

# **Central Bank of Ireland Consultation Paper 160 – Amendments to the Fitness and Probity Regime**

**July 2025**

## INTRODUCTION

The Irish Funds Industry Association (Irish Funds) is the representative body for the international investment funds industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms, and other specialist firms involved in the international fund services industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds industry employs over 19,519 professionals across every county in Ireland, with over 37,468 of a total employment impact right across the country<sup>1</sup> and provide services to almost 8,900 Irish regulated investment funds with assets of just under EUR 5 trillion<sup>2</sup>.

As a key pillar of Ireland's internationally recognised funds industry, maintaining high standards of governance and oversight is essential and this is where the Fitness and Probity ("F&P") regime plays a central role. The current F&P regime has been successful in supporting the proper functioning of firms and individuals working within the financial services sector by helping to acquire strong and qualified talent for the appropriate senior roles in the industry. The process ensures that there are individuals and firms who are committed to high standards of competency, integrity and honesty and are held accountable when they fall below these standards. It provides a good framework for ensuring standards are maintained thereby reducing the risk of harm to customers or the wider financial sector. The programme is robust and reflects international best practice. The Central Bank of Ireland ("CBI") "gatekeeper" role is critically important to protecting the interests of consumers and investors who interact with regulated firms and the market as a whole. We are supportive of the F&P regime in this context and in the context of the protection of the public interest ensuring trust and confidence in the financial system.

Given the passage of time as well as the Irish Financial Services Appeals Tribunal decision in 2024, Irish Funds welcomed the performance of an external review of the F&P regime last year by Mr Andrea Enria<sup>3</sup>. Irish Funds provided views and opinions to support this review, through our member firms and working group structure and we note the issuance of the Enria report in July 2024, which contains a package of 12 recommendations.

Irish Funds welcome the opportunity to provide our comments and seek clarification on the recently issued proposal within the Consultation Paper 160 - Consultation Paper on Amendments to the Fitness and Probity Regime ("CP160"). Noting that the objective of CP160 is to address the Enria recommendations relating to the need for increased clarity and transparency, our feedback on the questions set out in the consultation are outlined below. We have several queries and observations that we believe should be considered by the CBI ahead of the issuance of the Final Guidance on the Standards of F&P to ensure comprehensive compliance and effective implementation.

Irish Funds have observed in the analysis of the Fitness and Probity review by Andrea Enria, that since the inception of the Fitness and Probity Regime, 45% of Pre-Approval Controlled Function ("PCF") applications relate to funds or fund service providers. Of this cohort, 80% concern three

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<sup>1</sup>Assessment of the impact of the Funds & Asset Management Industry on the Irish Economy, Indecon, 2024

<sup>2</sup>Central Bank of Ireland, December 2024.

<sup>3</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/communications-publications/fitness-and-probity-review-by-andrea-enria.pdf?sfvrsn=ab7c611a\\_9](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/communications-publications/fitness-and-probity-review-by-andrea-enria.pdf?sfvrsn=ab7c611a_9)

specific roles: (i) Non-Executive Director; (ii) Independent Non-Executive Director; (iii) Chair of the Board<sup>4</sup>.

These figures highlight the significant interaction between the funds industry and the CBI supervisory processes. They demonstrate the relevance of taking industry feedback into account to help streamline supervisory workflows and reduce administrative delays, without compromising regulatory objectives.

## **IRISH FUNDS RESPONSE TO CP 160 QUESTIONS**

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

The proposed revision to the F&P Guidance has been well received by the industry, which supports the CBI willingness to review and enhance Fitness and Probity supervision.

Irish Funds appreciates many of the amendments proposed to the existing F&P framework in particular the clarifications provided in respect of the consideration of past events and the specific timelines included on the different stages of the PCF approval process. However, we believe that there are further opportunities to provide additional clarity in respect of the areas addressed in this feedback.

Recommendation 2 of the Enria report relates to “Clear fitness and probity standards” and recommend that all relevant standards and wider guidance issued by the CBI should be consolidated into one single location for ease of access and understanding, and to promote consistency in applications.

Irish Funds is very supportive of this initiative, and it is our understanding that all relevant supplementary material (Dear CEO letters, Frequently Asked Questions [“FAQ”] etc.) has and will be incorporated into the Final Guidance and that such supplementary material will become redundant as standalone documents. We would note the Draft Guidance<sup>5</sup> (“Draft Guidance”) does not specifically reference the FAQ currently in issue<sup>6</sup> and we think it is important for the CBI to clarify if the FAQ have been incorporated into the Final Guidance (“Final Guidance”) and that the FAQ will therefore fall away. This will ensure that the Final Guidance document becomes a centralised source of information and guidance for the financial services sector and support the development of a more robust and effective F&P assessment process. It would also be helpful if the contents of the “Fitness and Probity Gatekeeper Process”<sup>7</sup> document were incorporated into the Final Guidance, instead of being set out in a separate document.

We understand that the Final Guidance is due to be issued in Quarter 4 2025, and we would urge the CBI to consider the facilitation of an implementation period of at least 6 months in order to allow

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<sup>4</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/communications-publications/fitness-and-probity-review-by-andrea-enria.pdf?sfvrsn=ab7c611a\\_9](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/communications-publications/fitness-and-probity-review-by-andrea-enria.pdf?sfvrsn=ab7c611a_9) – please refer to “Chapter 4”, page 44

<sup>5</sup>“Draft Guidance” refers to the Central Bank of Ireland “Guidance on the Standards of Fitness and Probity April 2025”

<sup>6</sup><https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity---frequently-asked-questions-2018.pdf>

<sup>7</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-gatekeeper-process-manual.pdf?sfvrsn=bdab6a1a\\_8](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-gatekeeper-process-manual.pdf?sfvrsn=bdab6a1a_8)

firms sufficient time to incorporate the new and amended elements of the Final Guidance into their regulatory and governance frameworks.

Irish Funds will address the key areas in which further clarification and guidance are required in the upcoming questions.

### **(b) Are the enhancements to the draft Guidance useful to you?**

Irish Funds welcomes the proposed enhancements and supports the review of the F&P Guidance, as well as the CBI continued engagement with stakeholders. Given the importance of clarity in the effective application of the regime, we have identified a number of areas where further detail would be beneficial. The enhancements we have identified, along with additional comments and requests for clarification, are outlined in our response to Question 1(c).

### **(c) What other elements could the Central Bank include within the draft Guidance?**

As noted above, further clarity is needed on several important topics. In this context, Irish Funds has identified several areas where enhancements to the Draft Guidance would be welcomed by the industry, not only in terms of suggested inclusions, but also where additional clarity or detail would help ensure consistent understanding and effective implementation. These points are outlined in the individual sections below.

#### **Approach to Identifying the CF Population**

We note that on Chapter 2, "Approach to identifying the CF population" the Draft Guidance provides that the determination whether an individual is performing a Controlled Function ("CF") role is the responsibility of each firm and the role and functions of each individual should be assessed in line with the definitions prescribed in the F&P Regulations. The Draft Guidance, in Section 2.2 define that *"in summary, the CF roles in relation to a regulated financial service provider include:*

- *Exercising significant influence on how the affairs of a firm are conducted,*
- *Ensuring, controlling or monitoring the compliance of a firm with its relevant obligations, or*
- *The provision of a financial service."*<sup>8</sup>

FAQ 2018<sup>9</sup>, in Section 2.9 provides that *"the functions commonly performed by a Money Laundering Reporting Officer ("MLRO") would be considered to fall under the category of CF2"* and FAQ 3.10 provides that *"the role of Company Secretary is captured by the CF-1 category"*.

The Draft Guidance repeats the identification of the MLRO as a CF-2 role in Section 2.8 but is silent on the role of the Company Secretary. Since the publication of the FAQs (March 2012), it has been industry practice to treat Company Secretaries as CF-1s even though, in many instances, they would not be occupying "significant influence" roles. Many firms appoint third-party professional providers

<sup>8</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to section 2.2, page 25

<sup>9</sup><https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity---frequently-asked-questions-2018.pdf> - please refer to section 2.9, page 8 and section 3.10, page 12

of company secretarial services as the Company Secretary and often these are corporates (as is permitted by the Companies Act 2014/ICAV Act 2015). The role of these service providers is of an administrative nature limited to maintaining statutory books and registers and carrying out company registration office (“CRO”) filings /returns and in some cases providing support to the Board around Board meetings including minute-taking etc. The Company Secretary has no voting (or speaking rights) at Board or shareholder meetings. Obviously, in some firms, particularly where the Company Secretary is an individual employee, the individual may additionally have an executive function which involves decision-making and could be regarded as a “significant influence” role and, in that case, should be regarded as a CF-1 role.

In light of Section 2.5, “Roles Captured by CF-1: Exercising Significant Influence”, of the Draft Guidance, we would anticipate that many firms with a Company Secretary that is providing services of an administrative nature only to the firm but has been considered a CF-1 simply because of the prescriptive language of FAQ 3.10, will view it as no longer required to designate the Company Secretary in the CF-1 category. It would be helpful however if the Final Guidance were to clarify the position.

While we acknowledge that providing for each individual governance structure or model is not possible, and firms generally welcome the ability to consider their own specific circumstances, we would note that additional guidance on the criteria for making these determinations would be welcome, to ensure that while designations may differ across firms, these can be justified and explained on objective basis.

For example, in relation to designating individuals as CF-2, the Draft Guidance notes in Section 2.9. that:

*“...the designation as a CF is dependent on the functions performed by the individual rather than their job title or physical location in the organisation structure. Therefore, any individual who may be considered to be “ensuring, controlling or monitoring compliance” in the firm may fall under the scope of CF-2, as opposed to individuals working in the designated “compliance unit” only.”<sup>10</sup>*

We would submit that the current industry interpretation of “ensuring, controlling or monitoring compliance” does not typically involve bringing into scope junior compliance staff or staff outside the compliance function. Some firms limit CF2 designation to staff for whom monitoring/ensuring compliance makes up the bulk of their activities and/or apply a level of seniority. For large global organisations, that leverage centralized teams and resources for the execution of their compliance programs and framework (while retaining oversight and control locally), this may unnecessarily bring a large population of staff into scope of the regime, where ultimately the responsibility and control lies with a small number of local individuals. We would suggest further clarifying what “ensuring, controlling or monitoring compliance” means with reference to seniority and specific role responsibility.

Further, in Section 2.5, titled “Roles Captured by CF-1: Exercising Significant Influence”, the Draft Guidance indicates that all PCFs are expected to be also classified as Controlled Functions exercising significant influence (CF-1s). To our knowledge, this has not been articulated as a

<sup>10</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to section 2.9, pages 26, 27

requirement previously and the benefit of such duplicative classification is unclear. Similarly, in Section 2.7, "Roles Captured by CF-2: Ensuring, Controlling or Monitoring Compliance", the necessity of classifying PCFs, who already ensure compliance as part of their role, as CF-2s is unclear. A specific example of this duplication of roles is set out in Section 2.8 of the Draft Guidance which states that the role of PCF-13 (Head of Internal Audit) is also categorised as CF-2. Since all PCFs are a sub-set of CF-1s, following this logic would mean the role of PCF 13 would additionally need to be categorised as a CF-2 and a CF-1. The broad categorisation of CF-2 roles, which combines roles responsible for overseeing compliance with those involved in executing compliance tasks, may result in varied interpretations and implementations among firms. While it is agreed that individuals acting as MLRO should be classified as CF-2s, those performing this function within their PCF-52 role should not require additional classification, as their responsibilities are already encompassed within their existing PCF designation.

In our view, the additional classification of PCFs as CF-1 and/or CF-2 adds an unnecessary additional layer of complexity and administrative burden to the F&P governance process with little added benefit from an efficiency and effectiveness perspective. We would therefore welcome further clarification from the CBI on such categorisations and suggest that the Final Guidance should clarify that although PCF roles may in theory also be categorised as a CF-2 and/or CF-1, these additional categorisations do not need to be actioned on an ongoing basis from an administrative and governance process perspective.

In relation to Section 2.10 and 2.11, "CF-3 to CF-9: Provision of a Financial Service" to a customer, we note the reference to some of these roles being "*broad, wide-ranging roles likely to apply in all regulated firms.*" While this may be the case in certain sectors, many Fund Service Providers (Fund Administrators and Depositories) do not deal with customers directly and as such these roles would not be relevant to them. We would suggest that the Final Guidance further clarifies that these roles are wide ranging roles likely to apply "across all financial services sectors" noting however that the determination whether an individual is performing a CF role is ultimately the responsibility of each firm in line with their specific sector and business model.

Still in Section 2.10, it incorrectly states that CF-8 focuses on the management or supervision of individuals in CF-3 to CF-6 roles. However, CF-8 relates to adjudicating complaints while it is CF-7 that involves the management or supervision of those performing CF-3 to CF-6 roles. The Final Guidance should be updated accordingly.

## Temporary Officers

Under Section 2.37, "Temporary Officers", the Draft Guidance states that:

*"The Central Bank expects that the regulation on Temporary Officers will only be used in the most exceptional of circumstances, where an individual in a PCF role has had to suddenly and unexpectedly stop performing the PCF role<sup>11</sup>."*

While Irish Funds understand the reasoning behind the limited use of the Temporary Officer role, this approach is not always possible or realistic in practice. This is particularly pertinent in firms which are subsidiaries of larger Group entities. Irish Funds would support further clarity and the

<sup>11</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to section 2.37, page 36



implementation of a more consistent approach to the appointment and approval of Temporary Officers.

The approval of individuals covering planned temporary PCF absences, particularly in the context of parental and maternity leave, is currently agreed with the CBI on a case-by-case basis depending on the specific circumstances of the firm. This lack of consistency and clarity for such scenarios leads to industry confusion and potentially the implementation of inefficient and/or ineffective cover arrangements for firms.

The (i) 12-week rule and (ii) time-limited appointments, as outlined below, are approaches currently in use in the UK by the Financial Conduct Authority (“FCA”) and Prudential Regulation Authority (“PRA”). Irish Funds would recommend that the CBI considers adopting similar procedures as part of its revised Final Guidance. In our view, incorporating these measures could enhance clarity, consistency, and transparency in the Temporary Officer appointment process, while also placing appropriate emphasis on the need for regulated firms to maintain adequate and regularly reviewed PCF Succession Plans.

- **12 Week Rule:** Under the FCA’s 12-week rule, firms may appoint an individual to perform a Senior Management Function (“SMF”) without prior approval of the FCA for a period not exceeding 12 consecutive weeks. This temporary appointment is only used in situations such as emergencies, unplanned absences, or holiday cover. During this period, the individual may carry out the full responsibilities of the SMF role without FCA approval. However, if it becomes apparent that the temporary arrangement will extend beyond 12 weeks, the firm must submit a formal application for FCA approval, as further outlined below. Failure to do so would result in non-compliance with the FCA’s requirements.
- **Time Limit Appointments** Under the FCA’s rules, firms may seek time-limited approval for an individual to perform a SMF where the appointment is intended to be temporary or subject to specific conditions. This type of approval, for a period longer than 12 weeks but no greater than 12 to 18 months, allows an individual to perform the SMF role for a defined period, typically in situations such as project-specific assignments, transitional arrangements, or while a permanent candidate is being finalised. It may also be used to provide cover when an SMF is unable to perform their role due to a planned absence, such as maternity or paternity leave, or a career break. The FCA may grant approval with conditions or for a limited duration where it considers the individual fit and proper but subject to constraints. Firms must submit the appropriate application for such approvals and are required to seek further FCA consent should the time-limited role need to be extended or modified. These provisions help ensure that firms maintain compliant governance arrangements, even in temporary or exceptional circumstances, particularly given that the current process is quite onerous.

The inclusion of a simplified, clear and consistent process for the appointment of Temporary Officers, similar to the UK approach as set out above, would be very much welcomed.

## Outsourcing

The clarity and additions to the requirements of Irish Regulated Financial Service Provider with respect to outsourcing CFs and PCFs is welcomed, however we note that the definition of “outsourcing” has been removed, and the term “delegation” has been included in the Draft Guidance.

If the Draft Guidance is to refer to outsourcing of CF and PCF positions, we would recommend that the existing definition remains within the Final Guidance and that clarification should be included in the Final Guidance that the use of the terms “outsourcing” and “delegation” should be used interchangeably in order to be consistent with the CBI Cross Industry Guidance on Outsourcing<sup>12</sup>.

In terms of the outsourcing of a PCF to an unregulated entity, the requirement in Section 2.43 of the Draft Guidance, to name a specific individual in the outsourcing agreement, along with the removal of the broader term “the arrangement (e.g., the service level agreement or other contract)” previously included in the 2023 Guidance on Fitness and Probity Standards<sup>13</sup>, may prove challenging and impractical, particularly in cases where the individual holding the PCF changes. It would be a positive development if individuals did not have to be specifically named in the outsourcing agreement, given that the personnel may change from time to time and this should not require amendments to the contract. From a practical perspective, we would recommend an approach similar to that outlined in Section 2.17 of the Draft Guidance, or alternatively the outsourcing or other agreement be required to reference the PCF position rather than a named individual.

Should the existing provision as per Section 2.43 be retained, noting the point above around the removal of the broader term “the arrangement”, we would request further clarity as to how this requirement will be met for existing PCFs who may be named but not necessarily in the outsourcing agreement, on a go-forward basis.

## **Due Diligence**

In relation to “Legal Obligation of a Firm”, in the Due Diligence Section, under point 3.11, the Draft Guidance outlines a continuing obligation under the Central Bank Reform Act 2010 for firms to ensure individuals performing CFs meet the Standards of F&P, both prior to appointment and on an ongoing basis. Section 3.12 further specifies that firms should perform comprehensive background checks, including criminal record checks, credit checks, and reference checks. The depth and scope of these checks depend on the seniority of the roles and the nature scale and complexity of the firm. We request that the CBI provide further guidance on tailoring these background checks to align with the seniority of roles.

Clear criteria for these variations will help firms ensure that their F&P assessments are comprehensive and proportionate to each position's responsibilities, particularly for individuals in more senior roles who may have greater influence over the firm's operations while remaining efficient and relevant for less senior roles.

Regarding obtaining references under the “Due Diligence” Sections 3.12 and 3.22, “Fitness - Due Diligence to be undertaken by a Firm” emphasise the importance of conducting due diligence, including completion of reference checks as part of the fitness and probity assessment process. Section 3.22 specifically highlights the expectation that firms make all reasonable efforts to obtain references from former employers or other relevant individuals and maintain evidence of this correspondence. In cases where firms are unable to obtain references, they must document the steps taken and how they have satisfied themselves that the individual is competent and suitable to perform the CF/PCF role.

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<sup>12</sup><https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp138/cross-industry-guidance-on-outsourcing.pdf>

<sup>13</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards-2023.pdf?sfvrsn=ea5d6b1a\\_2](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards-2023.pdf?sfvrsn=ea5d6b1a_2)



Given the challenges faced by firms in obtaining detailed employee references, which are often limited to verification of employment dates, additional guidance from the CBI on alternative methods or considerations for verifying an individual's suitability when traditional employer references are not available would be valuable. This guidance would assist firms in fulfilling their due diligence obligations, ensuring that individuals performing CF/PCF roles meet the required standards of fitness and probity.

Continuing in Section 3.22, the Draft Guidance outlines the requirement for firms to obtain evidence of professional qualifications that may be relevant to a role when a CF necessitates specific credentials, such as those for an actuary, accountant, or lawyer. Firms are expected to secure copies of certificates, transcripts, or records evidencing these qualifications, and maintain documentation of any required licenses or certificates to practice, including renewals. While this guidance is clear, the example provided may be confusing (recruitment of a lawyer) as that role may or may not be a CF role. We would suggest clearer guidance could be provided by using examples where professional qualifications are more relevant such as the Head of Internal Audit or the Head of Financial Control. This would enhance the applicability of the Final Guidance for firms assessing the relevance of professional qualifications in their fitness and probity evaluations.

In relation to the interview process, still on Section 3.22, firms are advised to maintain records of interviews when used to assess competence and capability for controlled function, including pre-approval-controlled function roles. It would be beneficial for the CBI to provide guidance on the expected level of detail for these records. Specifically, outlining expectations regarding the content and format of interview records would assist firms in ensuring their documentation meets CBI expectations and effectively supports the assessment of skills and experience in relation to the funds industry.

We note that under “Criminal, Civil and Regulatory Actions”, the Section 3.40 of the Draft Guidance addresses the relevance of past events to an application, proposing that Firms are not required to investigate beyond a “look-back period” of 10 years, except where a custodial sentence may have been imposed, and where there are no other facts that raise concerns regarding the individual's fitness and probity. However it is unclear whether this period extends to investigations concerning previous employers, as referenced in Question 5.31 of the Central Banks Individual Questionnaire (“IQ”), which asks:

*“Has any business (or legal entity) where you held a position of responsibility or influence been or is being investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal or any similar body, whether publicly or privately, in any jurisdiction or is currently the subject of civil proceedings?”<sup>14</sup>.*

We request clarification on whether the CBI intends for the 10-year look-back period to also apply to investigations involving previous employers where the individual held a position of responsibility or influence.

Regarding the methodology for determining “Time Commitments”, Section 4.3. states that “*the standard of fitness includes a requirement that individuals have sufficient time to carry out the*

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<sup>14</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/requirements-assessment-compliance/fitness-probity-individual-questionnaire.pdf?sfvrsn=aa96991d\\_6](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/requirements-assessment-compliance/fitness-probity-individual-questionnaire.pdf?sfvrsn=aa96991d_6) – please refer to page 27

*functions of the CF and PCF roles that they occupy*<sup>15</sup>. It further specifies that “Firms should set out all relevant and necessary details to show that the individual has sufficient time to commit to the role”. Additional guidance from the CBI on a methodology that firms can utilise when determining the appropriate time commitment required for CF/PCF roles would be beneficial. This guidance would assist firms in evaluating whether individuals have enough time to discharge their responsibilities effectively. Establishing a clear framework for assessing time commitments will support firms in making informed decisions regarding role suitability and ensure compliance with CBI’s expectations.

Still with respect to “Time Commitments”, Section 4.4 emphasises that they are an important consideration in assessment of an individual’s suitability for a PCF role. Factors such as the nature, scale, and complexity of the firm, as well as other mandates requiring time commitment, including directorships and other Controlled Function roles, should be considered. The CBI generally expects executive PCF roles to be carried out on a full-time basis. However, we suggest the CBI consider adopting a more flexible approach to accommodate applicants who may undertake other activities within their organisations that align with their PCF responsibilities. For example, a proposed Chief Executive Officer (“CEO”) might also have a leadership role related to sales or product development which could compliment their PCF responsibilities. This flexibility would allow PCF applicants to leverage their broader organizational roles to effectively represent and ensure the interests of the Irish Regulated Financial Service Provider are taken into account.

Within “Frequency of Completion of the Certification Process”, Section 5.13 of the Draft Guidance, it is noted that Firms are required to carry out the certification process in respect of all CFs *“prior to appointment (or in case of a PCF, prior to the submission of an Individual Questionnaire to the Central Bank)”*. Whilst Irish Funds confirm that the requirements noted under Section 5.3, “The Certification Process”, are completed prior to submitting a PCF application to the CBI, Firms typically issue the certificate of compliance only after receiving written approval from the CBI for the role and in conjunction with the individual’s appointment. Further clarity on the sequence of events in this regard would be helpful as the certificate of compliance notes the regulated activities that the individual has been approved to undertake and issuing the certificate once CBI approval has been obtained provides confirmation to the individual that they are considered fit and proper at that point for the regulated roles noted in the certificate.

## Independence of Mind and Independence

Regarding “Independence of Mind”, Section 4.26 of the Draft Guidance outlines the requirement to assess the independence of mind of board members, including their behavioural competencies such as the ability to challenge decisions and resist groupthink. Specifically, we would appreciate further guidance on the following points:

- **Evidencing the Assessment:** Does the CBI expect firms to formally document or evidence this assessment? If so, what level of detail is considered appropriate? Further clarity or guidance from the CBI on the level of expectation with regard to any formal documentation or evidence of such an assessment would be useful. Independence of mind is a pattern of behaviour and cannot always be evidenced and on that basis, there is a concern that undue emphasis will be placed on Board meeting minutes as the sole evidence of directors demonstrating independence of mind. Irish Funds suggest other examples that can be part

<sup>15</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to page 64

of the assessment might include the Board Effectiveness Review and notes from the interview process, ahead of a particular individual being appointed to a role.

- **Assessment Methodology:** An Independence of Mind assessment is highly subjective and without the aid of effective parameters it will be very difficult to quantify or qualify. Any information that the CBI can provide and include in the Final Guidance in relation to recommended or acceptable methods, such as a Board Effectiveness Review, for assessing behavioural competencies would be welcomed. In addition, further guidance on what factors and parameters should be considered when directors are assessing “Independence of Mind” of other Board members should be provided.
- **Assessment Responsibility:** In our view, the Final Guidance should provide further direction on the individual(s) or entity responsible for conducting this assessment and the level of flexibility that will be afforded particularly to smaller firms in this regard.

Regarding “Independence”, in Section 4.28, we request clarification that the independence requirements for the funds sector are set down in the Irish Funds Corporate Governance Code for Fund Service Providers<sup>16</sup> and the Corporate Governance Code for the Collective Investment Schemes and Management Companies<sup>17</sup> (referred to as sectoral codes in the Draft Guidance). If that is the case, Section 4.28 should be amended to reference “sectoral codes” in its wording.

## Requirements of a Role/Inherent Responsibilities

Section 4.34, “Requirements of a Role/Inherent Responsibilities” of the Draft Guidance states:

*“While the SEAR and the Inherent Responsibilities under the SEAR Regulations apply to certain sectors only, the Inherent Responsibilities define relevant roles in broad terms and as such the Central Bank considers that they are relevant for all such roles across all sectors.”<sup>18</sup>*

We understand that such statements in the Draft Guidance around inherent responsibilities and the Senior Executive Accountability Regime (“SEAR”) are not intended to be read as extending the scope of the requirements to firms that are not currently subject to SEAR. Such firms should consider these provisions as helpful non-binding guidance and there is no implication that inherent responsibilities should be formally applied to roles at firms which are not in scope of SEAR.

We would therefore suggest that the statement in Section 4.34 of the Draft Guidance be further clarified to state that while the inherent responsibilities define relevant roles in broad terms, for firms not in scope of SEAR, these should be read as non-binding guidance.

## Level of Knowledge and Experience

Irish Funds welcomes the provision of the Draft Guidance on Chapter 4, “Level of Knowledge and Experience” deemed sufficient for certain key roles and agrees that referencing existing European Central Bank (“ECB”) benchmarks will ensure consistency.

<sup>16</sup><https://files.irishfunds.ie/1432808933-01072014-Corporate-Governance-Code-for-Fund-Service-Providers.pdf>

<sup>17</sup><https://files.irishfunds.ie/1432820468-corporate-governance-code-for-collective-investment-schemes-and-management-companies.pdf>

<sup>18</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to Requirements of a Role/Inherent Responsibilities, page 72

While appreciating the application of proportionality for smaller, less complex organisations, there is an opportunity to provide further clarification regarding which Regulated Financial Service Providers would fall into this category with reference to the most significant demarcation recently set out in the CBI's New Approach to Supervision paper<sup>19</sup>. Further reference to metrics relating to revenue, full time equivalent, assets under management, custody and management would also be useful.

## **Diversity and Inclusion**

Under "Collective Suitability, Diversity and Inclusion", the Sections 4.51 and 4.53 of the Draft Guidance emphasise the importance of Board composition in regulated firms. To ensure effective oversight, boards must collectively possess sufficient knowledge and a diverse range of skills and experiences to understand the firm's operations, key risks, and the broader financial environment. Diversity is essential for fostering varied perspectives and informed decision-making. The use of a board skills matrix is recommended to help identify current and future skills gaps, supporting the ongoing assessment of the board's suitability. Further guidance on applicable parameters, benchmarks, or targets for the use of a board skills matrix would be beneficial. It is also important that any such guidance considers the nature, scale, and complexity of firms, particularly recognising the potential difficulties smaller firms may face.

Clarification is also sought on whether the references to Diversity and Inclusion (D&I) in the Draft Guidance have been informed by the recent D&I thematic review conducted by the CBI, and whether the Final Guidance is expected to evolve following the review's conclusion.

## **CBI Portal and Individual Questionnaire ("IQ")**

Irish Funds have previously provided feedback on the CBI Portal to which the CBI responded to, dated 21 November 2024, as well as providing specific portal feedback within the response provided to the CBI Fitness and Probity Review, which was dated 26 April 2024, but we would like to take this opportunity and provide consolidated feedback for the CBI to consider and request updates on enhancements in progress:

In the CBI's response to Irish Funds, the following enhancements were noted however these are still ongoing issues and have therefore not yet been resolved by the CBI:

1. When a profile is incomplete, it is not clear which specific field is causing the issue. A warning symbol above the field causing an issue would be helpful. It was confirmed that the suggestion to examine feasibility of an enhancement to provide a warning symbol for the specific field was being considered.
2. The F&P Final Guidance or the Portal itself should clearly specify that country area codes are required when inputting telephone numbers. This has caused a significant delay for a member firm as a candidate inputted a non-Irish number without an area code. The enhancement to include country codes was expected to be implemented in Quarter 1 2025.
3. The CBI requires justification for time commitments less than 220 to 230 business days, which is considered full-time for a PCF role. Currently, Question 10.13, which addresses this commitment, is not included in the PDF submission document. Documenting the applicant's

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<sup>19</sup><https://www.centralbank.ie/docs/default-source/regulation/transforming-regulation-and-supervision/our-approach-to-supervision.pdf>

response to this question is important for audit trail purposes and comprehensive record keeping. We would request the CBI to consider this inclusion in future system updates.

As previously noted, members also cited the inability for legal entity portal users to view and access applications (IQ) on behalf of applicants in their firm. This becomes a constraint when questions are only sent back to the applicant (or proposer) and they are not available to answer queries (e.g. on holiday), which delays the application. The gatekeeper process also notes *“All relevant information should be disclosed by the Proposed Appointee and the regulated entity as part of the application.”*<sup>20</sup> Without visibility of the draft IQ, it is very challenging for the firm to ensure that all relevant information has been disclosed, as they must rely on the proposer, who may not have access to the necessary information to verify completeness.

Members suggested that individuals at the firm level, such as compliance and the company secretary, should be permitted to respond to queries relating to an in-progress IQ application. This would ensure appropriate coverage and eliminate key person risk. Creating a mechanism for delegation to these groups to complete routine administrative questions would also be welcomed, as it would facilitate timely submission of applications and mitigate any General Data Protection Regulation (“GDPR”) and confidentiality concerns.

As it currently stands firms are unable to download the IQ until after it has been submitted which makes it extremely cumbersome for firms to review the information contained in the IQ. It would be beneficial for firms if the draft IQ could be downloaded and extracted prior to the submission process.

Finally, member firms have noted that there are edit constraints once an IQ is returned to an applicant following review by the proposer, for example the past experience and training sections cannot be edited to add further details.

## **Definition / Scope Issues**

In addition to the specific themes outlined above, there are a small number of areas of the Draft Guidance where further detail around definitions would be beneficial to ensure understanding and consistency of approach by firms.

On the “Diversity and Inclusion” Section 4.60 of the Draft Guidance, we note the reference to the term “geographical provenance” in the context of “Diversity and Inclusion”. While this term is defined in the joint European Banking Authority (“EBA”) and European Securities and Markets Authority (“ESMA”) Guidelines, we suggest that it would be helpful, to avoid any confusion, to include the definition in the Final Guidance, as it is not a term previously used in the context of F&P and is not familiar to most firms.

In Section 1.34 “European Supervisory Authorities Guidelines” of the Draft Guidance, we would suggest that “in scope firms” is clarified to mean those firms in scope of the European Supervisory Authorities (“ESAs”) Guidelines rather than the F&P requirements.

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<sup>20</sup><https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-gatekeeper-process-manual.pdf> - please refer to Section “Completing the Individual Questionnaire”, page 9

On “Definition of Terms Used (CF-10 – CF-11)” Section 2.14 defines CF-11 by reference to “dealing in or with property”<sup>21</sup>. We note that the example given is that *“this could include...stocks/shares held by stockbroker”*. This example seems to refer to “dealing” in the context of trading financial instruments, thus it may not be fully clear to firms in other industry sectors. We would suggest that some further industry specific examples would be helpful to ensure consistent application.

Regarding the Irish Funds Corporate Governance Codes, Section 1.47 of the Draft Guidance notes that *“The Irish Funds Industry Association has issued the Corporate Governance Code for Fund Service Providers and the Corporate Governance Code for the Collective Investment Schemes and Management Companies”*. In the interests of clarity, we would suggest that the Final Guidance makes clear that the expectation of the CBI is that those operating within the Irish funds sector consider applying the relevant Irish Funds corporate governance codes instead of being required to comply “with the “Corporate Governance Requirements” imposed by the CBI on credit institutions, insurance undertakings and investment firms as referenced in Section 1.43 of the Draft Guidance.

## 2. (a) Do you agree with the proposed revisions to the PCF list?

In the section titled “Approach to Identifying the PCF Population”, the CBI have provided guidance to assist relevant firms in considering whether their internal roles meet the definition for certain PCF roles. Irish Funds welcomes the guidance provided here with respect to the roles that are not clear cut and/or in existence in all firms. However, we would find it useful if all PCF roles are defined in this way so that all firms are following a consistent approach.

In terms of the proposed changes to the list of PCFs, the merging of a number of duplicated roles is a welcome development. However, in our view the removal of the sector-specific categorisations may have unintended consequences for Firms. As the list currently stands, Firms are in a position to determine which PCF roles apply to them depending on their relevant sector and authorisation. This approach allows Firms to descope PCF roles that do not fall within their authorisation category and concentrate on determining the PCF roles that do apply. The proposed change is likely to result in an inconsistent designation of PCF roles across Firms. Irish Funds therefore believes that it would be more beneficial to keep the sector-specific categorisations in place.

However, if the proposed revised PCF list forms part of the Final Guidance, we believe it would be helpful for industry the CBI to provide further guidance as to what PCF roles a particular entity type is expected to have in place. On the one hand, the consultation paper notes that the reframing of the PCF list will not necessitate the appointment of new PCFs by regulated firms whilst also stating that *“there will be instances whereby a role that was previously categorised for pre-approval only for certain industry sectors, now becomes applicable to other sectors”*<sup>22</sup>. This reframing of the PCF list will require firms to carry out a comprehensive review of current PCFs in situ against the amended PCF list in order to determine if any new designations or appointments are required. Such an exercise will be a time consuming and resource intensive undertaking, particularly for smaller firms.

<sup>21</sup>[https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d\\_26](https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/guidance-on-fitness-and-probity-standards.pdf?sfvrsn=a5bcd1d_26) – please refer to Section “Definition of Terms Used (CF-10 – CF-11)”, page 28

<sup>22</sup>[https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp160/cp160-consultation-paper-on-amendments-to-the-fitness-and-probity-regime.pdf?sfvrsn=efaa6a1a\\_5](https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp160/cp160-consultation-paper-on-amendments-to-the-fitness-and-probity-regime.pdf?sfvrsn=efaa6a1a_5) – please refer to section “First stage changes”, page 13



We would also welcome clarification with respect to the role of Head of Trustee Services - PCF-35, to specify that this role encompasses a Fund Service Provider acting as Trustee/Depositary to all fund legal entity structures and not just Unit Trusts and is aligned with the definition of Depositary services (i.e. Safekeeping and Oversight) contained in the Alternative Investment Fund Managers Directive (AIFMD).

Whilst we acknowledge that given the SEAR is in its early stages of introduction, we would question if a two-stage approach is warranted given firms will have to review their application of PCF roles in stage one without being cognisant of the changes that will be delivered stemming from the outcome of stage two.

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

Irish Funds has addressed all comments in response to the previous questions but wishes to highlight the potential unintended consequences for firms should the CBI remove the sector-specific categorisations. Please refer to our response to Question 2(a) for further detail.

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