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Re: Discretionary Commission Arrangements in motor finance arranged through hire-purchase agreements

Dear CEO

The provision of hire-purchase (including Personal Contract Plan (PCP)) and consumer-hire agreements including motor finance agreements to consumers became a fully regulated activity on 16 May 2022 following the enactment of the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 (the '2022 Act'). Arising from the enactment of the 2022 Act, certain requirements of the Central Bank of Ireland's (Central Bank) Consumer Protection Code (the 'Code') - the General Principles, Knowing the Consumer & Suitability requirements and Advertising requirements – were applied to these activities from 16 August 2022[1].

As part of its role in regulating financial services, the Central Bank monitors practices and developments in the market across the various financial services sectors. Where we identify practices that are not in line with our expectations, we review the practice and intervene as appropriate within the context of our statutory mandate.

Review of discretionary commission arrangements in motor finance arrangements

As you are aware, the Central Bank has recently engaged with Regulated Firms (Firms) providing motor finance through hire-purchase agreements via credit intermediaries, to understand the commission models in place. Through this review, the Central Bank has identified the use of Discretionary Commission Arrangements (DCA) in Ireland by some Firms in the provision of motor finance through hire-purchase agreements. The Central Bank considers a DCA to be an arrangement whereby a Firm/Product Producer allows a credit intermediary to select the interest rate charged to the consumer and where the commission paid to the credit intermediary by the Firm

[1] Addendum to the Consumer Protection Code 2012 - Effective 16 August 2022

is linked, either wholly or partially, to the interest rate charged. The Annex to this letter sets out (non-exhaustive) examples of commission models that the Central Bank considers are DCAs.

The Central Bank review of DCAs took due consideration of current Code requirements and in particular we considered the practice in the context of requirements applicable to commission arrangements and conflicts of interest, particularly Provision 3.25A of the Code.

Provision 3.25A of the Code sets out that:

> *A regulated entity must ensure that, in providing a regulated activity to a consumer, if it pays or provides, or is paid or provided with, any fee, commission, other reward or remuneration in connection with the provision of that regulated activity to or by any person other than the consumer or a person acting on behalf of the consumer, the fee, commission, other reward or remuneration:*
>
> *a) does not impair compliance with the regulated entity's duty to act honestly, fairly and professionally in the best interests of the consumer;*
>
> *b) does not impair compliance with the regulated entity's obligation to satisfy the conflicts of interest requirements set out in Chapter 3 of this Code and, as applicable, the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018);*
>
> *c) does not impair compliance with the regulated entity's obligation to satisfy the suitability requirements set out in Chapter 5 of this Code and, as applicable, the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018); and*
>
> *d) in the case of a non-monetary benefit, is designed to enhance the quality of the service to the consumer.*

The Central Bank is not satisfied that DCAs, and in particular the incentives they create for credit intermediaries to apply a higher interest rate in order to increase the amount of commission received, are consistent with the market outcomes that Provision 3.25A seeks to achieve. While Provision 3.25A does not currently apply to the activity of hire-purchase/PCP/consumer-hire, as set out in CP158 – Consultation Paper on the Consumer Protection Code, we are proposing to apply the full Code, including Provision 3.25A, to these activities. We therefore expect that regulated firms take steps now to **cease the practice of DCAs** in anticipation of Provision 3.25A coming into force for these activities **immediately but no later than 31 July 2024**.

Disclosure of commission

We note from information provided as part of this review that, in some cases, there is limited disclosure about commission to customers when providing motor finance through hire-purchase agreements. While currently Firms are required to comply with Section 148 of the Consumer Credit Act 1995, we also expect Firms to be cognisant that we propose to apply the full Code including provisions in relation to commission and disclosure to the activity of hire-purchase. Given the importance of disclosure and the information provided to consumers when they are making financial decisions, Firms should review their approach to disclosure of commission and, where appropriate, amend relevant documentation provided to consumers.

Actions Required

[Firm Name] should consider the contents of this letter and provide the Central Bank with Board-approved confirmation by **5 July 2024** that:

1. Where your firm applies, or applied, a discretionary commission model in relation to motor finance arranged through a hire-purchase agreement via a credit intermediary, the date this practice ceased/will cease.

2. Confirmation that a review of your Firm's disclosure on commission to customers, in relation to motor finance provided through hire-purchase agreements via credit intermediaries, will be undertaken in accordance with both current and proposed Code requirements to ensure that there is appropriate disclosure of commission arrangements to customers about commission arrangements and that any necessary amendments are made to documentation, as soon as possible but no later than **30 August 2024**. The outcome of this review is to be provided to the Central Bank, by **30 September 2024**.

Responses and queries in relation to this correspondence should be emailed to motorfinance@centralbank.ie.

Yours sincerely

Wesley L. Murphy

Wesley Murphy
Head of Consumer Protection Supervision: Credit & Lending

cc.

Annex

The following are examples of commission models that the Central Bank considers to be Discretionary Commission Arrangements:

1. A Product Producer/Regulated Firm sets a minimum interest rate, and the commission paid by the Product Producer/Regulated Firm to the credit intermediary is based on the difference between the interest rate negotiated by the credit intermediary and the minimum rate. These are commonly known as "increasing difference in charges" or "interest rate upward adjustment" arrangements.

2. An agreement whereby the commission paid by the Product Producer/Regulated Firm to the credit intermediary varies within specific parameters based on the interest rate negotiated by the credit intermediary and paid by the consumer. These are commonly known as "scaled models”.