

The Central Bank of Ireland
New Wapping Street
IFSC
Dublin 1
By email: CP160@centralbank.ie

08 July 2025

Subject: IFDA response to amendments to the Fitness and Probity Regime (CP160).

Dear Sir/Madam

The **Irish Fund Directors Association** (IFDA), the representative body for individuals practicing or planning to practice as independent non-executive directors (INEDs) within the Irish Funds Industry in Ireland, aims to support its over 240 members and represent their interests to key industry stakeholders. IFDA promotes high governance standards and best practices within the Irish funds industry.

IFDA acknowledges the importance of the Fitness and Probity (F&P) gatekeeping framework in ensuring competence, integrity, and commitment in key roles within regulated financial entities. This framework is crucial for sound governance, risk management, and public trust. While the F&P regime has been in place since 2011 and aligns with other regulations to a great extent, IFDA recognises several shortcomings, as also highlighted in the Central Bank of Ireland's (CBI) independent review of its fitness and probity regime (the Enria Report), including a perceived lack of fairness and transparency in the approval process. IFDA fully supports the CBI's role and responsibility to ensure the F&P framework is transparent, predictable, and proportionate, and therefore welcomes the consultation paper on amendments to the Fitness and Probity Regime (CP160) as a necessary and timely review.

1. (a) Do you agree with the proposed revision to the draft Guidance?

The 2025 Draft Guidance consolidates all existing guidance, replacing the 2023 Guidance and specific guidance for Credit Unions, into a single document. This centralisation provides a more comprehensive and accessible resource for understanding the Fitness & Probity Regime as it applies to all in-scope firms, and its introduction is welcomed.

However, we have identified a number of areas where further clarification or guidance would be beneficial for directors and the entities to whom they perform a role.

Granular Application of Proportionality: While the 2025 Draft Guidance reiterates that criteria are applied in a proportionate manner given the varying nature, scale, and complexity of firms, further specific guidance or illustrative examples detailing how proportionality is determined and applies to directors' roles and the assessment of factors would be welcomed. Consideration of factors such as previous experience, time commitments, and past events for firms of significantly different sizes (e.g., small/medium versus large complex firms) would be beneficial.

More Definitive Guidance on Minimum Experience: We welcome the fact that the 2025 Draft Guidance offers general experience expectations and benchmarks for director roles, referencing ECB thresholds, but avoids setting minimum experience years for most positions (except Head of Actuarial Function).

Materiality Thresholds for Conflicts of Interest and Other Matters: The 2025 Draft Guidance requires firms to identify and assess the "materiality" of actual or potential conflicts of interest (COI) and past events. While it lists factors to consider for this assessment, the ultimate judgment of materiality rests with the firm. Providing further illustrative examples of scenarios that would typically be considered material (or not material) in different firm sizes and contexts could assist firms and INEDs in making and documenting these assessments consistently.

IFDA is also seeking the inclusion of timelines in the guidance for mitigating conflicts of interest, particularly in situations where former employees or contractors who previously held PCF roles with a Regulated Financial Service Provider (RFSP) apply for new positions within the same RFSP. To provide clear guidance, the CBI should establish specific timeframes for COIs. For instance, a defined period, such as two or three years (limited to three years in the Corporate Governance Code for Collective Investment Schemes and Management Companies 2012), should be set before a former RFSP employee can apply for a PCF-2B or PCF-3 role with the same RFSP. Similarly, a contractor who completed a part-time interim PCF role should be subject to a waiting period of, for example, six to twelve months before being eligible to apply for a PCF-2B or PCF-3 role with the same RFSP.

We also recommend that the CBI's guidance should make it clear or acknowledge that INEDs can perform other PCF roles with another RFSP, subject to being able to satisfy the relevant time commitment. This will help mitigate any confusion (by CBI staff) when an INED submits an IQ for an interim PCF role

Practical Alignment of F&P Assessment and SEAR Obligations: The 2025 Draft Guidance clearly links the F&P Regime with the Individual Accountability Framework (IAF), including SEAR and Conduct Standards. While it notes F&P assesses suitability and SEAR focuses on responsibilities, further practical guidance on how a firm's F&P assessment process for INEDs should specifically inform, support, or align with their obligations under SEAR, such as the development and maintenance of Statements of Responsibilities, would be beneficial in providing a clearer integrated picture for INEDs.

We propose that clarification be provided to confirm that the application of inherent responsibilities should remain as guidance for firms until they are in scope of SEAR.

Assessing Cumulative Effect: The 2025 Draft Guidance highlights that a series of seemingly minor matters can be significant when considered together for F&P assessment. While this principle is stated, providing further guidance or examples on how firms should approach the assessment and documentation of the cumulative effect of multiple matters would be beneficial for consistency and transparency. This point is present in both 2023 and Draft 2025 versions, indicating it remains an area where practical application needs further clarity.

Alignment of Past Events Disclosure and Investigative Look-back: The Draft Guidance in CP160 suggests a 10-year look-back period for investigating past events, provided no other concerns exist. However, the 2025 Draft Guidance mandates due diligence on all disclosed ongoing and past events, irrespective of their occurrence date. To clarify expectations for firms and INEDs regarding older disclosed events, the mandatory due diligence scope (all disclosed events) should be aligned with the suggested 10-year investigative look-back period. This clarification also applies to Question 5.31 of the IQ, which currently lacks any timeline or limitation concerning disclosure of matters which occurred when an applicant worked at a firm during an incident. Indeed the question is so open ended that it must be responded to in the affirmative if an applicant ever worked for a firm which was the subject of regulatory sanction, etc, even though they were not there at the time of the malpractice, nor involved in the area where the malpractice occurred. Implementing the same 10-year limit for this question would benefit all stakeholders, including the CBI in their follow-up on disclosures.

Independence of Directors: We are concerned that the proposed Guidance for assessing the independence of directors for PCF 2B roles lacks clear and consistently applicable objective measures across the financial services industry. Specifically, the terms "*in the past*" and "*in the recent past*" in paragraph 4.31 do not align with the CBI's aim for objective criteria. Furthermore, the absence of tenure as a criterion for assessing the independence of directors could lead to inconsistent independence assessments between boards. While the CBI has communicated expectations to individual firms, we believe a standardised approach for all regulated firms and outlined in Guidance would offer clarity for both assessing independence and for succession planning.

Framework for Exercising Judgment in Due Diligence: The 2025 Draft Guidance requires firms to "*exercise judgment*" and "*holistically consider the outcome*" of due diligence. Providing a more structured framework or further illustrative examples of how firms should document and justify their judgments, particularly in complex cases or where information is limited, would enhance transparency and consistency in the assessment process for directors. Paragraph 3.43, in the context of due diligence to be undertaken by the relevant firm to determine an individual's financial soundness, states that the "*relevant individual should provide evidence of financial soundness....*". It is unclear how this is expected to be done - by providing bank/savings statements? We do not think it is appropriate for the onus to be on the individual to prove financial soundness and this is a departure from the existing practice where an assessment of probity, and in particular financial soundness, is generally undertaken only in the case of exceptions e.g. by the existence of a judgement debt or bankruptcy order. Of course, the individual must also certify that they comply with the F&P Standards, which confirmation will include financial soundness.

Time Commitments: Paragraph 4.3 states, in the context of time commitment, that "*Firms should set out all relevant and necessary details to show that the individual has sufficient time to commit to the role.*" It would be helpful if the CBI could provide further clarity about exactly what is meant by this, and if it relates to what is contained in paragraph 4.4. Given the information asymmetry where legal entities/RFSPs or PCF role holders have enhanced insight into the operational requirements and time required for PCF roles, the CBI should give due consideration to the feedback from the PCF proposer/entity and the candidate regarding appropriate time commitments rather than arbitrarily increasing or imposing additional time commitments as has been the lived experience of many firms and individuals until now. IFDA can provide some examples of this if it is helpful.

Diversity and Inclusion: IFDA welcomes the addition of the diversity and inclusion section, acknowledging gender-balance as particularly important, as well as acknowledging that it is not the only element of diversity.

1. (c) What other elements could the Central Bank include in the draft Guidance?

The Enria Report indicated that Ireland's F&P standards (the Standards) are generally consistent with those of comparable regulators. However, several areas have been identified for potential improvement of the Standards, as outlined below.

Proposed Approach for PCF Role Qualifications: The CBI should, as recommended by the Enria Report, provide clear guidance to PCF applicants who initially appear to lack the necessary qualifications or experience. This guidance should outline specific steps the applicant can take to meet the CBI's approval criteria. Implementing this recommendation would aim to reduce repeated IQ withdrawals and foster a more reliable and transparent PCF application and approval process.

Table 5 specifies that the INED should have a minimum of "*3 years recent relevant practical experience at high-level managerial position*". This appears to be a very low base to perform

such a key board role. Having 3 years cited here may be misleading and potentially undermine the INED role, as well as involving the CBI having to justify a higher expectation where candidates with only 3 years' experience submit an application. A similar concern arises in relation to 8 years for a Chair role.

Clarification on IAF Training Requirement: As mandated by IAF rules, all firms must offer conduct standards training to individuals in controlled functions (CFs) or pre-approval controlled functions (PCFs). However, for individuals holding multiple INED positions, this requirement can lead to redundant training sessions. Therefore, IFDA recommends that the CBI's guidance be revised to state that attending duplicate training sessions within a twelve month period is not obligatory for INEDs who can provide evidence of previous IAF training attendance. This certification/evidential option is already in place in respect of AML/CTF training undertaken by individuals holding multiple INED positions.

2. (a) Do you agree with the proposed revisions to the PCF list?: We welcome the removal of sector-specific categorisations, and the merging of roles to enable this, and we look forward to the substantive review of PCF roles in 2027.

2. (b) Have you identified any issues with this revision?

IFDA would welcome further guidance and clarification regarding the following areas of the F&P regime:

i) CBI Interviews for Funds Sector: The limited number of interviews conducted for the Funds sector in 2023 (seven assessment interviews and one specific interview) is notable. Currently, interviews are not standard in our experience in the initial application phase unless flagged by supervisors. Clarification and guidance on the CBI's view of likely interview trigger points, such as the number of current mandates or appointments or the number of committed days, would be appreciated.

ii) Information Outreach Events: IFDA understands that the Dutch National Bank (DNB) hosts information outreach events twice per year (one in-person, one online) for individuals and firms who are applying, or are considering applying for a role that requires regulatory approval under their F&P framework. At these sessions, attendees receive a walkthrough of the process by DNB staff and there are Q&A sessions to help applicants understand the process better. IFDA would welcome a similar approach which could help better inform new and existing applicants and reduce any element of anxiety or concern regarding the application and interview process.

We hope that our input into this process will be helpful, and we look forward to the finalised paper in due course.

Should you need to contact us regarding any aspect of this letter please contact us at secretary@ifdassoc.ie.

For and on behalf of IFDA.



John Madigan
Chairperson, IFDA