Welcome to the Intermediary Times

Welcome to the first publication of the Intermediary Times in 2016.

Earlier this month we published the 2016 Consumer Protection Outlook Report, which provides information for all regulated firms on our objectives, our assessment of the current and emerging consumer environment and risks to our objectives. We have highlighted some of the key risks and priorities for the intermediary sector on page 2.

This edition also contains information on some important topics, including the reclassification of Authorised Advisers and Multi-Agency intermediaries to Investment Intermediaries; obligations under the Minimum Competency Code; and information in relation to self-employed agents.

For queries on the topics outlined in this newsletter or indeed any other queries, please see the main contact points on page 8. We hope that you find this newsletter useful and as always, we would welcome your feedback.

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Head of Consumer Protection
- Supervision Division

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We have recently published our second Consumer Protection Outlook Report (CPOR) which outlines our consumer protection objectives, our assessment of the current and emerging consumer environment, and risks to those objectives.

The CPOR also sets out a number of priorities that we will be focussing on in the context of our desired consumer protection outcomes, which are:

- A positive consumer focussed culture that is embedded and demonstrated within all firms.
- A consumer protection framework that is fit for purpose and ensures that consumers’ best interests are protected.
- Regulated firms that are fully compliant with their obligations and are treating their customers, existing and new, in a fair and transparent way.

Each regulated firm has a responsibility to its consumers to consider the risks we have identified throughout the CPOR in the context of their own business structures and activities and to take the necessary steps to ensure that they are effectively managed and mitigated. The following areas are of particular relevance to the retail intermediary sector:

- The implementation of key EU directives such as the Mortgage Credit Directive and the Payment Accounts Directive;
- An examination of risks and benefits of commission payments;
- Targeting firms which are not engaging appropriately with the Central Bank, including firms which fail to submit basic information necessary for us to be able to effectively supervise them; and
- A spotlight on marketing and advertising of credit products - specifically that the objective, content and tone should be to promote responsible borrowing.

We plan to roll-out a new authorisation process model for retail intermediaries in 2016, which will result in a more transparent process in terms of the information required and timelines for decisions. We will also increase the frequency and intensity of our on-site inspections in this sector.

The Central Bank will continue to challenge firms to demonstrate how they are identifying and managing consumer risks and how their employees’ behaviours are delivering fair outcomes for consumers.
Pre-Approval Control Function (PCF) Confirmation Return

All retail intermediaries have been sent a reminder email to submit their Annual PCF Confirmation Return for the year ended 31 December 2015. The purpose of this return is to confirm that all PCF holders - examples of which include but are not limited to members of the board/committees, sole traders and core senior management positions – are compliant with the Central Bank’s Fitness and Probity Standards and that they continue to agree to abide by the Standards.

The deadline for completion and submission of this return is 29 February 2016. Firms who have not yet submitted their Annual PCF Confirmation Return are required to do so immediately. Guidance on how to complete the Annual PCF Confirmation Return is available here. There is also a quick How-To Guide available here.

Please note that if the information set out in the return is incorrect (for example, it does not reflect a resignation which took place prior to the end-2015 reporting date); the firm will need to take appropriate action before submitting the Annual PCF Confirmation Return.

If a firm has not previously submitted details of its PCF holders either through an Individual Questionnaire (IQ) or through the ‘in situ’ process in 2012; it will need to submit an IQ via the Online Reporting System (ONR) for each PCF holder. The IQ can be found under the Fitness and Probity Section of the ONR.

For further queries in relation to completing and submitting your Annual PCF Confirmation Return please contact the Fitness and Probity team as follows:

Phone: 01 224 5333 or Email: FitnessandProbity@centralbank.ie

2015 Industry Funding Levy

The 2015 Industry Funding Levy notices were issued by the Central Bank in October 2015 and became due on 23 November 2015. Reminder letters for the 2015 levy and any previous levy years (where applicable) were issued on 5 February 2016. In order to avoid legal action to recover the debt, firms that have not paid these levies are requested either to pay this overdue amount or to contact the Industry Funding Team on 01-2244022 to discuss this overdue payment and to make arrangements to clear the account.

The Central Bank has recently appointed debt collection specialists, Hugh J Ward solicitors, to pursue regulated entities which have industry funding levies outstanding. We are reluctantly going this route to reflect a need for equity; it is fair to the majority who do pay that efforts to ensure payment by a small minority are intensified.

This formal debt collection process will consist of the issue of a final request for payment to each debtor, followed by a telephone call. Consideration will be given to the initiation of legal proceedings where payment is not forthcoming. It is expected that legal proceedings will commence in Quarter 3 2016 through the relevant Courts.
The EU Directive on Credit Agreements for Consumers relating to Residential Immovable Property (the Mortgage Credit Directive) was published in the Official Journal of the European Union on 28 February 2014.

This directive aims to create a European Union-wide mortgage credit market with a high level of consumer protection. It applies to credit agreements, entered into by consumers, which are secured either by a mortgage or by another comparable security commonly used in a Member State of the European Union on residential immovable property. It also applies to credit agreements which are used to acquire or retain property rights in land or in an existing or projected building.

The transposition deadline for this directive is 21 March 2016. The Mortgage Credit Directive will be transposed by statutory instrument into Irish legislation.

The Handbook of Prudential Requirements for Investment Intermediaries (the 2014 Handbook) came into effect from 1 October 2014 and was imposed on all investment intermediaries under Section 14 of the Investment Intermediaries Act, 1995 (as amended) (IIA). All investment intermediaries must be familiar with the provisions contained in the 2014 Handbook. The definition of ‘Investment Intermediary’ in the 2014 Handbook effectively means that all Multi-Agency Intermediaries and Authorised Advisors have been re-classified as investment intermediaries.

The Central Bank has commenced a project to update its records, website and the registers of regulated firms with the up-to-date authorisation status of each investment intermediary. We are also issuing amended statements of authorised status to these firms. This statement reflects the current authorisation under the IIA held by a firm and the names under which it can trade. Since the imposition of the 2014 Handbook, firms which have requested amendments to their authorisations to include a new name or activity have already received up-to-date statements of authorised status. We will continue to process these amendments as normal and it is expected this project will be completed by the end of June 2016. If you have any queries, please contact us at postauthorisations@centralbank.ie.
Regulated firms and persons carrying out certain controlled functions within those firms must meet the standards set out in the Minimum Competency Code 2011 (MCC), including the Continuing Professional Development (CPD) requirements.

- **Grandfathered persons**
  Under the MCC, regulated firms were required to complete a Statement of Grandfathered Status, by 1 January 2013, in respect of all grandfathered persons acting on their behalf. Regulated firms and grandfathered persons are reminded to ensure that a Statement of Grandfathered Status (in the format set out in Appendix 5 of the MCC) has been completed and firms must ensure that a Statement of Grandfathered Status, in respect of each grandfathered person acting on their behalf, is retained on file.

Regulated firms and grandfathered persons are also reminded that where any shortfall remains outstanding in respect of the CPD that was required to be completed from 1 January 2008 to 31 December 2014, the grandfathered person must be removed from the regulated firm’s Register of Accredited Persons and would not be in a position to carry out a function that falls within the scope of the MCC until he/she is again in compliance with the CPD requirements.

- **New entrants**
  New entrants must obtain a relevant recognised qualification within a four-year timeframe. The four-year timeframe commences on the date a new entrant starts in a role that falls within the scope of the MCC.

- **CPD Reminder**
  Qualified and grandfathered persons must complete 15 formal hours of CPD each calendar year. All formal CPD hours must be accredited by the provider of a recognised qualification. Under the MCC, a qualified person or grandfathered person who fails to complete the required CPD in any year may make up the shortfall by the end of the following year provided the person has not incurred another shortfall within the previous five years.

- **Update on Qualifications**
  In 2015, the National College of Ireland developed the following qualifications which have been recognised for the purposes of the MCC:
  - Accredited Product Professional (Personal General Insurance)
  - Accredited Product Professional (Commercial General Insurance)
  - Accredited Product Professional (Private Medical Insurance).

The updated list of qualifications which are recognised in respect of retail financial products and associated specified functions may be found on the Central Bank of Ireland’s website.
The Central Bank has come across a number of regulated entities in the recent past which have used self-employed agents in the conduct of insurance mediation, including in customer facing roles. There are a number of issues in respect of this practice of which both firms and agents should be aware.

Registration under the European Communities (Insurance Mediation) Regulations 2005 (the “IMR”)

The Central Bank reminds persons proposing to engage in insurance mediation that it is an offence to conduct insurance mediation unless registered as an insurance intermediary under the IMR. While the Investment Intermediaries Act 1995 permits an individual to provide certain limited services under the “full and unconditional responsibility” of an investment business firm without that person requiring separate authorisation, no such permissions exists under the IMR. Consequently, any self-employed agent dealing with insurance products must be registered independently of the regulated firm.

As a registered intermediary, such agents are responsible for their compliance with regulatory requirements including professional indemnity insurance and submitting the annual online return to the Central Bank.

Consumer Protection Code

Firms which engage self-employed agents for insurance mediation should be mindful of Provision 3.25 of the Consumer Protection Code:

3.25 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 agent, branch or entity to which activities are outsourced in accordance with the European Communities (Payment Services) Regulations 2009 where the regulated entity remains fully liable for the acts of that agent, branch or entity to which activities are outsourced;
e) a distributor, agent, branch or entity to which activities are outsourced in accordance with the European Communities (Electronic Money) Regulations 2011 where the regulated entity remains fully liable for the acts of that distributor, agent, branch or entity to which activities are outsourced;
f) 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;
g) a credit intermediary (within the meaning of the Consumer Credit Act 1995 and the European Communities (Consumer Credit Agreements) Regulations 2010); or
h) no longer providing a regulated activity, where the fee, commission, other reward or remuneration is in respect of a regulated activity that the person provided when the person fell within any of the descriptions at a) to g) above.
Through recent engagement with Industry Representative Bodies, it has been brought to the attention of the Central Bank that confusion may exist among self-employed agents around their obligations under the Code. In particular, clarification was sought on how the requirements under Chapter 4 of the Code relating to Provision of Information, including Provision 4.12 relating to the obligation to provide the terms of business to a consumer before providing any financial service to that consumer should be applied in respect of self-employed agents who work exclusively for another broker.

The obligations under the Code apply to the regulated entity that has the “point of sale” relationship with the consumer. If a regulated entity is a self-employed agent, and acts for a main brokerage, they may make reference to this fact in their literature. There is no facility under the IMR for a broker to take full and unconditional responsibility for another intermediary, arising from the definition of “tied intermediary” (i.e. an intermediary who is acting for an insurance undertaking). A self-employed agent is authorised in his/her own right and therefore is responsible for his/her own compliance with the relevant provisions of the Code.

Provision 4.12- 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.
On 2 November 2015, the ICCL notified all retail intermediaries that it had issued its Funding Consultation Document – “Funding the Investor Compensation Scheme” for comment. Industry representative bodies were also invited to comment on the proposals for the three-year period commencing 1 August 2016.

In particular, the ICCL welcomes the joint submission received from Irish Brokers (IBA & PIBA) to the Funding Consultation process. The ICCL will review submissions and publish revised Funding Arrangements on the publications section of our website [www.investorcompensation.ie](http://www.investorcompensation.ie) by 31 May 2016. The effective date for the revisions will be 1 August 2016.

Contact Us

As part of our commitment to on-going communication with you, we have set out details of the main contact points for queries below.

- **Online Annual Return/PCF Queries**: regulatorytransactions@centralbank.ie, 01-2244545
- **Authorisations**: retailintermediaries@centralbank.ie, 01-2244595
- **Revoking an Authorisation**: revoke@centralbank.ie, 01-2244376
- **Amending an Authorisation**: retailintermediaries@centralbank.ie, 01-2244376
- **General Queries/Feedback**: brokers@centralbank.ie, fitnessandprobity@centralbank.ie, advertising@centralbank.ie

Our regulatory codes can be accessed on our website at this link: [Regulatory Requirements](http://www.centralbank.ie)