Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Intermediary Inducements

Enhanced Consumer Protection Measures

Consultation Paper CP 116

November 2017

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1. Introduction

As the Central Bank set out in its Discussion Paper[1] of July 2016 on the Payment of Commission to Intermediaries (2016 Discussion Paper), financial products and services play an important part in the everyday lives of consumers from paying for goods and services, to insuring against future risks, saving for retirement, transferring money and borrowing to meet short- and longer-term needs. While these financial products can deliver consumer benefits, they can undoubtedly also present risks if the right product is not sold to the right consumer in the right way. Firms that produce financial products (product producers) often sell their products through third parties (intermediaries) and pay these intermediaries a sum of money (commission) for arranging the sale. This commission can take the form of a single once-off payment at the point of sale or an initial payment at the point of sale followed by further payments (trail commission) at intervals during the period of time that the product is held by the consumer. Commission arrangements can also include other benefits such as access to software or other facilities to assist the firm (soft commissions) and other non-financial rewards such as entertainment or marketing budgets.

On 7 February 2017, the Central Bank published the responses it received to the 2016 Discussion Paper. On the same date, the Central Bank announced that it would proceed with the development and publication of a Consultation Paper in 2017, proposing additional measures

[1] https://www.centralbank.ie/docs/default-source/publications/discussion-paper-5/discussion-paper-on-payment-of-commission-to-intermediaries.pdf?sfvrsn=2

to the existing framework to strengthen protections for consumers, in the context of commission payments, under the following headings:

- the acceptance and retention of commissions by intermediaries describing themselves as “independent”;
- ways to mitigate product and producer bias where commission is paid; and
- where commission amounts are based on the volume of product sold, including override commission.

To further inform this work, in Spring 2017, the Central Bank commissioned research into consumer perceptions and attitudes to the payment of commission to intermediaries. The report on the findings of this consumer research accompanies this Consultation Paper.

Having concluded the above work, along with taking into consideration developments on this topic in other jurisdictions and the progression of various EU legislation in this area, the Central Bank is now proposing measures to require firms to avoid conflicts of interest created by poorly designed inducement arrangements and provide greater transparency to consumers. The measures proposed in this Consultation Paper proceed on the basis that, in principle, it should be possible to properly design the arrangements by which a product producer remunerates an intermediary it has appointed to sell its products, rather than the customer having to pay a fee up-front to get advice from those intermediaries. This is the case provided of course that the arrangements in question are made clear to the customer from the outset, and the Central Bank is also proposing to improve the level of transparency on this point. This approach is consistent with the standard that has emerged at a European level, in measures such as MCD, MIFID II and IDD. Provided industry plays its part in designing such incentives correctly, it will also avoid the ‘advice gap’ that can emerge where product producer inducements are banned outright.

The specific proposals are described in detail below, including relevant key findings from the consumer research mentioned above. Appendix 1 contains the specific proposed amendments to the Consumer Protection Code 2012 (the Code) were the Central Bank to introduce these measures. The outcome of this consultation will also inform future technical assistance to the Minister for Finance in relation to the exercise of Member State discretions relating to inducements in the Insurance Distribution Directive (IDD), the Markets in Financial Instruments

Directive II[2] (MiFID II) and the Mortgage Credit Directive (MCD)[3], should the Minister decide to avail of discretions in those Directives that have not been activated to date. Details on the provisions in these Directives on inducements are contained in Appendix 2 to this paper.

A number of questions are set out in this Consultation Paper in relation to the proposed new measures and views from interested parties are welcome on any, or all, of the individual questions included in this Consultation Paper. In particular, we would welcome views from consumer bodies and from firms carrying out activities that fall within the scope of MiFID II, the IDD and the MCD.

2. Summary of proposed enhanced consumer protection measures

By their very nature, inducements provided to intermediaries by product producers (such as payments for hitting a sales target on a specific product, or paying more commission for the sale of one product over another competitor/equivalent product) seek to incentivise the behaviour of the intermediaries to whom they are provided. If such inducements are to be provided by product producers, they must be properly designed to ensure that the best interests of consumers are protected. In particular, they must be designed to ensure that they avoid creating conflicts between an intermediary's duty to act in its customer's best interests and the intermediary's own interests.

The overarching principles underlying the themes arising from the 2016 Discussion Paper and the proposals on those themes in this paper therefore are (i) the avoidance of conflicts of interest arising from inducement arrangements and (ii) greater transparency for consumers.

At an international level, through its work on the G20/OECD Taskforce on Consumer Protection, the Central Bank contributed to the development of the G20/OECD High-Level Principles of Financial Consumer Protection (2011)[4] and the consequent development of effective approaches to the implementation of those principles. This included work to develop effective approaches to High-Level Principle 6, which states that: "*The remuneration structure for staff of both financial services providers and authorised agents should be designed to encourage*

[2] Directive 2014/65/EU
[3] Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.
[4] http://www.oecd.org/daf/fin/financial-markets/48892010.pdf 6

responsible business conduct, fair treatment of consumers and to avoid conflicts of interest. The remuneration structure should be disclosed to customers where appropriate, such as when potential conflicts of interest cannot be managed or avoided."

The Central Bank's Consumer Protection Code 2012 sets out General Principles that firms must comply with in all their dealings with customers. These include General Principle 2.7, which requires firms to seek to avoid conflicts of interest. As detailed in Appendix 2, the principle that conflicts of interest arising from inducements to intermediaries are to be avoided is also to be found in the detailed requirements of EU law such as MCD, MiFID II and IDD.

A conflict of interest arises, for example, where there is a disparity between the inducement for selling one product rather than another to a consumer. Product/producer bias stems from the conflict of interest that is created by the extent to which an inducement arrangement induces the intermediary to favour its own interest to maximise its earnings over the consumers' interests to get the best product to suit their needs. This includes where such bias arises from an override or other volume-based inducement arrangement.

In order to address this product/producer bias, the Central Bank is now proposing a number of consumer protection measures in the area of inducements. The proposed measures can be summarised as follows:

2.1 Acceptable inducements

It is proposed to make more specific the criteria that must be met in order for inducements to be considered acceptable. These criteria will bring other sectors into line with the requirements on investment firms under MiFID II, creating consistency in the rules that apply across all sectors when selling financial products.

2.2 Inducements that give rise to conflicts of interest, and would no longer be acceptable

It is proposed to provide explicitly that certain inducements are deemed to give rise to a conflict of interest and, therefore, must be avoided. These are:

- inducements linked to targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention);
- inducements linked to the size of a mortgage loan;
- soft commission arrangements; and
- recommending a particular product to a consumer from amongst a range of products where the intermediary would receive different levels of inducements for the

products in that range. Here, the different levels of inducement mean that the intermediary is incentivised to recommend the product that pays the intermediary the best commission (or other inducement), rather than the one best suited to the customer's needs.

2.3 Clarity about what constitutes 'independence'

It is proposed that firms would no longer be permitted to describe themselves and their regulated activities as 'independent' where they accept and retain inducements.

2.4 Transparency of remuneration arrangements

Increased transparency measures relating to inducements are proposed.

The Central Bank acknowledges the potential challenges for industry in implementing the proposed requirements. However, we believe that the proposed requirements are necessary in order to ensure that the best interests of consumers are protected. This Consultation Paper provides an opportunity for industry participants and other interested stakeholders to highlight any implementation issues or any unintended consequences arising from the proposals, as well as any suggestions to enhance the proposals to ensure they achieve their stated aim. The Central Bank would also note that, absent these measures, differences exist between the mandatory provisions of MCD, MiFID and IDD on these topics, so differences would exist between products that are functionally equivalent from the consumer's point of view (such as a MiFID instrument and an insurance-based investment product). Such differences in the rules applicable across the framework, in themselves, create conflicts of interest where intermediaries are incentivised to sell products in one regulatory category rather than another because one is more lenient in what is permitted.

We have considered some of the potential for these proposals to have unintended consequences, and we encourage respondents to flag any such consequences they perceive. For example, (as noted in our 2016 Discussion Paper) in countries where commissions have been banned outright, or banned outright in certain cases, there is some evidence of an 'advice gap' emerging which may not be in the best interests of consumers. The proposals set out in this paper, therefore, do not ban the receipt of inducements by intermediaries, nor do they prohibit intermediaries from providing advice to consumers even where they receive such inducements. Rather, they seek to ensure that inducement arrangements are properly designed to promote the best interests of consumers and that, where consumers receive advice from an intermediary that accepts and retains an inducement, the intermediary does not hold

itself out as being 'independent'. An advice gap should not arise as a result of these proposals as intermediaries can continue to provide advice to consumers and to receive inducements, provided those inducements are properly designed.

The Central Bank is also mindful that, if the proposal on recommendations is introduced, firms may look to introduce a proliferation of products with minor/unnecessary variances in order to avoid the objective of the rule. Such a tactic would seek to facilitate intermediaries to say the product recommended (for which they provide an attractive inducement) is 'unique' and not a part of a 'range'. Other scenarios could also be envisaged leading to more fragmentation or bespoke designing of products (not all of which would be contrary to consumers' best interests necessarily, as some may represent genuine improvements in choice). However, product producers and intermediaries are reminded in this regard that the development of new products (and making significant changes to existing products) will now be subject to product oversight and governance standards introduced at EU level for each of the financial products the subject of these rules. This includes ensuring the design of the product takes account of the objectives, interests and characteristics of customers, the identification of a target market for that specific product, product testing and monitoring to ensure that the product continues to be aligned with the interests of the target market.

There may also be an impact on the range of products an intermediary is prepared to provide recommendations on, arising from the proposal that a recommendation cannot be made where different levels of inducement are available within the range of products being considered. Intermediaries may either demand a higher level of inducement from product producers or just remove the lower-inducement-paying providers from their range altogether. However, this must be balanced against the need to ensure the protection of consumers from conflicts of interest based on inducements, as described above. It also needs to be borne in mind that, in the current situation, there is already a clear incentive for the intermediary to favour products that provide better commission (or other inducement). In other words, the commercial pressure on the product producer paying the lower inducement to raise its inducement to meet its higher-paying competitor already exists.

3. The proposals in detail and consultation questions

This section of the paper describes the above proposals in more technical detail, together with the specific questions on which we are seeking views.

3.1 Acceptable inducements

The proposals set out in this paper do not include a specific ban on the receipt of inducements by intermediaries. We believe there is a place in the market for the provision of services that are remunerated by means of such arrangements. However, inducement arrangements must be structured to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest.

The Code currently imposes requirements in relation to remuneration arrangements on product producers distributing products through intermediaries and on regulated entities in their arrangements with their employees. However, the Code does not contain specific requirements in relation to the receipt by firms themselves of inducements from third parties.

Both the MiFID Regulations 2017 and the IDD contain requirements in relation to inducements from third parties. Under the MiFID Regulations 2017, an investment firm will not be regarded as fulfilling its obligations under the conflicts of interest provisions where:

"the investment firm pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, in connection with the provision of an investment service or an ancillary service, unless -

(a) the fee, commission or non-monetary benefit -

- *i) is designed to enhance the quality of the relevant service to the client, and*
- *ii) does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in the best interests of the client".*

Similarly, under the IDD, insurance distributors will be regarded as fulfilling their obligations under the conflicts of interest provisions applicable for insurance-based investment products where:

"they pay or are paid any fee or commission, or provide or are provided with any non- monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:

- *a) does not have a detrimental impact on the quality of the relevant service to the customer; and*
- *b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.*

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The MiFID Regulations 2017 set out that for an inducement to be considered to be designed to enhance the quality of the relevant service to the client all of the following conditions are met:

- it is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received;
- it does not directly benefit the recipient firm, its shareholders or employees without tangible benefit to the relevant client;
- it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

An inducement shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the inducement.

Proposal

In order to ensure consistency across all sectors in how inducement arrangements operate, we are now proposing a number of amendments to the Code in order to bring the Code provisions more in line with the requirements in these EU legislative instruments, and seek to create a level playing field in terms of inducements across these various sectors. To achieve this, we propose amending the Code to specify that, in order for inducements to be acceptable, they must:

- be designed to enhance the quality of the relevant service to the consumer;
- not have the potential to impair the intermediary's obligation to act honestly, fairly and professionally in accordance with the best interests of the consumer; and
- not have the potential to impair the intermediary's obligation to satisfy the suitability requirements set out in Chapter 5 of the Code.

Question 1 Do you see any reasons why the Code should not be amended as set out above?

Question 2 Do you see any reason why, for example, insurance intermediaries should not be subject to the requirement that inducements must enhance the quality of the service rather than the requirement that an inducement is not detrimental to the quality of the service as is required under the IDD? If so, please set out those reasons.

Question 3 Do you agree with the conditions in schedule 5 of the MiFID Regulations 2017, as set out above, that describe how an inducement enhances the quality of the service? Please explain your answer.

Question 4 What other examples do you consider would enhance the quality of the service? Please set out those examples in detail.

Question 5 Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.

Question 6 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.

3.2 Inducements deemed to be conflicts of interest

The Code contains existing requirements on conflicts of interest, including a general principle that a regulated entity must seek to avoid conflicts of interest. The Code recognises that there are circumstances where conflicts of interest arise and cannot reasonably be avoided; in those cases, the Code outlines the steps a regulated entity must take to manage such conflicts when they arise. However, whereas some conflicts of interest can arise unexpectedly or in a manner beyond the control of a firm, remuneration arrangements are put in place by design and, therefore, conflicts of interest arising from such arrangements can and should be avoided. The requirement in the General Principles of the Code to seek to avoid conflicts of interest reflects that the creation of a conflict between the interests of the consumer and that of a regulated entity is inherently harmful to the protection of consumers' best interests. This is especially so where the consumer is relying on the advice of a regulated entity in deciding to choose to purchase a particular financial product or service.

Done properly, disclosure can assist a consumer in developing a better understanding of financial products and to make informed decisions concerning financial products. A regulated entity must therefore make full disclosure of all relevant information, including charges, in a way that seeks to inform the consumer, as is required in the Code's existing provisions on remuneration. However, disclosing conflicts of interest relating to inducements is not a sufficient means of addressing concerns about these arrangements.

Therefore, in addition to the proposals set out in 3.1 above, we propose amending the conflicts of interest provisions to include a requirement that certain conflicts of interest must be avoided in all cases. These are:

- inducements linked to targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention);

- inducements linked to the size of a mortgage loan;
- soft commission; and
- recommendations where a conflict of interest arises.

3.2.1 Inducements linked to targets that do not consider the consumer's best interests

We propose to make it clear that any inducement paid by a third party that is contingent on reaching or achieving targets that do not consider the consumer's best interests, including profit targets, volume-based targets, or targets linked to business retention, is deemed a conflict of interest and must be avoided. This means that arrangements such as override commission, or payment of commission in advance subject to a clawback if a certain level of business is not achieved, would be deemed a conflict of interest and therefore must be avoided. Commission that is paid upfront and subsequently clawed back is effectively a target. Override commission is an additional commission payment or benefit to an intermediary for meeting or exceeding agreed targets. It is generally an increased percentage of commission per unit or a percentage uplift of the commission amount earned. It may also be referred to as accelerated commission.

In the case of override commission, a significant conflict of interest arises where the service given to the consumer is required to be in that consumer's best interest, but is financed mainly by inducements paid or provided by the product producer to the intermediary, with additional payments for reaching, achieving or exceeding prescribed targets. Such conflicts are not in the best interests of the consumer, and disclosing an inducement arrangement to a consumer or the conflict that it creates will not in itself prevent detriment to that consumer.

This proposal provides additional clarity in the context of the existing requirement in the Code that applies to product producers where they pay or provide an inducement to an intermediary based on levels of business introduced. In those circumstances, the product producer is already obliged by the Code to demonstrate that their arrangements do not impair the intermediary's duty to act in the best interest of consumers and that such arrangements do not give rise to a conflict of interest between the intermediary and the consumer[5].

This approach is also in line with the requirement in the IDD, under which an insurance distributor is not permitted to: *"make any arrangement by way of remuneration, sales targets*

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[5] Code provision 3.31

or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs".

In addition, Regulation 8(5) of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016, which transposes the MCD into Irish law, requires that, where a mortgage credit intermediary provides advisory services, the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and in particular is not contingent on sales targets.

Proposal

We propose therefore to introduce a provision into the Code that an intermediary must avoid all conflicts of interest arising from third party inducements contingent on achieving targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention).

Question 7 Do you have any views on the proposal that inducements contingent on achieving targets that do not consider the consumer's best interests, including profit targets, volume targets, and targets linked to business retention, are deemed to be conflicts of interest and must be avoided? Please explain your answer.

Question 8 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.

Question 9 Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.

3.2.2 Inducements linked to size of mortgage loan

Inducements that are linked to the size of a mortgage loan present the intermediary with an incentive to encourage the consumer to borrow a greater amount than the consumer wants or needs. While the consumer may initially be happy with the higher level of mortgage loan, it may not be in the consumer's best interests in the longer term to enter into such a commitment. The outcome may be detrimental for the consumer as it has the potential to lead to over-indebtedness.

FinCoNet's Report on Sales Incentives and Responsible Lending (2016)[6] highlights that sales incentives such as commission payments are especially prone to cause harm in the case of credit products. In the case of credit, the consumer gets the financial benefit of the product up-front but feels the effects of the cost at a later point, making the role of behavioural concepts such as 'present bias' especially relevant.

Behavioural economics studies suggest that people overestimate the beneficial impact of purchasing an item and focus on the benefits rather than the long-term cost when making decisions on credit, so their evaluation of the product tends not to be as rational as it may be when considering other financial products. The risk to consumers is that some incentive schemes may be designed to take advantage of this vulnerability. It does not in any event appear to be logical that the service provided to the consumer to obtain a loan should be remunerated differently based solely on the size of the mortgage loan, outside of such an arrangement being there to incentivise an intermediary to maximise the amount the consumer borrows.

We propose to make it clear that any inducement paid by a third party that is linked to the size of a mortgage loan is deemed a conflict of interest and must be avoided.

Proposal

Inducements linked to the size of a mortgage loan will be deemed to give rise to a conflict of interest and, therefore, must be avoided.

Question 10 Do you have any views on the above proposal? Please explain your answer.

Question 11 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.

Question 12 Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.

3.2.3 Soft commission

[6] FinCoNet (2016), Report on Sales Incentives and Responsible Lending, http://www.finconet.org/Report_Sales_Incentives%20_Responsible_Lending.pdf

Code provision 3.36 will become redundant as arrangements that would have fallen within the definition of 'soft commission', such as investment research, will now be subject to the rules relating to inducements or minor mon-monetary benefits, as applicable. Firms must assess, therefore, whether the arrangement is an inducement or a minor non-monetary benefit and ensure the relevant requirements are complied with.

Question 13 Do you have any views on the proposed deletion of provision 3.36 of the Code, relating to soft commission agreements? Please explain your answer.

3.2.4 Recommendations where conflict of interest exists

Key consumer research findings

63% of respondents stated that they trust their financial adviser/broker to understand their needs and to advise on a product that best suits their needs.

55% of respondents said that they thought that financial advisers/brokers have their customers' best interest in mind when they give financial advice.

61% of respondents agreed that financial advisers/brokers primarily advise based on what products will earn them the most commission.

It is important that any recommendation provided by an intermediary to a consumer is unbiased and in line with the consumer's best interests. The existence of inducement arrangements that give rise to a conflict of interest can affect the intermediary's ability to provide unbiased recommendations. This arises as inducements, by their nature, seek to incentivise behaviour, and where there is a disparity between the inducement for selling one product, or the products of one product producer, rather than another there is a conflict of interest as a result. Consequently, the Central Bank aims to eliminate the conflict of interest that an intermediary is presented with by the prospect of receiving different levels of inducement when recommending a product to a consumer as the most suitable product for that consumer from a given range of products[7].

[7] In addressing the practical challenges that the proposals may present, it is worth noting that there are indications that the intermediary sector has already given some consideration to the issue of inducements, particularly where conflicts of interest arise. One such example of this is a model, proposed by one of the representative bodies for insurance brokers, Professional Insurance Brokers Association (PIBA), in its Financial Broker Technical Guides (*A Guide*

Proposal

An intermediary may not recommend a product to a consumer as being the most suitable product from a range where there are different levels of inducement offered for the range of products involved.

Question 14 Do you have any views on the above proposal? Please explain your answer.

Question 15 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal, including any impact on consumer choice? Please explain your answer.

Question 16 Do you foresee any practical difficulties arising in the implementation of this proposal? Please set out those difficulties in detail.

3.2.5 Conflicts of interest policy and record-keeping requirement

We propose that the current conflicts of interest provisions will be strengthened so that firms will be required to have in place a written conflicts of interest policy that specifies the procedures to be followed, and the measures to be adopted, by the regulated entity in order to avoid such conflicts of interest.

New record-keeping requirements are also proposed. Firms will be required to retain records to demonstrate:

- how conflicts of interest arising from inducements have been avoided for each transaction;
- how the requirement that a firm must not make any recommendation if there are different levels of inducement offered for the range of products involved has been met; and
- that the inducement arrangements summary document was brought to the attention of the consumer before concluding a contract for a financial product.

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to Eliminating Provider Bias for Financial Brokers" – Financial Broker (A *PIBA* initiative) December 2013). This model seeks to combat the risk of bias, by introducing a remuneration structure where there is a choice of remuneration based on commission or fees where the price the broker sets is the amount the broker takes in total remuneration, regardless of where the business is placed. If one product producer is paying more commission than the broker's set amount, the broker refunds this to the consumer. If the product producer is paying less commission for the recommended product than the broker's set price, the consumer pays the difference in price.

These new requirements will assist firms to demonstrate their compliance with the proposals set out in this paper.

Question 17 Do you have any views on the proposal that a written conflicts of interest policy should also specify procedures to be followed, and measures to be adopted, by the regulated entity, in order to avoid conflicts of interest relating to inducements? Please explain your answer.

Question 18 Do you have any views on the proposal that records must be retained to demonstrate how conflicts of interest arising from inducements have been avoided for each transaction?

Question 19 Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.

Question 20 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.

3.3 Independence

The Code recognises the importance of transparency around how intermediaries describe themselves and the services they provide, and how they in turn are perceived and understood by consumers. As well as the general obligation in General Principle 2.7 of the Code to seek to avoid conflicts of interest, provisions 4.16[8] and 4.17[9] require intermediaries, that describe themselves as independent, to only do so where the principal regulated activities of the intermediary are provided on the basis of a fair analysis of the market and the intermediary allows the consumer the option to pay in full for its services by means of a fee. The question arises as to whether to strengthen these provisions of the Code in order to bring greater clarity to the concept of an 'independent' intermediary. This includes having regard to regulatory developments such as the G20/OECD High Level Principles on Financial Consumer Protection

[8] 4.16 The term 'independent' may only be used by an intermediary, other than a regulated entity referred to in provision 4.16A, in its legal name, trading name or any other description of the firm where:
a) the principal ***regulated activities*** of the intermediary are provided on the basis of a ***fair analysis of the market***; and
b) the intermediary allows the ***consumer*** the option to pay in full for its services by means of a fee.

[9] 4.17 The term 'independent' may only be used in any trading name or other description of a ***regulated activity*** where the intermediary, other than a ***regulated entity*** referred to in provision 4.17A,:
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.
Where a ***regulated entity*** does not provide all of its ***regulated activities*** in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the ***consumer***. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.

(and in particular Principle 6), the provisions of MiFID II, MCD and IDD (described above), as well as the findings of the Central Bank's consumer research.

Key consumer research findings

73% of respondents stated that it was important for a financial adviser/broker to describe himself as independent.

63% of respondents stated a preference for choosing a financial adviser who describes himself as independent.

Given a choice scenario between a (slightly cheaper) up-front fee and a (slightly dearer) commission structure, 47% of respondents said they preferred a once off upfront fee, while 36% said they preferred an ongoing commission payment. 18% did not know.

47% of respondents said they based their choice on the option being cheaper/more affordable while 30% based it on knowing how much they paid. When asked as part of a follow-up survey, 68%[10] of respondents said they would pay for financial advice through a financial adviser by means of an upfront fee, if this was the only way of obtaining financial advice.

However, just 24% of respondents said they would be prepared to pay a fee to each financial adviser each time when shopping around specifically for financial advice.

If an adviser is describing itself as independent, then that adviser needs to be truly independent. The findings of the consumer research underpin this, by evidencing the importance consumers place on the concept of an adviser being 'independent'. This illustrates how consumers might be influenced in their choice of adviser (or how much weight they place on the advice) by that adviser being described to them as 'independent'. In order for a consumer to be satisfied that an intermediary describing itself as 'independent' is truly independent, the Central Bank believes that consumers need to be able to proceed with confidence that such an intermediary is not being influenced by the inducement it may receive from a product producer. The

[10] These findings relate to additional questions that were asked as part of a follow-on survey, using the same sample, sub a smaller base line size (based on response rates) – see section 1.2 of Consumer Research Report.

consumer research also provides an insight into the extent to which a consumer seeking independent advice may be willing to pay a fee.

Proposal

The Central Bank therefore proposes that an intermediary may only describe itself as independent

- in its legal or trading name, or other description where *all* its regulatory activities are provided on the basis of a fair analysis of the market, or
- in any description of its regulated activities where that regulated activity is provided on the basis of a fair analysis of the market,

and where it does not accept and retain a third party inducement, other than a minor non-monetary benefit which is capable of enhancing the service to a consumer. In these circumstances, where a charge for this service is incurred, an intermediary must be paid by means of a fee by the consumer.

This proposal would be in line with the requirements introduced by the MiFID Regulations 2017, which prohibit investment firms accepting and retaining inducements in the case of independent advice. As set out in Appendix 2, the IDD contains two Member State discretions in this area. The IDD is due to be transposed into Irish law by 23 February 2018 and the Department of Finance is currently considering its transposition.

Question 21 Do you have any views on the proposal that an intermediary may only describe itself or its regulated activities as independent, where it does not accept and retain a third party inducement for the provision of advice, other than a minor non-monetary benefit which is capable of enhancing the service to a consumer? Please explain your answer.

Question 22 Do you foresee any practical difficulties arising from the implementation of this proposal? Please set out those difficulties in detail.

Question 23 Do you have any views on what, if any, unintended consequences may arise in implementing this proposal? Please explain your answer.

3.4 Transparency of inducement arrangements

Intermediary Inducements – Enhanced Consumer Protection Measures

Consumers are not generally aware of the full details of any inducement arrangements that exist between intermediaries and product producers and, therefore, are not aware of any drivers associated with those arrangements that may create product producer or product bias, which could potentially influence an intermediary's recommendation to them. The Central Bank proposes to increase transparency around how intermediaries are remunerated, so that consumers have full information on factors that may create conflicts of interest or which have the potential to influence intermediaries.

The purpose behind this proposal is that consumers are informed about any factors that have the potential to influence an intermediary's recommendations and, therefore, can identify any potential conflicts of interest themselves. Greater transparency can also act as a discipline on the market in a wider sense, as it will be clearer to all concerned what nature of arrangements are in place.

As the requirement proposed is that details of any inducement between a product producer and an intermediary would be publically available, product producers and intermediaries are encouraged to develop inducement arrangements that are aligned with the consumer's best interests and are designed to encourage responsible business conduct, fair treatment of consumers and to avoid conflicts of interest.

Proposal

Intermediaries must publish on their websites and display in their public offices a comprehensive summary of the details of the inducement arrangements they have with any product producers with which they have an appointment or from which they receive inducements for arranging products. At a minimum, the summary must include:

- the basis on which an inducement is payable,
- an indication of the amount or percentage of the inducement paid,
- any additional benefits to be paid or provided to the intermediary which may not be directly related to individual sales, and
- details of any fees, administrative costs or non-monetary benefits, which could be paid or provided to the intermediary under any arrangement with the product producer.

It is also proposed that, before concluding a contract for a financial product, an intermediary would be required to bring the inducement arrangements summary document to the attention of the consumer.

Finally, it is proposed that firms would be required to retain records to demonstrate how the inducement arrangements summary document was brought to the attention of the consumer before concluding a contract for a financial service.

Question 24 Do you have any views on the proposal to introduce an obligation for intermediaries to publish comprehensive details of inducement arrangements with product producers with which they have an appointment? Please explain your answer.

Question 25 Do you think the Central Bank should prescribe the format and content of the inducement arrangements summary document? If so, please provide details of the content you think should be included.

Question 26 Do you have any views on the proposal that firms must retain records to demonstrate how the inducement arrangements summary document was brought to the attention of the consumer? Please explain your answer.

3.5 Proposed new definitions

As set out in the introduction to this paper, and as detailed in the 2016 Discussion Paper on this topic, the term commission is used to describe how intermediaries are paid for arranging a sale through a product producer. Commission can take various forms, including trail commission and soft commissions. European legislation such as MiFID contemplates a broader concept and instead refers to the term 'inducement'. This wider definition encompasses fees, commission and non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party. While not defined in the Code, the Code currently contemplates remuneration in the form of fee, commission, other reward or remuneration in respect of the provision of regulated activities. Given the move at EU level to the use of the term 'inducement' and its wider meaning, it is proposed to introduce new definitions in the Code in order to capture the wider context within which inducements are understood. It is considered that these additional definitions may be necessary in order to prevent any misunderstanding or misinterpretation of

what the proposed new rules are intending. It is also necessary in order to ensure that conflicts of interest created by commissions are not migrated to other non-commission arrangements.

The following definitions are proposed for inclusion in Chapter 12 of the Code:

"inducement" means a fee, commission or non-monetary benefit, whether target-based or otherwise, paid or provided to a regulated entity by a third party or a person acting on behalf of a third party, other than the consumer or a person acting on behalf of the consumer, excluding ***minor non-monetary benefits.***

The MiFID Regulations 2017[11] provide that only minor non-monetary benefits should be allowed, *provided that they are clearly disclosed to the client, that they are capable of enhancing the quality of the service provided and that they could not be judged to impair the ability of investment firms to act in the best interest of their clients*. It is proposed to introduce a similar definition to the Code, as follows:

"minor non-monetary benefits" means such benefits that are capable of enhancing the quality of the service provided to a ***consumer*** and are of a scale and nature such that they could not be judged to impair compliance with the ***regulated entity***'s duty to act in the best interest of the ***consumer***.

The MiFID Regulations 2017 sets out some examples of benefits that would be considered acceptable minor non-monetary benefits. These include, for example, participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument, or hospitality of a reasonable de minimis value, such as food and drink during a business meeting or conference, seminar or other training events.

Question 27 Do you have any views on the proposed definitions of '*inducement*'? Please explain your answer.

Question 28 Do you have any views on the proposed definition of '*minor non-monetary benefit*'? Please explain your answer.

Question 29 Do you agree with the above examples of minor non-monetary benefits? Please set out your reasons.

[11] Regulation 32(15) of the MiFID 2017 regulations

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Question 30 Are there any additional minor non-monetary benefits that you think should be included? Please explain your answer.

Question 31 Would you set a monetary limit, as a guide, on a minor non-monetary benefit? If so, what limit would you consider appropriate and why?

4. Making a Submission: Practical Information

Comments from all interested parties are welcome. While there are a number of questions included in this Consultation Paper. It is important to note that although you may not be able to respond to each and every question, the Central Bank would encourage partial responses from stakeholders on those questions that they believe are most relevant to them.

We intend to make submissions received available on our website after the deadline for receiving submissions has passed. Because of this, please do not include confidential or 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.

While, as indicated above, the Central Bank will take reasonable steps to avoid publishing confidential or commercially sensitive material, the Central Bank makes no guarantee that it will not publish any such information and accepts no liability whatsoever for the content of stakeholders' consultation responses that are subsequently published by the Central Bank. Therefore, please be aware that you are making a submission on the basis that you consent to us publishing it in full.

This paper will be open for comment until 22 March 2018. Submissions should be made to consumerprotectionpolicy@centralbank.ie clearly labelled with the subject title "Consultation Paper on Intermediary Inducements."

In the event that you are unable to send your response electronically, please mark it for the attention of Consumer Protection: Policy and Authorisations, and forward by post to:

'Intermediary Inducements Consultation'

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Appendix 1 – Draft proposed provisions and amendments to the Consumer Protection Code 2012 (the Code)

We are proposing to introduce the measures described in this paper by amending the Code. Set out below for each policy measure under consideration are proposed new additions or amendments to existing Code provisions, as appropriate. For ease of reference, proposed new or amended provisions are highlighted in the text below.

Proposed Policy Measure	Proposed Code Requirement

NEW DEFINITIONS

	New Definitions
Definition of inducement	***“inducement”*** means a fee, commission or non-monetary benefit, whether target-based or otherwise, paid or provided to a ***regulated entity*** by a third party or a person acting on behalf of a third party, other than the ***consumer*** or a ***person*** acting on behalf of the ***consumer***, excluding ***minor non-monetary benefits.***
Definition of minor non-monetary benefit	***“minor non-monetary benefits”*** means such benefits that are capable of enhancing the quality of the service provided to a ***consumer*** and are of a scale and nature such that they could not be judged to impair compliance with the ***regulated entity***’s duty to act in the best interest of the ***consumer***.

SOFT COMMISSION

	Deletion of existing provision and definition
Deletion of existing soft commission (provision 3.36)	~~3.36 A ***regulated entity*** must not enter into a ***soft commission agreement*** unless such agreement is on paper or on another ***durable medium***. 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 ***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.~~
Deletion of definition of soft commission from Chapter 12	~~***"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***;~~

MINOR NON-MONETARY BENEFITS

	New Provision/Amended Provision
A new provision requiring regulated entities to clearly disclose minor non-monetary benefits to consumers is proposed.	Prior to offering, recommending, arranging or providing a product or service, a ***regulated entity*** must ensure that ***minor non-monetary benefits*** are clearly disclosed to the ***consumer***.

INDEPENDENCE

	New Provision/Amended Provision
Amending when an intermediary can describe itself as independent, including with regard to its legal name and trading name, and any description	4.16 ~~The term 'independent' may only be used by a~~ An intermediary, other than a ***regulated entity*** referred to in provision 4.16A, may only describe itself as independent – a) in its legal name, trading name or any other description of the firm where~~:~~

of its regulated activities, and with regard to its payment for the provision of advice in these circumstances.	~~a) the principal~~ all ***regulated activities*** of the intermediary are provided on the basis of a ***fair analysis of the market***; ~~and~~ or b) in any description of a ***regulated activity*** of the intermediary where that ***regulated activity*** is provided on the basis of a **fair analysis of the market**, ~~b) the intermediary allows the *consumer* the option to pay in full for its services by means of a fee~~ and, in either of these circumstances, where the intermediary does not accept and retain an ***inducement*** for the provision of advice for any of its regulated activities, other than a fee paid by a ***consumer*** to whom the advice is provided.
Amending when a regulated entity providing MiFID Article 3 services can describe itself as independent, including with regard to its legal name and trading name, and any description of its regulated activities, and with regard to its payment for the provision of advice in these circumstances.	4.16A A ***regulated entity*** providing ***MiFID Article 3 services*** may only use the term 'independent' - a) in its legal name, trading name or any other description of the firm where ~~a) the principal~~ all ***regulated activities*** of the ***regulated entity*** are provided on the basis of a ***fair analysis of the market***; ~~and~~or b) in any description of a ***regulated activity*** of the ***regulated entity*** where that ***regulated activity*** is provided on the basis of a ***fair analysis of the market***; and in either circumstances, where the factors to be taken into consideration by the ***regulated entity*** in conducting its ***fair analysis of the market*** includes the criteria set out in Article 53(1)(d) of Commission Delegated Regulation (EU) 2017/565.
	Deletion of existing provisions
Deletion of existing provisions 4.17 & 4.17A	~~4.17 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.~~ ~~Where a ***regulated entity*** does not provide all of its ***regulated activities*** in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the ***consumer***. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity.~~ ~~4.17A "The term 'independent' may only be used by a ***regulated entity*** providing ***MiFID Article 3 services*** in any trading name or other description of a ***regulated activity*** where the ***regulated entity***:~~ ~~a) provides the ***regulated activity*** on the basis of a ***fair analysis of the market***; and~~ ~~b) the factors to be taken into consideration by the ***regulated entity*** in conducting its ***fair analysis of the market*** includes the criteria set out in Article 53(1)(d) of Commission Delegated Regulation (EU) 2017/565.~~ ~~Where the ***regulated entity*** does not provide all of its ***regulated activities*** in an independent capacity, it must explain the different nature of its services in a way that seeks to inform the ***consumer***. It must ensure that there is no ambiguity about the range of services that it provides in an independent capacity."~~
	Deletion of existing provision
Deletion of existing provision on Information about Remuneration (4.61)	~~4.61 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.~~

CONFLICTS OF INTEREST

	New Provision
Criteria that must be met in order for inducements to be deemed acceptable.	A ***regulated entity*** shall ensure that, in providing a regulated activity, if it pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit, in connection with the provision of that ***regulated activity***, to or by any party other than the ***consumer*** or a ***person*** on behalf of the ***consumer***, the fee, commission or non-monetary benefit: (a) is designed to enhance the quality of the relevant service to the ***consumer***, (b) does not impair compliance with the ***regulated entity***'s duty to act honestly, fairly and professionally in the best interests of the ***consumer***, and (c) does not impair compliance with the ***regulated entity***'s obligation to satisfy the suitability requirements set out in Chapter 5 of this Code.
	Amended Provisions
A regulated entity must have in place a written policy detailing how it will avoid any conflicts of interest associated with third party inducements.	3.28 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 entailing a risk

Such conflicts of interest include inducements that are contingent on reaching or achieving targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention).	of damage to the interests of its ***customers*** who are ***consumers***, including those specified in provision paragraph (c) of 3.28; and b) specify procedures to be followed and measures to be adopted by the ***regulated entity***, in order to manage such conflicts, other than those referred to in c) below; c) specify procedures to be followed and measures to be adopted by the ***regulated entity*** in order to avoid the conflicts of interest relating to inducements. The conflicts of interest to be avoided by these specified procedures shall include conflicts with regard to the following ***inducement***s that may be received by the ***regulated entity***: i) ***Inducement***s linked to the achievement of targets that do not consider the ***consumer***'s best interests, e.g., targets relating to volume or profit, or bonus payments linked to business retention. ii) ***Inducement***s linked to the size of a mortgage loan. iii) Soft commission arrangements, i.e., agreements 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***. 3.29 Other than for ***inducements*** as are set out in the circumstances in paragraph (c) of provision 3.28, where conflicts of interest arise and cannot be reasonably avoided, a ***regulated entity*** must: a) 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, on paper or on another ***durable medium***, that he or she is aware of the conflict of interest and still wants to proceed; and

	b) ensure that the conflict does not result in damage to the interests of the ***consumer***.
	Amended Provision
In complying with the proposed conflicts of interest provision, inducements contingent on reaching or achieving targets that do not consider the consumer's best interests (e.g., targets linked to volume, profit or business retention) will be deemed to be conflicts of interest that must be avoided. The strengthened conflicts of interest provision renders the requirement in provision 4.59(c) redundant.	**Information about remuneration** 4.59 Prior to the sale of a non-life insurance product, an ***insurance intermediary*** must: a) 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***; and b) inform the ***consumer*** of the amount of remuneration receivable in respect of that service or that details of remuneration are available on request~~; and~~ ~~c) disclose in general terms to a~~ ~~***consumer***~~ ~~any remuneration arrangements with~~ ~~***product producer***~~~~s that are not directly attributed to the services 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~~.

SUITABILITY

	Amended Provision
In complying with the proposed additional suitability provision a regulated entity can only accept and retain the lowest inducement amount that is available within the range of products which is available as suitable to a consumer.	5.17 A ***regulated entity*** must ensure that any product or service offered 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 from 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***~~.~~, and c) a ***regulated entity*** must not make any recommendation the subject of paragraph b) if there are different levels of ***inducement*** offered for the range of products involved.

RECORDS

	Amended Provision
Increased record-keeping requirements	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; h) records demonstrating how conflicts of interest arising from third party ***inducement***s, as specified in provision 3.28(c)(i) – (iii), have been avoided for each transaction; i) records demonstrating that for each recommendation made, the requirement in provision 5.17(c) has been complied with;

	j) records demonstrating that the ***inducement*** arrangements summary document was brought to the attention of the ***consumer*** before concluding a contract for a financial product; and k) all other relevant information and documentation concerning the ***consumer***.

TRANSPARENCY

	New Provision
A new transparency provision requiring intermediaries to publish their inducement arrangements	An intermediary must display in its public offices, in a manner that is easily accessible to ***consumers***, a comprehensive summary of the details of all ***inducement*** arrangements that it has agreed with ***product producer***s. The summary must, at a minimum, include the following: (a) the basis on which the ***inducement*** is paid or provided to the intermediary; (b) an indication of the agreed amount or percentage of the ***inducement*** where the ***inducement*** is paid or provided to the ***intermediary*** on this basis; (c) details of any agreed fees, administrative costs, or non-monetary benefits in the ***inducement*** arrangement; and (d) any agreed additional benefits that may be paid or provided to the ***intermediary*** as part of the inducement arrangement, including any benefits which are not related to ***intermediary's*** individual sales. If the intermediary has a website, this information must also be made publicly available through placing this summary on its website.

Appendix 2: The consumer protection framework on inducements

The measures proposed in this Consultation Paper continue the Central Bank's work to maintain a strong consumer protection framework for consumers of products with inducement structures. The sectors of industry captured by the Code with regard to inducements include firms authorised under the Investment Intermediaries Act 1995, mortgage intermediaries, and insurance intermediaries[12].

The Central Bank's Consumer Protection Code 2012 requires firms to seek to avoid conflicts of interest. It also imposes requirements relating to inducements on firms when distributing their products through intermediaries and in relation to remuneration arrangements with employees, as follows:

"3.31 Where a product producer distributes its products to consumers through an intermediary and 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 between the intermediary and the consumer.

3.32 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".

The European Union (Markets in Financial Instruments) Regulations 2007 (the MiFID Regulations 2007)[13] are the main framework for conduct of business regulation for investment activities. With effect from 3 January 2018, these Regulations will be replaced by the European Union (Markets in Financial Instruments) Regulations 2017 (the MiFID Regulations 2017). The MiFID Regulations 2017 will prohibit an investment firm subject to those Regulations, when providing investment advice on an independent basis, from accepting and retaining fees, commissions or any monetary or non-monetary benefits paid or provided by any third party, other than where a minor non-monetary benefit is capable of enhancing the quality of service

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[12] Some rules on pre-sale disclosure are contained in S.I. 15/2001, the Life Assurance (Provision of information) Regulations 2001 (the Life Assurance Disclosure Regulations). Under those regulations product producers are required to provide information about life assurance products, the projected benefits and charges, intermediary or sales remuneration payable under the policy, and information on early withdrawal.
[13] S.I. No. 60/2007

provided to a client. In addition, MiFID II contains a discretion which allows Member States, in exceptional cases, to impose additional requirements on investment firms provided those requirements are "*objectively justified and proportionate so as to address specific risks to investor protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State".* This discretion has not been exercised in Ireland to date.

The MCD was transposed into Irish law in March 2016 through the enactment of the European Union (Consumer Mortgage Credit Agreement) Regulations 2016 (Mortgage Credit Regulations)[14]. These regulations require a mortgage credit intermediary to provide information to the consumer in advance of carrying out mortgage credit intermediary services. This includes, where applicable, the existence and, where known, the amount of commissions or other inducements payable by the creditor or third parties to the mortgage credit intermediary for its services in relation to the credit agreement. While the MCD contains a discretion for Member States to impose a ban on commission payments from creditors to credit intermediaries, this discretion was not exercised in Ireland at the time of transposition.

Finally, the IDD, due to be transposed in February 2018, will require that an insurance distributor is not remunerated in a way that conflicts with its duty to act in the best interests of its customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs. An insurance intermediary must provide the customer with information about the nature of the remuneration it receives in relation to the insurance contract.

In addition to the above, the IDD contains the following two Member State discretions relating to incentives:

- Member States may limit or prohibit the acceptance or receipt of fees, commissions, etc. in relation to the distribution of insurance products; and

[14] S.I. 142/2016

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- Member States may prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of advice on insurance-based investment products.

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