



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

**Settlement Agreement between the Central Bank of Ireland  
and  
Merrion Stockbrokers Limited**

**Merrion Stockbrokers Limited fined €200,000 by the Central Bank of Ireland in respect of failings pursuant to the Fitness and Probity regime.**

On 12 December 2017, the Central Bank of Ireland (the 'Central Bank') fined Merrion Stockbrokers Limited ('Merrion') €200,000 and reprimanded it for a breach of section 21 of the Central Bank Reform Act 2010 (the '2010 Act'). Merrion has admitted this breach, which was identified during a Central Bank inspection of Merrion in 2016.

Under the Fitness and Probity regime, individuals performing certain influential and customer facing roles in regulated entities are considered to be performing controlled functions ('CFs'). The most significant of these roles are pre-approval controlled functions ('PCFs') in respect of which Central Bank approval is required prior to appointment.

The Central Bank's enforcement investigation identified that Merrion failed to introduce adequate systems or controls to ensure that individuals holding CFs and PCFs complied with the Fitness and Probity Standards (the 'Standards').

The breach occurred from the introduction of the Fitness and Probity Regime on 1 December 2011, and persisted for over 4 years. During this period, Merrion failed to:

- Introduce adequate systems or procedures to ensure compliance with its obligations under section 21 of the 2010 Act; and

- Take reasonable steps to satisfy itself that its CFs and PCFs complied with the Standards.

A programme of compliance improvements began following a management buy-out and the appointment of a new Board in late 2014. Following the Central Bank's inspection in 2016, the current Board took appropriate steps to ensure that the inadequacies in Merrion's Fitness and Probity policies and procedures were addressed.

Head of Enforcement Investigations, Brenda O'Neill, said:

*"The Fitness and Probity regime was introduced in the wake of the financial crisis because of the need to ensure that the right individuals were working in the financial services sector and that those individuals would be held accountable if their conduct fell below the expected standards.*

*Under the Fitness and Probity regime, the Central Bank acts as a gatekeeper for individuals in senior positions at supervised firms, known as pre-approval controlled functions. Importantly however, it is firms who have the ultimate responsibility for ensuring that the wider population of individuals working in financial services, namely those in controlled functions, are suitable. This is an obligation that firms have when appointing individuals to roles. It is also an ongoing obligation for firms to ensure individuals continue to meet the Standards. If circumstances arise to suggest that an individual no longer satisfies the Standards, firms must be in a position to identify this and, if necessary, report any such circumstances to the Central Bank. Firms must take these obligations seriously as the risks posed by failing to do so are significant.*

*In this case, Merrion did not meet its obligations under the Fitness and Probity regime. Until April 2015, there was an absence of any written procedures. In addition, Merrion failed to correctly categorise a number of employees performing controlled functions and failed to understand that its obligation to monitor the Fitness and Probity of individuals does not stop once initial due diligence has been completed. The fine must reflect the significance of these failings.*

*This is the first case against a firm for a breach of its section 21 obligations. We expect all firms to take note of this case and understand that they play a crucial role in ensuring that the Fitness and Probity regime works effectively".*

The Central Bank confirms its investigation into Merrion in respect of this matter is closed.

## **BACKGROUND**

Merrion is authorised as an investment firm under Regulation 11(1) of the European Communities (Markets in Financial Instruments) Regulations 2007. Merrion offers a full service stockbroking service across a number of business lines including advisory stockbroking, wealth management and fixed income. Merrion is 100% owned by Merrion Capital Holdings Limited, which is a holding company for a number of companies within the Merrion Group of companies.

In February 2016, the Central Bank conducted an on-site inspection at Merrion, with a focus on Merrion's Fitness and Probity processes.

## **PRESCRIBED CONTRAVENTIONS**

The Central Bank's investigation identified the following grounds upon which section 21 of the 2010 Act was breached by Merrion:

### **Due diligence failings**

Regulated firms are required to conduct thorough due diligence to ensure that employees performing CFs comply with the Standards. This due diligence is at the heart of the Fitness and Probity regime and must be conducted, both upon initial appointment, and on an ongoing basis. Strict adherence by regulated firms to these requirements is crucial to ensure that persons in senior positions are competent and capable, honest, ethical have integrity and are also financially sound.

In addition, firms are required to assess the appropriate CF or PCF categorisations applicable to individuals. Failing to do so correctly can result in a firm not knowing what parts of the Standards apply to those individuals.

For the period covered by this breach, Merrion failed to conduct the requisite level of due diligence for the ongoing assessment of CFs and PCFs.

## **Systems and controls deficiencies**

Regulated firms cannot permit individuals to perform CF or PCF roles unless they have satisfied themselves on reasonable grounds that those individuals comply with the Standards. For reasonable grounds to exist and to be capable of objective demonstration, regulated firms must put in place proper systems and controls against which compliance can be monitored.

Merrion did not put in place written Fitness and Probity policies and procedures until 24 April 2015. However, these were not adequate, and as a result:

1. By failing to properly document its due diligence when hiring individuals into CF roles, Merrion was unable to demonstrate how it satisfied itself on reasonable grounds:
  - As to the professional or other qualifications of individuals performing CFs as required under section 3 of the Standards;
  - As to the appropriate competence and skills of individuals performing CFs as required under section 3 of the Standards; and
  - As to individuals performing CFs acting with honesty, ethically and with integrity as required under section 4 of the Standards.
2. Merrion did not maintain written records to demonstrate how it fulfilled its ongoing obligation to ensure individuals performing CFs continued to meet the Standards.
3. Merrion erred in the classification of a number of individuals performing CFs.
4. Merrion's Fitness and Probity records were not adequate, with no centralised Fitness and Probity records for each individual covered by the regime.

## **PENALTY DECISION FACTORS**

In deciding the appropriate penalty to impose, the Central Bank considered the following matters:

- The seriousness with which the conduct is viewed, particularly in circumstances where adherence to the Fitness and Probity regime is vital to ensuring that suitable individuals work in regulated entities.
- The period of time over which the breach occurred.
- The need to impose an effective and dissuasive sanction on regulated entities.
- The fact that Merrion took prompt and comprehensive steps to rectify the breach.
- The co-operation of Merrion during the Central Bank's investigation and in settling at an early stage in the Administrative Sanctions Procedure.

- End -

## NOTES TO EDITORS

- A list of the CFs can be found [here](#) and a list of the PCFs can be found [here](#).
- Pursuant to section 21 of the 2010 Act a regulated financial service provider shall not permit a person to perform a controlled function unless: a) the regulated financial service provider is satisfied on reasonable grounds that the person complies with the Standards, and; b) the person has agreed to abide by the Standards.
- The 2010 Act is available [here](#). The Standards are available to download [here](#). Guidance to the Standards is available to download [here](#).
- The Central Bank conducted an on-site inspection at Merrion's premises in February 2016 utilising its 'authorised officer' powers pursuant to Chapter 3 of the Central Bank (Supervision and Enforcement) Act 2013, which is available to download [here](#).
- The fine reflects the application of the maximum percentage settlement discount of 30%, as per the Early Discount Scheme set out in the Central Bank's 'Outline of the Administrative Sanctions Procedure' linked [here](#).
- This is the Central Bank's 115<sup>th</sup> settlement since 2006 under its Administrative Sanctions Procedure, bringing total fines imposed by the Central Bank to over €61 million.