



IRISH FINANCIAL SERVICES  
REGULATORY AUTHORITY

Financial Services Regulation: Comprehensive  
Framework of Standards for testing the probity  
and competence of Directors and Managers of  
Financial Services Firms

February 2005

CONSULTATION PAPER CP11

# 1 PURPOSE OF CONSULTATION

1.1 Directors and managers of financial services firms are required to take responsibility for the proper running of the firm. Because of this responsibility, it is important that they have the skills to run the firm and that they have personal qualities, such as honesty, integrity and fairness to ensure that the firm is run properly, in compliance with relevant legislation and in a manner that treats its customers fairly. Accordingly, an important part of regulating financial services firms is ensuring that directors and managers have the necessary skills and qualities. The Financial Regulator is reviewing the current means by which proposed directors and managers are examined and is proposing a new comprehensive framework for testing the competence and probity of directors and managers. This paper is seeking the views of the industry, consumers and the public generally and of any interested groups concerning the Financial Regulator's proposals for a comprehensive framework. To facilitate public consideration of the issues, this paper sets out the Financial Regulator's current thinking.

## 1.2 "FIT AND PROPER"

EU and Irish law require that the directors and managers of financial services firms regulated by the Financial Regulator meet standards of competence and probity. These standards are usually referred to in shorthand as "fit and proper" standards. "Fitness" requires that a person appointed as a director or manager has the necessary qualifications, skills and experience to perform the duties of that position. "Probity" requires that a person is honest, fair and ethical. Before being appointed, a new director or manager goes through a process to demonstrate to the satisfaction of the Financial Regulator that he or she meets the fit and proper standards. This is the "fit and proper test". The standards apply with as much force to existing directors and managers as to new ones. If information comes to light to cast doubt on the fitness or probity of a director or manager in the course of his or her career, it will be necessary for the appointing firm and/or the Financial Regulator to take action appropriate to protecting the interests of its customers.

## 1.3 MAKING YOUR SUBMISSIONS

- 1.3.1 The closing date for submissions is 30 April 2005. We are seeking views from the public, the financial services industry, lawyers, accountants and consumer groups on the proposed framework. Comment is invited in respect of all aspects of the proposed comprehensive fit and proper test, including both policy issues and the detail of the test. Comments will be carefully considered when formulating policy and, in particular, prior to the Financial Regulator finalising its proposals for a comprehensive test. The comprehensive fit and proper test to be adopted by the Financial Regulator after this consultation will be published.
- 1.3.2 Comments are welcome from all interested parties. Please make your submissions in writing and, if practical, by email or on disk. You can post them, fax them or email them to us. When addressing any issue raised in this paper, please use the corresponding numbers in this paper to identify the section you are referring to. If you are raising an issue that we have not referred to in this paper, please indicate this in your submission.
- 1.3.3 We place a high value on the openness of the consultation process. Consequently, we intend to make a summary of the submissions received available on our website after the deadline for receiving submissions has passed.
- 1.3.4 Please clearly mark your submission 'Comprehensive Fit and Proper Test Policy Consultation' and send it to:

Irish Financial Services Regulatory Authority

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Dublin 2

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Ph: 4104099

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All submissions should be sent on or before 30 April 2005.

## 2. INTRODUCTION

- 2.1 The Irish Financial Services Regulatory Authority (Financial Regulator) was established in May 2003. As the regulator of most financial services in Ireland, the Financial Regulator is required to promote the best interests of users of financial services.
- 2.2 The Financial Regulator has responsibility for the supervision of the safety and soundness and conduct of business of financial service firms, apart from occupational pension funds, including banks, securities firms, credit unions, collective investment schemes and the managers of such schemes, insurance companies and investment firms, including intermediaries. The Financial Regulator's model for supervision is principles-based. While regulated firms are subjected to regular scrutiny by the Financial Regulator, the primary responsibility for orderly and prudent management rests with the firms themselves.
- 2.3 These responsibilities rest on the Board of Directors and the senior management of the firm. The Board of Directors of the firm have specified responsibilities and duties under both general law and the laws and regulations applying to financial firms. In particular, they are required to lay down principles for the management of the company and to ensure that the company is managed in accordance with those principles. It is their responsibility to promote within their organisations a culture of good governance and of proactive and positive compliance. The senior managers of financial services firms are responsible for managing those firms in conformity with all the directives of the Board as well as all legislative requirements.
- 2.4 These responsibilities require that financial services firms take care to appoint directors and managers who have the necessary experience, expertise and knowledge to run the firm properly. Equally important, the directors and managers should be persons who will act honestly, ethically and with integrity, who will foster a culture of compliance in their firms and who will act in the best interests of the firm's customers.
- 2.5 For these reasons, financial services supervisors in all jurisdictions consider that the application of a "fit and proper" test to directors and senior managers is an important supervisory tool.

### 3. THE ROLE OF THE “FIT AND PROPER” TEST IN THE REGULATORY REGIME

#### 3.1 The Aims of a “Fit and Proper” Test

3.1.1 Our principles-based approach to regulation places the primary responsibility on regulated entities for ensuring that they are prudently and soundly managed in compliance with all relevant requirements. Within firms, that responsibility rests on the board of directors and the senior managers. It is therefore important that the directors and managers of financial services firms are competent to manage their firms prudently and soundly. As the business of financial services is based on trust a high standard of ethics is paramount. Proposed senior managers and directors are expected to act in the best interests of their clients, to exercise due diligence in their business dealings and to act in a conscientious and trustworthy manner. The “fit and proper” test is therefore an important tool applied by supervisors to ensure that directors and managers fulfil those standards.

3.1.2 The importance of this supervisory tool is reflected in the interest shown in “fit and proper” tests internationally. EU Committees of Supervisors have kept these standards under review, in light of the provisions of the various relevant Directives. The international standard-making bodies in the banking, securities and insurance sectors have issued standards for individual financial services sectors. Moreover, through the “Joint Forum” – where the three bodies agree common initiatives - they have agreed common standards for fitness and probity. It is thus internationally recognised that an effective and comprehensive supervisory regime should include controls designed to establish the competence and probity of the directors and management of regulated firms.

## 3.2 Present Practice

The Financial Regulator currently applies a “fit and proper” test to the directors and managers of most financial services firms for which it is responsible. While the standards applied for the purposes of the fit and proper test are broadly similar, each sector is looked at slightly differently in practice. This reflects the separate development of national and EU law in the various financial service sectors and to the separate evolution of standards in these sectors. The process of checking the fitness and probity of the directors and managers of banks, insurance companies, securities firms, investment firms, collective investment schemes and the managers of same is based on the completion of individual questionnaires (IQ’s) by newly proposed directors or managers. The form of the IQ varies from one sector to another. The completed forms are then scrutinised and validated by the relevant Department of the Financial Regulator. The fit and proper test applies not just to new applicants but also to existing directors and managers. Where there is reason to believe that an existing director or manager has acted in such a way as to cast doubt on his/her fitness or probity, there are procedures in the existing arrangements to take appropriate action, including removal of the person from his or her position

## 3.3 Reason for Review

- 3.3.1 While the standards and processes applied at present within the Financial Regulator for the purposes of the fit and proper test are broadly similar, there are differences in emphasis and procedure. These differences derive from the separate development of the relevant provisions in national and EU law, rather than from any perceived need for differentiation. In light of the establishment of a single regulatory authority in 2003 and in the context of the setting up of a single authorisation unit in 2004 (the Financial Institutions and Funds Authorisations Department) the Financial Regulator considers it timely to review “fit and proper” standards and procedures throughout the organisation with a view to establishing a common test. A common test has the advantage of ensuring that all firms, directors and managers regulated by the Financial Regulator would be subject to consistent standards.

- 3.3.2 At the same time, a policy review of existing standards is also timely. There has been a renewed emphasis on firms' good corporate governance and risk management both domestically and internationally in response to developments in recent years, including the outcome of domestic enquiries and tribunals and international financial scandals. Regulators have been reviewing and updating requirements in relation to corporate governance. Given the importance of the directors and managers of firms in that endeavour, it is timely to review and update fit and proper standards and procedures.
- 3.3.3 The Financial Regulator, in the course of its review of "fit and proper" standards, has had regard to similar reviews carried out in other jurisdictions, in particular, the fit and proper tests operated by the Financial Services Authority in the UK and by the Australian Prudential Regulatory Authority.

## 3.4 Legislative Issues

The legal provisions that apply at present in relation to the fit and proper test vary in terms of the powers and duties of the Financial Regulator as well as in matters of detail. This review of policy and processes may necessitate amendment of existing legislation. In that eventuality, the Financial Regulator will make the appropriate recommendations to the Department of Finance.

### 3.5 The test – elements for consultation

The following sections deal with specific aspects of the proposed revised test. Questions in each section identify particular issues for public comment. The questions are not intended to limit public comment to the issues they raise. On the contrary, the Financial Regulator encourages public comments on any aspect of the fit and proper test. The specific aspects of the proposed test dealt with in the following sections are as follows:

- Operation of the test and issues arising in relation to its operation (section 4)
- Scope of the test (Section 5)
- The Individual Questionnaire (Section 6)
- The role of firms in operating the test (Section 7)
- Standards of Fitness and Probity (Section 8)
- Issues having a bearing on probity (section 9)
- Ageing of offences (Section 10).

Question: Is it reasonable to review existing policy and procedures to establish a revised “fit and proper” test and to update standards of fitness and probity?



## 4. PROPOSED FRAMEWORK

- 4.1 Paragraphs 4.2 to 4.4 contain a description of how the proposed test will operate. Paragraph 4.6 deals with issues relating to the operation of the test, such as timing and frequency of the test and the role of the Financial Regulator.

### Operation of the Test

- 4.2 The test begins in the firm proposing the appointment of a director or manager. The Financial Regulator's view is that the foundation of the test itself is a culture within firms that places a high value on appointing fit and proper directors and managers. In considering potential candidates, compliant firms would give priority to the need to choose people that are fit and proper and so will meet the requirements of the test.
- 4.3 Once a person is chosen by the firm, that person should be required to complete the Individual Questionnaire (IQ), (see proposed IQ in Annex 1) which elicits details of their career including qualifications and experience. The IQ also asks the candidate to give details, if any, of sanctions, censures and criminal convictions against them as well as their financial history.
- 4.4 The firm should then verify the information contained in the completed IQ and check the information to ensure that there are no issues arising from that material that would cause the firm to reconsider its proposal to appoint the person. If all is in order, the firm should forward the completed IQ to the Financial Regulator, with a statement confirming that it is prepared to proceed with the appointment, that it has verified the information in the completed IQ and seeking agreement to the proposed appointment. The Financial Regulator will examine the proposal. It may carry out checks to verify the information provided. Once the firm has satisfied the Financial Regulator as to the credentials of the proposed person, and with the agreement of the Regulator, the appointment can then proceed.

4.5 In summary, the elements of the proposed test are as follows:

- A sound process of selection by financial services firms
- A common Individual Questionnaire (IQ) to be completed by individuals proposed for positions subject to the test
- Verification by the firm of information provided by individuals in the IQ
- Scrutiny of proposals by Financial Regulator, including the completed IQ and the firm's verification of the information provided in the IQ.

Question: Is the proposed test reasonable? Is it comprehensive? Is it reasonable to expect firms, no matter their size or complexity, to embed a culture that places a high value on fitness and probity? Is it prudent to put the initial responsibility on the firm to verify the information contained in the IQ no matter the size of the firm?

## 4.6 Issues arising in respect of the operation of the test

### 4.6.1 Timing of Test

In principle, no appointments should be made until the Financial Regulator has been satisfied that the proposed person is suitable and has indicated as much to the firm. The fit and proper process can be time-consuming, particularly where checks with third parties, such as foreign regulators are involved. It can happen that a firm needs to confirm an appointment quickly, whether to fill a pressing vacancy or to accommodate the proposed person in resigning from an existing post. In the past, the Financial Regulator has been prepared to allow an appointment to be made subject to the understanding that the appointment would be rescinded if information were to come to light during the period of enquiry suggesting that the person was not fit and proper. The difficulty with this approach is that it may be difficult to enforce the "understanding", were it to become necessary. Moreover, it may be unfair to a person who may have already resigned from their last position.

Another possible approach would be to start the fit and proper process at an earlier stage – for example, where the firm is down to a short list of applicants, all would be subject to the test.

Question: Should timing issues be taken into account? If so, how? Is it possible for the Financial Regulator to grant conditional approval? Would it be reasonable to start the fit and proper test at the stage of short-listing candidates? What implications has this for a principles based approach?

#### 4.6.2 Scrutiny by Financial Regulator

When the Financial Regulator receives the completed IQ and the letter of verification from the firm, it will scrutinise the documentation. The Financial Regulator reserves the right itself to verify some or all of the information in the IQ and seeks explicit consent to do so. Part of this process of verification may involve enquiries with other authorities. Such enquiries would be pursued in a manner consistent with Data Protection legislation. The other authorities would include, but not be limited to, the following:

- Garda Síochána
- Revenue Commissioners
- Office of the Director of Corporate Enforcement
- Companies Registration Office
- Financial Regulators in other jurisdictions
- Police authorities in other jurisdictions

Question: The IQ requires the consent of the applicant to allow the Financial Regulator to carry out further enquiries. Is this reasonable? Is there an appropriate alternative?

#### 4.6.3 Frequency of application of test

The Financial Regulator is considering whether an annual update of the information in the IQ is desirable. Annual reports are particularly relevant in relation to tax compliance. While a regular review of the fit and proper information initially provided would be useful, seeking an annual re-statement from all of those persons in all authorised firms would generate a bureaucratic burden, which could work against the identification of adverse changes in the

circumstances of a limited number of individuals. A more efficient approach would be to oblige firms to require directors and managers to sign an annual declaration as to any changes to their compliance with fit and proper standards accompanied by a tax clearance certificate and file both with the Secretary of their respective firms. This file would be subject to spot-checks by the Financial Regulator in the course of an on-site inspection/review meeting. In any case, any material changes should be notified to the Financial Regulator by the firm.

Question: Is an annual update necessary? Is it prudent? Is the recommended approach practical? Is there another way of ensuring that material changes are brought to the attention of the Financial Regulator in a timely manner?

#### 4.6.4 Application of new test to existing directors/managers

The revised fit and proper test will apply to newly appointed directors and managers from the date of its implementation. The question arises whether existing directors and managers should be asked to complete the new form. An argument in favour is that this would ensure consistency and fair treatment to all. An argument against is that the administrative effort involved for all concerned would be heavy.

Question: The Financial Regulator would welcome views on the issue.

#### 4.6.5 Decision by Financial Regulator

After scrutiny of the information and any verification considered necessary, the Financial Regulator will make a decision to agree, or not, the proposed appointment. Clearly, in the first instance, the appointment then goes ahead. Where the Financial Regulator has a doubt about the fitness or probity of an individual so that it is minded to refuse an appointment, it will pursue the matter consistent with the applicable principles of fairness and natural justice.

## 5. SCOPE OF FIT AND PROPER TEST

- 5.1 As noted above, the existing fit and proper tests carried out by the Financial Regulator vary across sectors, reflecting varying powers and provisions in legislation. The Financial Regulator intends that this proposed comprehensive test will be applied to all directors and managers at Executive Board level. Clearly, it is important that managers below this level as well as particular post holders (for example, compliance officers, money laundering reporting officers (MLRO's) and Heads of Internal Audit) should also be "fit and proper". In keeping with the principles based approach, the Financial Regulator considers that firms appointing such managers or post holders should vet the fitness and probity of proposed appointees to ensure that they meet the standards set out in this paper. It is not envisaged that the Financial Regulator would have a role in such tests.

Question: Is it reasonable to continue to apply the test to all directors and to managers at the level of Executive Board? Should the test be applied to managers below that level? Are there other post holders that should be subject to the formal test? If so, at what level is the appropriate cut off? Is it reasonable to expect firms themselves to apply the test to managers and post holders not covered by the formal test?

- 5.2 Not all financial services providers regulated by the Financial Regulator are subject to fit and proper tests or to a test in the form being recommended. The directors of Credit Unions are not subject to a test - the issue of fitness and probity of Credit Union directors will be one of the issues addressed in a forthcoming review of credit union legislation. Other financial service providers, such as mortgage intermediaries and moneylenders are, in accordance with legislation, subject to fit and proper tests that are renewed annually. The Financial Regulator is considering whether the test proposed in this paper should be applied to such providers on first application only. They would of course be required, like others, to meet the fit and proper standards on an ongoing basis.

Question: Is it reasonable to apply the proposed common fit and proper test to providers such as mortgage intermediaries and moneylenders?

### 5.3 Shadow Directors

It can happen that an individual who is not formally a member of the board of directors of a financial services entity may exercise significant influence in the direction and management of the company on behalf of one or a number of shareholders. Such persons may be regarded as “shadow directors”. Since the purpose of the test is to ensure the competence and probity of those directing or running a financial services firm, the Financial Regulator considers that such persons should also be subject to the test. Accordingly, where such a person is not in a post that is subject to the fit and proper test but nevertheless exercises influence on the direction or management of the firm equivalent to that of a normal director, he or she should be subject to the fit and proper test. Firms will be obliged to identify such persons and have them subjected to the fit and proper test.

Question: Is it reasonable that “shadow directors” should be covered by the test? Is it reasonable to require the firm to identify such shareholders or “shadow directors”? What difficulties might firms experience in bringing such people to the attention of the Financial Regulator?

### 5.4 Alternate Directors

It occasionally happens that a firm will appoint alternate directors to take the place of nominated directors in the event of the unavailability of the latter. The Financial Regulator proposes that alternate directors should also be subject to the comprehensive fit and proper test now being proposed.

Question: Is it reasonable to apply the test to alternate directors?

## 5.5 Qualifying shareholdings

5.5.1 In accordance with legislation, those with qualifying shareholdings (i.e., a specified percentage of the shares of a financial services company – usually 10% or more) are subject to suitability checks by the Financial Regulator. There may be shareholders whose holdings fall below the “qualifying” threshold but who nevertheless influence the running of the company. Legislation does not provide for vetting these shareholders, although the same considerations apply to them as to “qualifying” shareholdings.

Question: Is it reasonable to include in suitability checks shareholders that, while not having a qualifying holding, nevertheless are influential? Should the Financial Regulator seek a change in the law so that such shareholders may be vetted? If so, what criteria should apply? How would such shareholders be identified?

5.5.2 Shareholders may be legal or natural persons. Shareholders that are legal persons (usually a company, often a financial services company) are checked by the Financial Regulator through scrutiny of their accounts and any other information publicly available. Where the company is a financial services entity regulated by the Financial Regulator, a decision may be made on the basis of the information already available to the Financial Regulator. Where the shareholder is a financial services entity supervised in another jurisdiction, the Financial Regulator will seek information from the relevant regulatory authority in order to decide on the suitability of the shareholder.

- 5.5.3 Where the proposed shareholder is a natural person, that is, a private individual, the Financial Regulator does not necessarily have information about the individual in order to check his or her suitability. Accordingly, it is intended that the Financial Regulator will satisfy itself as to the suitability of that shareholder by applying the common fit and proper test. The Financial Regulator considers that the “proper” element of the test should be applied to shareholders. It is not so certain that the application of the “fit” element should be obligatory. Experience of financial services would certainly be an advantage in the case of an influential shareholder of a financial services firm and the completion of the “fit” part of the IQ would provide the Financial Regulator with valuable information about the proposed shareholder. On the other hand, it is not clear that it would be possible to refuse a shareholder of good character simply on grounds of lack of qualifications or experience in financial services. The application of the “proper” element of the test would entail completion of the relevant parts of the IQ by the individual, verification of the information by the firm and scrutiny by the Financial Regulator.
- 5.5.4 It can happen that a company holding shares in a financial services firm may itself be wholly owned or part owned by a natural person. Where a natural person holds such an indirect shareholding in a financial services firm, they may be in a position to influence the direction of the firm. The Financial Regulator therefore considers that that person should be subject to a suitability check. Accordingly, it is proposed that such persons be subject to the fit and proper test.

Question: Is this a reasonable approach to suitability checks on shareholders. Is the probity element of the fit and proper test sufficient check for shareholders that are natural persons? Or should the “fit” part of the test be applied? Is it reasonable to apply the fit and proper test to indirect shareholders of financial service firms that are natural persons?



## 5.6 Managers of Cross-border branches

In accordance with the EU Directives, the activities of Irish authorised firms who have established or propose to establish branches in member countries of the EU are subject to prudential supervision by the Financial Regulator. This includes the application of the fit and proper test, which is applied to managers of EU branches. Conversely, the managers of branches in Ireland of firms authorised elsewhere in the EU are tested by their home state supervisor.

## 5.7 Unscheduled Departure of Director or Manager

The unscheduled departure of a director or manager is always a matter of interest, lest the departure is a signal of issues of which the Financial Regulator should be aware. It is proposed to require departing directors and managers to complete a form (see Annex 2).

Question: Is this a reasonable process? Are there circumstances in which this should not apply?

## 5.8 Future Scope

The comprehensive fit and proper test is designed to be applied to new categories of offices or institutions in the future reflecting developments in the Financial Regulator's responsibilities – for instance, the EU Financial Conglomerates Directive will require fit and proper testing in respect of directors/managers of certain holding companies.

## 6 INDIVIDUAL QUESTIONNAIRE

- 6.1 The Financial Regulator proposes to base the fit and proper test on the information provided in the Individual Questionnaire (IQ) (Draft at Annex 1). Individuals proposed for positions subject to the fit and proper test will have to complete the IQ. The IQ covers the person's qualifications and experience, asks questions about any professional censures or criminal convictions, the conduct of the person's financial affairs and the person's financial history including any involvement, either personal or professional, with insolvencies or bankruptcies. The IQ seeks information about the person's employment history since leaving full time education. The Financial Regulator attaches importance to establishing a person's employment history and ensuring that there are no unexplained gaps in a person's career. However, the Financial Regulator acknowledges that this may be a burdensome requirement, particularly for those with a mature career and a well-established recent record in the financial services sector.
- 6.2 The IQ had been designed to provide all the information relevant to the consideration of an individual in the context of the fit and proper test. The Financial Regulator has had regard to similar questionnaires required by the FSA in the UK and APRA in Australia. However, the Financial Regulator is conscious that the IQ is lengthy compared to any similar questionnaires now in use across individual financial services industry sectors. The advantage of applying the IQ to all proposed directors and managers is that there is a level playing field, common standards are reflected and the information provided in respect of one position is comprehensive and therefore suitable for scrutiny in respect of other posts subject to the fit and proper test. On the other hand, it could be argued that not all of the information is necessary for positions in all firms, no matter their size or function. For positions in some firms, there may be valid arguments for requiring only some of the information sought in the IQ on the basis of the position to be filled or the size or function of the firm.

Question: Is the IQ reasonable? Is it suitable for its purposes? Is it equally suitable for all those subject to the fit and proper test? If not, how can the IQ be adapted to particular positions or firms? How can those positions and firms be identified in a manner that is objective, fair, prudent and clear to firms? Are there issues covered in the draft IQ that could be prudently dropped from the IQ? Conversely, are there issues that should be added? Should the IQ seek information about positions held during a person's whole career or would it be reasonable to restrict queries to a more recent period? If the latter, what would be a prudent "recent period"? In what circumstances would it be prudent to seek information only for a recent period?

6.3 If, either at the time of the submission of the IQ or subsequently it comes to light that a person has given false or misleading information on the form, or has omitted a material fact, that will be viewed seriously by the Financial Regulator and will likely be regarded by the Financial Regulator as compromising the person's probity and his or her eligibility for appointment.

Question: Is this a reasonable position to adopt or are there circumstances where this should not apply?

## 7. ROLE OF FIRM

- 7.1 The Financial Regulator envisages a very significant role for firms in the process of carrying out the fit and proper test. This is consistent with our principles based approach. In particular, we attach value to the concept of firms adopting a culture of giving priority to fit and proper issues in their selection policy. However, the Financial Regulator recognises that its proposals as to the process to be followed, involving, for example, verification by firms of information provided in completed IQ's is demanding. While larger firms will have the resources to carry out such tasks, some smaller firms, such as one person intermediary firms, mortgage intermediaries or moneylenders will be presented with a challenge.
- 7.2 A possible approach to this issue would be to make a distinction between those firms with the administrative capacity to carry out the required tasks and those without. The difficulty is in making a clear distinction that is objective, fair and clear to firms.

Question: The Financial Regulator would appreciate any views as to how such a distinction might be made. What criteria might be used?

- 7.3 It would then be necessary to consider an appropriate process for small firms. The Financial Regulator would prefer an approach that reconciles the principles based approach with recognition of the difficulties for small firms. In essence, it would be preferable to have the information provided in a completed IQ subject to verification by a party other than the Financial Regulator. This strengthens the verification process, since the Financial Regulator will carry out its own verification. A possible source for verification in respect of an intermediary holding an appointment from a financial services producer is the firm that granted it that appointment. Thus the financial services producer would verify the information provided by the intermediary in the IQ.

Question: Should the same procedures, regarding, for example, verification, apply to all firms? If not, on what basis should procedures differ? How should procedures differ? Could product producers play a role in verifying the fitness and probity of intermediaries? Are there other possible sources for verification of completed IQ's?

- 7.4 Directors and managers are required to detail their employment history to establish that they are fit and proper. The Financial Regulator believes that it is consistent with our principles based approach that the proposing firm should take the responsibility for ensuring the accuracy of the completed IQ. In particular, the firm should examine the person's history to see that the person has discharged his or her responsibilities in previous posts with honesty and integrity. The firm should also ensure that there are no unexplained gaps in the person's career as described in the IQ. If there are and the firm is satisfied to proceed with the appointment, it should explain its decision to the Financial Regulator. The firm should also seek references at least from the person's most recent previous employer.

Question: Is this a reasonable process? Will all firms be in a position to carry out these checks? What difficulties might arise in carrying out such checks?

## 7.5 Process of selection by firm

- 7.5.1 All firms that make appointments have a process of selection. The Financial Regulator recognizes that the formality of the process and the extent to which it is documented will vary widely depending on the size and risk profile of the firm. Some firms may have formal documented processes. Others may recruit through employment agencies. Still others will have informal, undocumented processes. The Financial Regulator does not intend to second-guess an institution's interview and selection process.

7.5.2 However, the Financial Regulator expects that the recruitment/appointment process the firm undertakes would put particular emphasis on the steps taken to ensure that proposed individuals are fit and proper and have the appropriate competence and experience to enable them to fulfil their duties. It would be expected that, however formal or informal the process, it would normally cover the following:

- Consideration of the duties and responsibilities of the post to be filled
- A selection/appointment process that matches the selected person to the requirements of the post,
- Verification of qualifications, experience, references and membership of professional bodies
- Some probity checks, including relevant websites (Companies Registration Office, Revenue Commissioners, ODCE) and tax clearance certificate
- In relation to directors of larger institutions, how the institution determined that the individual would be a strategic and effective fit with the other members of the Board and that they had suitable relevant experience.

7.5.3 The Financial Regulator is mindful of the need to avoid imposing unreasonable burdens on firms, especially small firms. However, where a firm is going to make an appointment, its recruitment/selection processes should in practice encompass the above elements. Some firms may outsource to recruitment agencies. Provided that the relationship between the recruitment agency and the regulated firm is well controlled by the regulated firm, and the agreed recruitment processes cover the elements above, there is no reason why an external recruitment agency should not be acceptable.

Question: The Financial Regulator would welcome views on this proposal. In particular it would be interested to hear how firms might demonstrate that they have a sound process in place? How would firms with less formal, undocumented processes demonstrate the soundness of that process? How would firms that “outsource” recruitment demonstrate the soundness of their process? Does the relative size and risk profile of a firm have a bearing on the application of this approach to all firms?

## 8. STANDARDS OF FITNESS AND PROBITY

- 8.1 The proposed comprehensive test envisages that the criteria for assessing the fitness and probity of an individual will fall under three categories.
- Competence, and capability;
  - Honesty, integrity, fairness, ethical behaviour; and
  - Financial soundness.

### FITNESS

- 8.2.1 In regard to an individual's competence and capability the firm should be best placed to judge whether the individual has the competence, experience and ability to understand the technical requirements of the business, the inherent risks and the management processes required to conduct the operations of the firm effectively. Whereas common standards of probity should apply, no matter the size or activity of the firm, the requirements for competence will vary to reflect the nature of the post and the size and activity of the firm. In considering the competence and capability of a person the firm should take into account all relevant considerations including:
- The activities and size of the firm
  - The responsibilities of the position
  - Whether the person has shown the capacity to successfully undertake the responsibilities of the position, taking into account the nature of those responsibilities, including the establishment of an effective control regime, and
  - Whether the person has a sound knowledge of the business and responsibilities he or she will be called upon to shoulder.

In scrutinising the evidence offered by the firm as to the fitness of the person proposed, the Financial Regulator will have regard to these factors and to any other information given by the firm.

Question: Is it reasonable that standards of competence should vary to reflect the nature of the post and the size and activity of the firm? Is the firm best placed to judge the standards of competence required for a post? If not, how would the Financial Regulator establish standards on a fair basis? Are there other considerations that the firm or Financial Regulator should take into consideration when seeking to establish appropriate standards of competence?

8.2.2 It is common for individuals to hold a number of directorships. This reflects the fact that a directorship is not normally a full time position. It has the advantage that skills and experience may be transferred from long established firms to new firms within and across industry sectors. However, with increased emphasis on corporate governance both in Ireland and internationally, the responsibilities of directors, especially of financial services firms, has grown significantly. Appointment as a Director represents perhaps a greater time commitment than in the past. The issue of how many directorships it is appropriate for one person to hold therefore arises. The Companies Acts provide that a person is not permitted to be a director of more than 25 companies at any one time. However, directorships in certain types of companies may be excluded for the purposes of calculating the number of companies of which the person concerned is a director. At present, the Financial Regulator would examine a person's other commitments to ensure that there are no conflicts of interest.

Question: The question arises as to what extent, in considering the fitness of a person proposed for a directorship, the Financial Regulator should take into account the person's other commitments, including other directorships. Should the Financial Regulator apply a stricter limit than the limit applied by the Companies Acts to the number of Directorships to be held by Directors of financial services firms? If so, what factors should be taken into account in limiting the number? Should the Financial Regulator depart from the provisions of the Companies Acts in respect of the exclusions permitted? If so, on what grounds?



## Honesty and Integrity

- 8.3 The principles based supervisory model depends on directors and managers that are honest, who act ethically and with integrity and fairness. It is therefore necessary for those proposed for particular positions to comply with these general standards. The problem both for individuals proposed for these positions and for the Financial Regulator lies in “proving” that a person complies with these standards.
- 8.4 In this paper, attributes such as honesty, integrity, ethical behaviour, fairness and a commitment to compliance have been used to describe “probity”. Probity is thus a matter of character illuminated by a person’s past behaviour. While we rely on a spotless record as an indicator of good character, we recognize that it is not an infallible indicator. Furthermore, it is not easy to define probity in a way that ensures that the fit and proper test captures all possible aspects of the concept. Probity is broader than any attempted definition or list of qualities. Particular aspects of probity may come to the fore from time to time. Tax compliance and misselling of financial services products are aspects attracting public attention at present. Other issues may attract attention in the future. While such individual probity issues may not be explicitly captured in any definition or list of qualities, it is the view of the Financial Regulator that they are implicitly included in the overall concept of probity.

Question: Is it possible to comprehensively define probity?  
Is it possible to comprehensively list all the qualities associated with probity? How can individuals demonstrate that they are “proper”?

## Common Standards

- 8.5 The Financial Regulator regulates firms that differ widely in size and in the nature of their activities, from large institutions with retail branches in many parts of the State and indeed in other jurisdictions to non-cash handling intermediaries that are active in a relatively limited geographical area. While the appropriateness of applying the same procedures to all firms may be open to debate, the Financial Regulator proposes that the standards of probity should be same, no matter the size and activity of the firm.

Question: Is it reasonable to require the same standards of fitness and probity for all those covered by the test?

## 8.6 Encouraging a culture of compliance

- 8.6.1 Probity is an issue not just at the moment of appointment, but on an ongoing basis. This makes it incumbent on firms to foster a system that supports continuing adherence to the values underlying probity. Moreover, firms have a responsibility to adopt policies and processes that detect instances where ethical behaviour is under threat. For example, an individual director or manager may act with scrupulous honesty. However, if that individual is aware of unethical or dishonest behaviour on the part of a colleague and fails to act to stop it, that reflects on his honesty. There may be many reasons why an otherwise honest person may fail to act in such circumstances. It is the responsibility of the firm to have systems that will detect such instances and that will support those who stand up for ethical behaviour within the firm. A director or senior manager who directs a junior colleague to act in an unethical or dishonest manner is failing to act ethically, fairly and with a proper commitment to compliance. Again, the firm should have systems that bring these behaviours to light and support and reward those who resist pressure to act unethically. Where such instances do arise, the firm should consider appropriate disciplinary action of the person or persons who have been responsible for compromising other colleagues. In any case, where such matters come to light, they should be reported immediately to the Financial Regulator.

Question: Is it reasonable to expect firms to have systems in place to detect unethical behaviour and to support those within firms who seek to vindicate ethical behaviour? What should be the role of the Financial Regulator? How can it become aware of such instances?

8.6.2 While it is difficult to prove probity, equally, it can be difficult to prove dishonesty or failure to act with integrity. This difficulty is felt as much by the Financial Regulator as by individual firms. Firms investigating instances of improper behaviour faced with incomplete evidence may come to an arrangement with an individual involving a severance package. In such circumstances, the firm may not have grounds to provide full references to prospective future employers.

8.6.3 Where there has been wrongdoing, the firm should make all reasonable efforts to establish grounds for taking disciplinary action and take the action. In any case, arrangements agreed with individuals should not include an agreement to provide a reference that is untrue, inaccurate or misleading and the firm should make every effort consistent with fair procedure to ensure that any prospective employer is not misled by any reference given as a result of a settlement.

Question: Is this a fair and reasonable approach? How can the need for protecting the firm or a prospective employer on the one hand be reconciled with the rights of the person under scrutiny on the other? What, if any, action should the Financial Regulator be able to take against a firm providing an unjustifiable “good character” reference?

## 9. ISSUES HAVING A BEARING ON PROBITY

### 9.1 Instances arising from the IQ.

The Individual Questionnaire elicits information from candidates about any instances in their past where the candidate's integrity or honesty was ever in question, whether on the part of a previous employer, a professional body, a civil or criminal court or the tax authorities. Where there are any such instances, the firm will have to consider this information before making a final decision to appoint the person. In considering the information available to it, the firm would take into account the gravity of any incident in the person's past. A minor incident does not necessarily imply that the person was guilty of dishonesty or lack of probity. If the firm is satisfied to proceed with the appointment, it should explain its decision to the Financial Regulator. The Financial Regulator will consider any such issues that arise in replies provided by the candidate in light of their significance as to the honesty, integrity or fairness of the individual. For example, a traffic offence will not be deemed relevant. However, a relatively minor offence may cast doubt on the honesty of the person, especially where it has been omitted from the IQ. In these cases, it will be necessary to consider the issue further, including whether it falls within a period of contrition (see below). It will not necessarily follow that a minor incident in a person's past will rule them out of consideration. The Financial Regulator will also consider any evidence that the person has ever been obstructive, misleading, or untruthful in dealing with a court, tribunal, regulatory agency (including the Revenue Commissioners and the Director of Corporate Enforcement) or professional or industry body.

Question: What kind of offences should be regarded as not adversely affecting the probity of the individual? Are there mitigating circumstances that should be taken into account? In what manner should the Financial Regulator consider and view information or evidence provided?

## 9.2 Financial Soundness

9.2.1 There are two sets of issues addressed in the Individual Questionnaire (IQ) under this heading – personal bankruptcy or similar and association with the bankruptcy or similar of a company. Where a person has failed to manage his or her debts or financial affairs satisfactorily, especially where that caused loss to others, their competence, honesty and integrity may be in doubt. The Financial Regulator would enquire further if such an issue were to arise in responses to the questionnaire. It may not necessarily follow that one incident in a person's past (for instance, where a person did experience difficulty, but subsequently honoured all debts) would rule them out.

Question: How should an incident in the past relating to a person's financial affairs or bankruptcy be regarded? Are there instances where an appointment could proceed in spite of an incident in the past? Are there any mitigating circumstances that should be taken into account in such cases?

9.2.2 Where a person has been associated with an entity that became insolvent, went into administration, was in the control of a Court appointed liquidator or otherwise failed to meet its financial obligations to creditors or beneficiaries, that person's competence, honesty and integrity may be brought into question. As above, it may not necessarily follow that one instance in a person's past (for instance, where their association was at a very junior level) would rule them out. The Financial Regulator would enquire further into the matter to establish whether or not the circumstances did reflect on the person's probity or competence.

Question: Are there instances that should be waived? Are there mitigating circumstances that should be taken into account?

### 9.3 Tax Compliance

All senior officers and officials working within the financial services area should be, and should be seen to be, tax compliant. The Financial Regulator proposes in the future to ask all firms to secure from applicant directors and managers a declaration on their tax affairs and a tax clearance certificate. The firm proposing the individuals should confirm to the Financial Regulator that it holds such a declaration and certificate. Existing directors and managers should similarly provide a tax clearance certificate and declaration annually to their firm. These documents should be retained on file by the Secretary of the firm and should be available for inspection by the Financial Regulator.

Question: Is this the best way to administer our oversight of tax issues for fitness and probity purposes?

### 9.4 Issues Arising from the Financial Regulator's Administrative Sanctions Regime

9.4.1 The Financial Regulator's administrative sanctions regime is currently the subject of a separate public consultation. The proposed regime envisages the imposition of a range of sanctions for breaches of prescribed law and regulation. These sanctions are to be imposed by decision of the Financial Regulator.

9.4.2 Among the sanctions that may be imposed is the sanction of exclusion from a management position in the financial services industry for breach of a prescribed regulatory requirement. This sanction may in certain cases overlap with the Financial Regulator's power to exclude a person from an approved position because it is not satisfied that that person is fit and proper. In many cases, concern about a person's fitness and probity will arise because a regulatory requirement has been breached. Such a matter may be dealt with by either using the sanctions powers or the fitness and probity powers. The issue on which views are being sought is what approach the Financial Services Regulator should adopt where there is an overlap between these two powers.

- 9.4.3 The Financial Regulator proposes that such cases are best decided on a case-by-case basis. The decision on which power to use would be taken when the initial investigation of a matter had reached the point where the facts were substantially known and a decision needed be taken as to whether the Financial Regulator was minded to exercise its powers to exclude a person from the industry as not fit and proper, whether the Financial Regulator believed a sanctions inquiry should be held, or whether no action of either type was required by the facts uncovered in the investigation.
- 9.4.4 If this approach were taken it would mean that when a decision is taken to use the Financial Regulator's fitness and probity powers to exclude a person from the industry, a sanctions inquiry would not proceed. It would also mean that if a decision were taken to hold a sanctions inquiry into an individual's conduct, a parallel investigation into that person's fitness and probity would not arise. If a sanctions inquiry determined that a certain sanction is the appropriate punishment for a particular breach of a regulatory requirement, it could be seen to amount to something similar to 'double jeopardy' for the Financial Regulator to seek also to exclude a person who has suffered that penalty as also not fit and proper, where this conclusion is drawn on the basis of substantially the same facts.
- 9.4.5 A question arises whether, for example, a person who has previously breached a regulatory requirement should be allowed to work again in management in the financial services industry when a sanction of a period of exclusion had been completed. However, in deciding whether to follow the fit and proper or sanctions procedure the Financial Regulator would have considered whether there is a sanction likely to deter that person from committing another breach or whether the facts of the case require complete exclusion from management in the industry.

9.4.6 The critical element of this approach is the idea that a matter already taken through a sanctions inquiry would not be reviewed again from a fitness and probity perspective, if such a review would be based on substantially the same facts as had been considered by the sanctions inquiry. It is important to emphasise that this constraint would be limited. There may be related matters that could still lead to a review of a person's fitness and probity. If a sanctions inquiry dealt with a minor breach of a regulatory requirement and that breach was linked to a broader matter which was leading to concerns about a person's fitness and probity, it would remain open to the Financial Regulator to use its fitness and probity powers, notwithstanding that a sanctions inquiry on a related matter had taken place. This would be reasonable if there was a significant difference – even as amongst linked events - between the actions which were the subject of the sanctions inquiry and the actions which created the fitness and probity concern.

Question: Is this a reasonable procedure? Are there particular circumstances where the Financial Regulator should sanction a person and then also seek to exclude them from the industry?



## 10. AGEING OF OFFENCES

10.1 It is common in fit and proper regimes internationally or, indeed, in the case of appointments to public bodies or civil/state services for offences beyond a certain age not to be regarded as a barrier to appointment to a post for which a fit and proper test is applied. The Financial Regulator is considering whether to introduce similar provisions.

Question: Is it reasonable and prudent to provide for ageing of offences? To what offences and/or misdemeanours should ageing apply? Should ageing be applied differently, depending on the nature of the offence (see paragraph on financial crime below)? What would be appropriate differences in application? What is an appropriate period or "specified age"? On what grounds should old offences not be a barrier to appointment? Should the seriousness of the original offence be taken into account? Should the nature (e.g., traffic offence) of the offence be taken into account?

10.2 The Financial Regulator takes a very serious view of any acts of dishonesty or fraud. Subject to examination of individual cases, and allowing for very minor offences, the Financial Regulator proposes that such acts would represent a barrier to appointment irrespective of the age of the offence. Such offences cast a particular light on the character and patterns of behaviour of those on whom reliance is placed for the honest and ethical running of financial services entities. Some forms of crime, other than financial crime, may equally have similar implications.

10.3 The Financial Regulator proposes that in each case where convictions for offences are of a specified age, the Financial Regulator will examine whether the conviction bars the person from fulfilling our probity standards.

Question: Are there any mitigating circumstances that should be taken into account in considering whether an old offence should be "aged"? If a more serious view of fraud and dishonesty is to be taken, what would be the implication for aging of offences? Are there circumstances where a longer period of aging would be acceptable? Are there financial crimes/convictions that should always be regarded as a barrier to appointment no matter their age? Are there other crimes that should be treated with the same seriousness as financial crime?

10.4 These considerations apply to newly proposed directors/managers. However, where the Financial Regulator has not been prepared to regard a person as meeting the fit and proper criteria in the past, should that decision permanently bar the person from appointment as a director or manager in the financial services industry?

Question: Should there be a regular review of the position of persons refused in the past? Should there be a review in all cases, no matter how serious the reason for the Financial Regulator's original view? How often should a review take place? Should a distinction be made arising from the reason for the past refusal? Should the consideration of financial crime vary from the consideration of other offences as outlined above?

10.5 The Financial Regulator is minded to review such cases on request at intervals of five years. A decision to change or confirm the Financial Regulator's original view would be taken having regard to the reasons for that view.

Question: Is this a reasonable view? Are there circumstances where financial crime or fraud should ever be waived? Are there other crimes which should be regarded as in the same category?

10.6 The Financial Regulator proposes that all convictions, including old convictions, should be notified to the Financial Regulator.

# ANNEX I

## INDIVIDUAL QUESTIONNAIRE

### Personal Details

1.1 Individual's full name

Title

Surname

Mr./Mrs./Ms.

Forename(s)

1.2 Former Names (if any)

Date of Change of Name (if any)

1.3 Date of Birth (original Birth Certificate may be required)

1.4 PPS Number (if Irish resident)

1.5 Country and Place of Birth


1.6 Nationality

1.7 Private Address (please indicate if you have been at this address for less than six months)

1.8 Has your address changed in the last ten years? If YES, please also give your previous address(es).

1.9 Details of Passport Number, Place of Issue and Expiry Date.

1.10 Please state below the position held or to be held in the financial institution and provide a brief outline of the responsibilities of that position.



1.11 Directors that have no previous experience in the relevant financial services sector or in financial business are asked to outline the nature of the contribution that they will make to the financial services provider



1.12 Directors must complete a declaration confirming that they are fully aware of the obligations and the duties of a director of a company under the Companies Acts 1963 to 2003 as amended.

1.13 Are you currently or were you previously approved or refused by the Irish Financial Services Regulatory Authority ('Financial Regulator') to carry out activities for a financial institution? Please provide details



## 2. Experience

### 2.1 Employment History

In Section 1 please provide full details of your employment history starting with your most recent employment. Section 2 should be completed for any periods during which you were not employed. All sections, (1-8 of the employment table and 1-4 of the unemployment table, if relevant), must be completed, providing a complete employment history from leaving full-time education

### SECTION 1 – EMPLOYMENT HISTORY

1	
1. Date Commenced Employment (month/year):	
2. Name of Institution:	
3. Address of Institution:	
4. Nature of Institution's Business:	
5. Position Held:	
6. Key Areas of Responsibility:	
7. Experience/Knowledge Obtained Relevant to the Proposed Position:	
8. Date Finished Employment (Month/Year):	
9. Reasons for Leaving:	

<b>2</b>	
1. Date Commenced Employment (month/year):	
2. Name of Institution:	
3. Address of Institution:	
4. Nature of Institution's Business:	
5. Position Held:	
6. Key Areas of Responsibility:	
7. Experience/Knowledge Obtained Relevant to the Proposed Position:	
8. Date Finished Employment (Month/Year):	
9. Reasons for Leaving:	

<b>3</b>	
1. Date Commenced Employment (month/year):	
2. Name of Institution:	
3. Address of Institution:	
4. Nature of Institution's Business:	
5. Position Held:	
6. Key Areas of Responsibility:	
7. Experience/Knowledge Obtained Relevant to the Proposed Position:	
8. Date Finished Employment (Month/Year):	
9. Reasons for Leaving:	

## SECTION 2 – PERIODS WHERE NOT EMPLOYED

1	
1. Date Commenced Period of Unemployment (Month/Year):	
2. Reason for Unemployment:	
3. Activities During This Period:	
4. Date Commencing Period of Employment (Month/Period):	

2	
1. Date Commenced Period of Unemployment (Month/Year):	
2. Reason for Unemployment:	
3. Activities During This Period:	
4. Date Commencing Period of Employment (Month/Period):	



## 2.2 Qualifications and Memberships

Date Commenced (Month/Year):	
Name of Institution/Professional Body:	
Qualification/Membership Obtained:	
Full/Part Time:	
Date Qualification/Membership Obtained (Month/Year):	
Relevance, if any, of Qualification/Membership to proposed Position:	

## 2.3 Other Relevant Training

List the details of any other training, which is relevant to the proposed position

Other Relevant Training	Date Undertaken

## 2.4 Legal and Regulatory Requirements

Please also confirm your understanding of, and awareness of your responsibilities relating to the legislation, regulations, codes of practice, guidance notes, guidelines and any other rules or directives, which are of relevance to the proposed position and confirm your intention to comply with the same.

Confirm Understanding and Awareness of Responsibilities	Confirm Intention to Comply

## 4. Good Reputation and Character

The following questions should be answered by entering a tick ( ) in the appropriate box. In any case where the response to a question is YES, full details should be given on a separate sheet and referenced to the appropriate question.

- 4.1 Have you been convicted of any offence involving fraud, dishonesty or breach of trust, in the State or elsewhere?
- 4.2 Have you been convicted of any offences (excluding minor motoring offences) other than those declared above or been subject to penalties for tax evasion? (See also declaration to be signed regarding tax compliance)
- 4.3 Have you been charged before any Court (including a Court Martial or Service Disciplinary Court) in Ireland or elsewhere with an offence of which you have not been acquitted? What was the outcome?
- 4.4 Are you currently engaged in, or the subject of, any criminal or civil proceedings or arbitration (other than as an expert witness or member of a jury) or is any unsatisfied judgement debt or award outstanding against you?
- 4.5 Have you at any time, in the State or elsewhere, been declared bankrupt, or entered into any compromise with creditors, or are you currently the subject of bankruptcy proceedings? Are you aware of any such proceedings pending?
- 4.6 Have you at any time entered into a deed of arrangement in favour of your creditors, or other composition or arrangement with creditors, or failed to satisfy a judgement debt under a Court Order made in the State or elsewhere within one year of the making of the Order?

- 4.7 Have you been refused or had withdrawn any authorisation to carry on financial services business in the State or elsewhere?
- 4.8 Have you ever been disqualified or restricted, in the State or elsewhere, by a Court from acting as a director of a company, or from acting in the management or conduct of the affairs of any company, partnership or unincorporated association?
- 4.9 Has any employer that you had in the past ten years or your present employer (to the best of your knowledge) applied for regulatory approval in respect of any financial services business in the State or in any other jurisdiction and been refused the application or had the approval withdrawn?
- 4.10 Have you or, to your knowledge, your employer ever resigned from such an organisation or decided after making an application not to proceed with that application?
- 4.11 Has any company, partnership or other business venture of which you are, or have been, a significant shareholder, director or partner, ever, to your knowledge, been refused or had revoked membership of any professional body or any regulatory body, or been censured, disciplined, suspended, expelled, fined or been subject to any other disciplinary action by any such body whether in the State or elsewhere?
- 4.12 Has any company, partnership or other business venture, of which you are or have been a significant shareholder, director, or partner, to your knowledge, ever resigned from any body referred to in 4.11 above or decided not to proceed with an application to any such body after making one?

- 4.13 Have you or, to your knowledge, your employer ever been censured or disciplined by any regulatory body in the State or elsewhere because of your or your employer's business or professional activities? Are you, or is your employer to your knowledge, currently undergoing any investigation or disciplinary procedure?
- 4.14 Are you, or to the best of your knowledge, any employer that you had in the last ten years or present employer currently undergoing any investigation or disciplinary procedure?
- 4.15 Have you or, to your knowledge, your employer been criticised or censured in the last ten years by a professional body to which you or your employer belong or formerly belonged? If so give full particulars:
- 4.16 Have you ever resigned from a professional or regulatory body in the State or elsewhere with a view to avoiding legal action or disciplinary process?
- 4.17 Have you been a director of, or associated with, a company which was, during your period of directorship, convicted of an offence?
- 4.18 Have you ever been refused entry to any profession or been dismissed or requested to resign from any office or employment, or from any fiduciary office or position of trust, whether or not remunerated?
- 4.19 Have you ever been prohibited, suspended or refused the right, in the State or elsewhere, to carry on any trade, business or profession for which a specific license, registration or other authority is required?
- 4.20 Have you ever to your knowledge been the subject of an investigation into allegations of misconduct or malpractice in connection with any financial services business or are you currently undergoing such an investigation?

- 4.21 In the last ten years, have you been the director of a company, in the State or elsewhere, which has gone into liquidation, receivership or examinership or entered into any arrangements with its creditors either while you were a director or within three years of your ceasing to be a director?
- 4.22 Has any company with which you were associated during the last ten years been compulsory wound up either whilst you were associated with it or within one year after you ceased to be associated with it?
- 4.23 Have you, in connection with the formation or management of any company, partnership or unincorporated association ever been adjudged by a court in the State or elsewhere civilly liable for any fraud, wrongful trading or other misconduct towards such an entity or towards any members or creditors of such an entity?
- 4.24 Have you ever been concerned directly or indirectly with the management or conduct of affairs of any company which has been investigated by an inspector or examiner appointed under the Companies Act, 1963 to 2003 in respect of events which occurred while you were involved, or been required to produce books, records or other documents to the Minister for Enterprise and Employment in respect of such events?
- 4.25 Have you ever been concerned with the management or conduct of affairs of any company which, by reason of any matter relating to a time when you were so concerned, has been convicted of any criminal offence in the State or elsewhere, censured, disciplined or publicly criticised, by any enquiry, by any governmental or statutory authority, or by a similar body overseas, which has resulted in a finding against the company by a court?

4.26 To be completed by Persons Having a Shareholding in the authorised entity  
Have you entered into any agreement with any other person (natural or legal) which will influence the way in which you exercise your voting rights or the way in which you otherwise behave in your relationship with the authorised entity?

5. Other Business Interests  
If you have, or have had in the last 10 years, any other business interests you must complete this section.

5.1 State whether these are or were:

5.1.1 in any bodies corporate of which you were a director.

If YES, give details below:

Name	Principal Activities	Past or Current Directorship

5.1.2 in any bodies corporate in which you have or have had a beneficially-owned interest in more than 10 per cent of the equity share capital, or a majority of the voting rights, whether or not you are a director.

If YES, give details below:

Name	Principal Activities (please indicate if past or current)

5.2 Do any of the bodies corporate listed in the answers to 5.1.1 and 5.1.2 maintain a business relationship with the financial services entity in respect of which this application is made.

If YES, give details below:

Name	Principal Activities (please indicate if past or current)



5.3 State how many shares or share options of the entity submitting this application are registered in your name (including any holdings held on your behalf) or in the name of an associate.

5.4 Have you personally given any guarantees in respect of your firm's liabilities or those of any firm or individual

If YES, give details below.



5.5 State whether you have or have had any other business interest involving a personal liability in the last 10 years.

If YES, give details below.



5.6 Give details of any current interests in financial institutions.



5.7 Give the names of any other companies in which you are entitled to exercise or control the exercise of one third or more of the voting power at a general meeting, also the names of any companies the directors of which are accustomed to act upon your directions or instructions.



## 6. Personal Bank Details

Give the following information in respect of your personal bank account(s).

Bank/Building Society

1	
Name	Address
Sort Code	Account Number

2	
Name	Address
Sort Code	Account Number

3	
Name	Address
Sort Code	Account Number

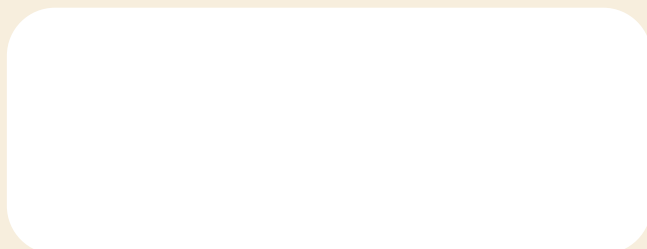
## 7. References

7.1. On a separate page please provide two personal referees who are familiar with your financial services activities, one of which must be the individual's most recent previous employer.

7.2. Have these referees given their permission?

7.3. State whether you consent to the Financial Services Regulator taking up these references at this stage.

If NO, please give reasons below:



7.4. Please note that individuals who are/ have been resident outside the state in the last five years are asked to provide a clearance letter/ certificate from the police authorities of that jurisdiction.

7.5. Please note that the Financial Regulator may carry out a Regulator check if the individual has previously been employed by a regulated entity in another jurisdiction.

7.6. Please note that all persons appointed as directors or managers are required to submit to their firm an annual declaration confirming that there have been no material changes in the information provided in this form

## DECLARATION

I, \_\_\_\_\_ (name of individual)

declare that:

- (i) have truthfully and fully answered each question in this Questionnaire, and have disclosed any other information which might reasonably be considered relevant to the purpose of furnishing this form as set out above, and
- (ii) I will promptly notify the Irish Financial Services Regulatory Authority ('Financial Regulator') of any changes in the information which I have provided and will supply any other relevant information of which I may become aware at any time after the date of this Declaration,
- (iii) I hereby authorise the Financial Regulator to make enquiries with the Garda Síochána as to any convictions that may or may not be recorded against me. I authorise the Garda Síochána to furnish to the Financial Regulator a statement that there are no convictions recorded against me in the Republic of Ireland or elsewhere, or a statement of all prosecutions successful or not, pending or completed in the State or elsewhere as the case may be.
- (iv) I hereby authorise
- all corporations or companies,
  - the Revenue Commissioners,
  - the Office of the Director of Corporate Enforcement,
  - the Companies Registration Office,
  - all regulatory bodies in the State or elsewhere,
  - all law enforcement agencies in the State elsewhere
  - all former employers
  - all credit agencies
  - all educational and professional institutions
  - all persons (legal and natural)
- to release information which they may have about me to the Financial Regulator and I release them from any liability or responsibility from doing so.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Signed: \_\_\_\_\_

Position/Proposed Position \_\_\_\_\_

ENDORSEMENT BY AUTHORISED ENTITY /  
APPLICANT FIRM (as appropriate)

I/We submit the above Questionnaire pursuant to the relevant legislation, and declare that, to the best of my/our knowledge, information and belief the information which it contains is accurate and supports our view that this person fulfils all the criteria for the post for which he/she is proposed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Position: \_\_\_\_\_

For and on behalf of \_\_\_\_\_

Note: It is an offence under the relevant legislation to knowingly or recklessly provide false or misleading information or make false or misleading statements in relation to an application for authorisation.

## ANNEX II

### IRISH FINANCIAL SERVICES REGULATORY AUTHORITY

Director/Senior Manager previously approved  
Notification of Departure

I \_\_\_\_\_, am writing to  
notify the Irish Financial Services Regulatory Authority of my  
departure from the Board of or from my position as  
\_\_\_\_\_ in

\_\_\_\_\_,  
licensed/authorised by the Irish Financial Services Regulatory  
Authority as ( a\_\_\_\_ ) from

\_\_\_\_\_

I declare that my reason for leaving is:

Please delete as appropriate:

I declare that there are no issues, which I wish to bring to the  
attention of the Financial Regulator.

or

I declare that there are issues, which I wish to bring to the attention  
of the Financial Regulator as follows:

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Signed: \_\_\_\_\_



IRISH FINANCIAL SERVICES  
REGULATORY AUTHORITY

Please clearly mark your submission 'Comprehensive Fit and Proper Test Policy Consultation' and send it to:

Irish Financial Services Regulatory Authority  
P.O. Box 9138  
College Green  
Dublin 2

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All submissions should be sent on or before 30 April 2005