering an intermediary to comply with its obligations under the Act. Failure to comply with a direction may result in an intermediary being prohibited from engaging in investment or insurance business. Further information on the ICCL is available at **www.investorcompensation.ie**.

In Focus

Conference on Life and Pensions Industry, January 2013

The address by Mark Burke, Head of Life Insurance Supervision to 'A future for the Life & Pensions Industry' conference held in the RDS on 31 January 2013, can be found **here**. This speech looks at the impact of regulation on life assurance business in Ireland, and may be of interest to intermediaries providing life and pensions products.

What's Coming Up?

Next Retail Intermediary Road Show

Our next road show will take place in Co. Donegal in July. Further details will be e-mailed to all brokers/ intermediaries when a date and venue have been finalised.

There were very high levels of attendance at each of the road shows in 2012. We hope to welcome more of you to the upcoming series in 2013.

Industry Report

The Central Bank will shortly be publishing a Report on the Irish Retail Intermediary Sector. This will be the first report of its kind and will be available on our website.

This report will provide relevant information on the sector and on our supervisory approach and activities.

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