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**Re: Compliance by Regulated Financial Service Providers (“Firms”) with their Obligations under the Fitness and Probity Regime**

Dear CEO,

Individuals who work in regulated firms must meet high standards of competence, integrity and honesty. To ensure this, the Fitness and Probity Regime was introduced by the Central Bank of Ireland (the “**Central Bank**”) under the Central Bank Reform Act 2010 (the “**2010 Act**”). The Fitness and Probity Regime imposes significant obligations on Firms, which must be followed, to ensure that senior and other key personnel comply with fitness and probity requirements.

The Central Bank believes that there is a lack of general awareness in the industry regarding the scope of the Fitness and Probity Regime. While the Fitness and Probity Standards (the “**Standards**”) <sup>1</sup> for individuals appear to be well known, there appears to be less understanding regarding the extent of a Firm’s own legal obligations under the 2010 Act.

The purpose of this letter is to emphasise to Firms that they have significant compliance obligations under the Fitness and Probity Regime, and to highlight some of the main areas of compliance which have been found to be lacking.

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<sup>1</sup> [Code issued under Section 50 of the Central Bank Reform Act 2010.](#)



## Obligations under Section 21 of the 2010 Act<sup>2</sup>

1. Firms have ongoing obligations under Section 21 of the 2010 Act to ensure that they do not allow a person to perform a controlled function (“CF”) role<sup>3</sup> unless they are “satisfied on reasonable grounds” that the person complies with the Standards. This should include consideration of the number of other CF roles held by the person. Additionally, Firms must not permit a person to perform a CF role unless that person has agreed to abide by the Standards.<sup>4</sup> The Central Bank has taken enforcement action against Firms for failing to put in place, and / or failing to follow, proper systems and controls to ensure compliance with the Fitness and Probity Regime.<sup>5</sup> We encourage you to read the public statements in respect of these enforcement actions and to ask how your Firm’s fitness and probity controls compare.
2. Notwithstanding recent enforcement action, we continue to see significant shortcomings in Firms’ compliance with their fitness and probity obligations. The following failings are of particular concern:

- a. *Failure to Provide for the Ongoing Nature of the Obligation*

Under Section 21 of the 2010 Act, Firms are required to conduct due diligence on an ongoing basis to ensure that employees performing CFs comply with the Standards. This is particularly important in circumstances where, once an individual is appointed to a CF role, the Fitness and Probity Regime does not provide for ongoing fitness and probity monitoring by the Central Bank.

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<sup>2</sup> Under the SSM legal regime, the ECB is responsible for taking decisions on the approval of certain pre-approval controlled functions within credit institutions deemed by the ECB to be a ‘significant institution’ (“SI”). Additionally, the ECB is responsible for supervising SI’s compliance obligations under the Fitness and Probity Regime, as provided for within the 2010 Act. For further detail regarding the ECB’s responsibilities in this regard, please refer to the: [ECB authorisations webpage](#). Detail regarding the ECB’s harmonised approach to fit and proper assessments is set out within the [ECB’s Guide to F&P Assessments](#).

<sup>3</sup> Including a pre-approval controlled function (“PCF”) role

<sup>4</sup> Section 21 of the 2010 Act provides that: “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 any standard of fitness and probity in a code issued under section 50, and

(b) the person has agreed to abide by any such standard.”

<sup>5</sup> Against [Merriion](#) Stockbrokers in 2017; [Eservices](#) Credit Union and [Appian Asset Management](#) Ltd in 2018.



We have seen instances where serious issues have arisen which should have prompted a Firm to ask itself if a particular person in a CF role was still “fit and proper”. In one example, an individual had a significant judgment registered against them, such that questions arose over that individual’s financial soundness, but the Firm failed to take any steps to satisfy itself that the individual still complied with the Standards.

Similarly, we have seen examples where individuals have been criticised publicly by other regulators and/or the Courts for past actions. However, their current Firms have failed to take any steps to assess whether those individuals are still fit and proper, and it has been left to the Central Bank to intervene.

The Central Bank recommends that, at a minimum, Firms should require those persons performing CF roles to undertake to notify them of any changes in circumstance, which might be material to their fitness or probity. Where appropriate, we expect a Firm to properly assess if that individual still satisfies his or her obligations under the Standards. Firms should also ask persons performing CF roles to certify, at least on an annual basis, that they are aware of the Standards and that they agree to continue to abide by them.

*b. Failure by Firms to report issues to the Central Bank*

We also see instances where Firms have identified fitness and probity concerns about an individual and have taken steps to address these, but have failed to report those concerns to the Central Bank<sup>6</sup>. In some cases, the Firms have gone so far as to suspend or dismiss the individuals for fraud but have neglected to report this to the Central Bank.

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<sup>6</sup> Sections 21.3 and 21.4 of the [Guidance on Fitness and Probity Standards 2018](#). This is in addition to the requirement on individuals in PCF roles to consider whether they must report any matter to the Central Bank in accordance with section 38(2) of the Central Bank (Supervision and Enforcement) Act 2013.



In that scenario, the Central Bank is unable to consider an individual's misconduct, in particular in respect of any future PCF application that an individual might submit.

To be clear therefore, where your Firm has any fitness and probity concerns regarding a person who is performing a CF role, and takes action on foot of those concerns, you must notify the Central Bank without delay. While there is no exhaustive list of the types of action that must be notified to the Central Bank, they would include, for example, the issuing of a formal written warning, suspending / dismissing a person or reducing / recovering some of their remuneration as a result of issues relating to fitness and probity.

### **Obligations under Section 23 of the 2010 Act**

3. Under Section 23 of the 2010 Act, which provides for the Central Bank's 'gatekeeper' remit, a Firm may not appoint a person to certain senior positions known as PCF roles unless the Central Bank has approved the appointment in writing. The gatekeeper regime exists to allow the Central Bank to assess whether the most senior people in the financial services industry are fit and proper, which is critical to the protection of the public interest and to ensuring that there is public trust and confidence in the financial system.
4. The Central Bank is concerned that Firms do not fully appreciate their obligations under this section, or the ramifications of non-compliance. We say this because we have seen examples of individuals acting in PCF roles without the Firm having sought the Central Bank's approval. In some cases, the individuals have been in those roles for a considerable time.
5. Before a Firm may appoint a person to a PCF role, the Firm must seek the Central Bank's approval for the appointment. The approval process incorporates a fitness and probity assessment by the Central Bank of the proposed PCF role holder. However, notwithstanding that the assessment process applies to the proposed appointee, the statutory obligation is on the appointing Firm to seek approval before appointment.



6. In circumstances where a person is appointed to a PCF role without the approval of the Central Bank, we will hold the appointing Firm responsible for non-compliance.

### **Due diligence for senior positions & the role of the nominations committee**

7. Firms should be familiar with the approval process for PCF appointments. As a reminder: a PCF applicant is required to complete an individual questionnaire (“IQ”), which the Central Bank considers before approval is granted or refused<sup>7</sup>.
8. However, we have observed a number of instances where applicants have failed to disclose on their IQs material facts<sup>8</sup> which are either known to proposing Firms, or would have been known if proper due diligence of their proposed PCF candidates had been conducted. This is of particular concern in circumstances where the IQ includes a declaration from the proposing Firm regarding the suitability of the proposed candidate and confirming that all due diligence has been conducted.
9. Several proposed appointees have stated that they failed to disclose certain facts because they did not believe them to be material<sup>9</sup>. However, it is for the Central Bank to determine whether a fact is material to a PCF application. In certain instances, we have challenged applicants because of their failure to make full disclosures to the Central Bank.
10. In our low and medium impact Firms, PCF approval may be granted based on the IQ alone, but we retain the discretion to interview the applicant to assess their suitability for the role and will do so where we think necessary.
11. The process is different for applicants for certain senior appointments at high and medium high impact Firms because of the importance of those Firms to the financial system. For

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<sup>7</sup> For further detail see [here](#)

<sup>8</sup> Typically relevant to their probity or financial soundness.

<sup>9</sup> Applicants are required in accordance with the IQ (Section 5 of the IQ) to be candid and truthful and provide a full, fair and accurate response to all questions. Applicants are specifically requested, if uncertain on how to respond to any of the queries raised, to endeavour to provide as much information as possible. Applicants should be aware that the withholding of relevant information in this context may constitute an offence or grounds for refusal of the application amongst other possible sanctions (section 11.8 of the IQ).



those applicants, the Central Bank will interview<sup>10</sup> them as a matter of course to assess their suitability for their role.<sup>11</sup>

12. After these initial interviews (regardless of the Firm's impact rating), we can decide to approve a PCF appointment. However, if there are concerns that merit further enquiry, the applicant will be invited to a second interview known as a "specific interview" involving our specialist fitness and probity team in the Enforcement Directorate. These interviews are more intrusive<sup>12</sup> and applicants should prepare for this. For example, if an applicant held a position at a Firm that was sanctioned in Ireland or another jurisdiction, they will be asked about their role in this. Such questions may refer to any evidence that suggests their involvement in the misconduct giving rise to the sanction.
13. This process was put in place following the introduction of the Fitness and Probity Regime in 2012. We have recently observed a marked increase in the number of applications referred to our fitness and probity specialists and an uptick in the number of PCF applications withdrawn by proposing Firms either during or subsequent to the "specific interview" process<sup>13</sup>.
14. These withdrawals relate not only to PCF applicants for low or medium impact Firms, but also extend to PCF applicants at high impact Firms. This causes us to question whether Firms at all impact levels are conducting proper PCF due diligence before proposing individuals for senior roles.
15. As a CEO, we ask you to consider this letter carefully and to discuss it with your board or if relevant your nomination committee. You, your board and any relevant committees play a critical role in ensuring that the right people are proposed as PCFs. It is crucial that

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<sup>10</sup> For further detail on the interview process see section 3.9 of the F&P FAQ's [here](#).

<sup>11</sup> The Central Bank will interview applicants for Chairman, CEO, Finance Director or Chief Risk Officer at any high impact Firm as routine. In addition, the Central Bank will interview applicants for Chairman and CEO at any medium high impact Firm as routine.

<sup>12</sup> Specific interviews are transcribed and applicants are entitled to legal representation.

<sup>13</sup> In 2016, 5 PCF applications were withdrawn. In 2017, 8 PCF applications were withdrawn, and in 2018 18 PCF applications were withdrawn. Withdrawals following intervention by Enforcement are the key measure of the gatekeeper regime's impact. Our experience has been that there is a high level of withdrawals relative to refusals once a Firm or an applicant becomes aware that the Central Bank has concerns with the PCF application. This is consistent with the experience of other jurisdictions with similar regimes.



you ask not merely whether a given candidate is competent, but also whether the individual acts with integrity at all times.

## Conclusion

16. Firms have the first line of responsibility under the Fitness and Probity Regime. Firms must ensure people subject to the regime are fit and proper. Further, this responsibility does not end following the hiring of staff; you must ensure that your staff are fit and proper on an on-going basis. Where Firms fall short, the Central Bank will take appropriate action.
17. This letter should be read with the the Guidance on Fitness and Probity Standards (the “**Guidance**”)<sup>14</sup>. The Central Bank, in light of this letter, expects you together with your board to review your Firm’s fitness and probity policies, procedures and practices and address any shortcomings. Firms should be in a position to demonstrate how the issues raised in this letter have been considered, and to explain and evidence any remedial actions taken.

Yours sincerely,

A handwritten signature in blue ink, reading "Derville Rowland".

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Derville Rowland  
Director General Financial Conduct

A handwritten signature in blue ink, reading "Ed Sibley".

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Ed Sibley  
Deputy Governor Prudential Regulation

<sup>14</sup> [Guidance on Fitness and Probity Standards 2018](#).