AIB

Philip Brennan
Group General Manager

AIB Group
Regulatory & Operational Risk

Bankcentre
Ballsbridge
Dublin 4

Telephone +353 1 660 0311
Direct +353 1 641 3245
Facsimile +353 1 641 2794
Mobile +353 87 243 5900
E-mail philip.m.brennan@aib.ie
www.aibgroup.com

Consumer Protection Codes Department
Financial Regulator
PO Box 9138
6-8 College Green
Dublin 2

13 August 2010

Consultation Paper 45: Minimum Competency Requirements

Dear Sir/Madam,

Allied Irish Banks, p.l.c. (AIB) welcomes the opportunity to provide comments on the Central Bank and Financial Services Authority of Ireland (the Authority) Consultation Paper 45, Minimum Competency Requirements (CP45).

The introduction of the Minimum Competency Requirements in 2007 has greatly assisted in improving the minimum standards of financial knowledge of employees of financial services providers. Over the period since their introduction, many issues of interpretation and practical application have arisen. It is, therefore, timely to review the Requirements and ensure that they are still 'fit for purpose'.

In relation to the proposals set out in CP 45, we are particularly concerned with the proposal to phase out grandfathering. The grandfathering provisions allow for the recognition of the practical, hands on experience gained over the years by employees of financial services providers. This experience, coupled with the ongoing CPD requirement, should ensure that those employees that are grandfathered have the appropriate skill and knowledge to act as accredited individuals. We do not support the proposal to phase out grandfathering.

We also have a concern in relation to the proposed timeframe of March 2011 for implementation of revisions to the Requirements. Some of the proposed changes are significant and will pose challenges to industry in relation to their practical implementation. In addition, the Authority has not yet specified the changes proposed in a number of key areas such as those covered in the "Additional Proposals" section of the CP. In this regard, we believe that it would be useful and, indeed, necessary for the Authority to engage in meaningful dialogue with industry prior to implementation of these changes.

We have set out both general and specific comments on the proposals in the attached Schedule. We would be happy to discuss these comments with you at any stage.

Yours faithfully,

Philip Brennan
Group General Manger

Schedule

General Observations

The "Additional Proposals" section of CP 45 sets out areas where the Authority is considering introducing or amending the Requirements but has not yet framed actual amendments. These proposals are phrased very broadly and appear potentially open-ended. We have, therefore, in our response sought to address a number of possible scenarios and give our views on each. This, we hope, will enable the Authority to consider these "additional" items further. In the interests of transparency, we feel that the Authority will need to consult further when it has had an opportunity to be more specific on its proposals in these areas.

We welcome the Authority's recognition that not all situations will be covered by specific rules, and we acknowledge that in those circumstances firms need to interpret the Requirements in a "reasonable and practical manner when considering marginal cases or unusual circumstances" and to document their interpretation and the rationale for it in each case.

Finally, we would advocate that an impact assessment be conducted on any proposed changes to the Requirements in accordance with Better Regulation Principles.

Comments on Proposals included in draft revised Requirements

1. Definition of "Advice"

CP 45 proposes amending the definition of "Advice" to that set out in the European Communities (Markets in Financial Instruments) Regulations 2007. This would appear to have the effect of extending the MiFID definition to a broader range of products. The rationale for this amendment is unclear given that many of the products/services covered by the Requirements fall outside the scope of MiFID and the requirements of the Investment Intermediaries Act 1995 will still apply for many firms. We would welcome clarity from the Authority on the rationale for this proposal.

The MiFID definition is, arguably, broader than that set out heretofore in the Requirements. It is, therefore, important that the existing clarifications on what is <u>not</u> considered "Advice" remain in the revised Requirements.

2. Continuous Professional Development (CPD)

We welcome the proposed change from the current three-year cycle for CPD to an annual requirement. We also welcome the proposal to set the annual requirement at 15 formal hours and the discontinuance of informal hours.

We do, however, require clarification on some of the wording as drafted in the revised Requirements, as follows:-

Sections 3.1.2 & 3.2.4 Failure to comply

Section 3.1.2 states that qualified individuals who fail to comply with their relevant CPD requirements, will not be in a position to act as an accredited individual until the professional designation has been reinstated. Section 3.2.4 allows grandfathered individuals and individuals who hold qualifications without a CPD requirement to make up a shortfall in CPD hours by the end of the following year. In our view, this provision introduces the potential for varying standards. For consistency, we would request that the Authority engage with the awarding institutions for those qualifications which meet the minimum competency requirements, to ensure that CPD regimes are aligned to avoid situations whereby one set of individuals are disadvantaged.

Section 3.2.2 Formal hours

Clarification is required on the annual CPD requirement for an individual who may be accredited to advise on a number of financial products. For example, where an individual is accredited to provide advice on housing loans and investment products, it should be clarified that they are not required to take 2X15 hours of CPD, where CPD undertaken is both widely spread and relevant.

Section 3.2.2 refers to "formal or structured CPD hours..." In the previous section 3.2.1, it is stated that 15 hours of formal CPD must be completed. We would suggest removing the word "structured" from 3.2.2. as there is no reference to "structured" elsewhere.

3. Grandfathered individuals & Proposed Requirement 3.2.4

We agree with the proposal in Proposed Requirement 3.2.4 and the consequences for individuals of failure to comply.

We would, however, welcome clarification on the wording used in the second paragraph of 3.2.4 with respect to repeat shortfalls and how this might work in practice. CP45 refers to the opportunity to make up a CPD shortfall by the end of the following year, and that if an individual incurs a shortfall in any of the three years following the previous shortfall, that they will be deemed to no longer meet the requirements. However, the current position is that some awarding bodies apply a 5 year rule as opposed to a 3 year rule. The change to a 3 year rule will, therefore, need to be clearly communicated to all financial services providers and the educational bodies.

In addition we recommend that the following wording be added to the final paragraph of Requirement 3.2.4: "without the Reinstatement process as outlined in section 3.2.5."

4. Reinstatement of Grandfathered individuals & Proposed Requirement 3.2.5

We welcome the proposals to allow an individual who has lost his/her grandfathered status to have that status reinstated in certain circumstances.

In the case of 'reinstatement within one year' the proposed requirement seems to indicate that the shortfall in CPD hours (plus penalty hours) be completed prior to reinstatement, however, to avoid doubt, the Authority's intention in this matter should be stated. In considering this matter we would recommend that the requirement be amended to allow an individual be reinstated subject to completing any CPD shortfall/penalty CPD within a short timeframe. That timeframe should be defined by the Authority in the Requirements. This would provide some consistency with the proposals under 'other reinstatements' which permit reinstatement while working toward obtainment of an examination or qualification.

5. MCR Register & Proposed Requirement 4.1

We acknowledge the importance of maintaining a register of accredited individuals for purposes of internal record-keeping and for monitoring compliance. We believe that the existing situation whereby the register is made available upon request by a consumer should continue.

We do not support the proposal to provide individual certificates for each accredited staff member due to the risks associated with ongoing production and administration of such certificates.

6. Certificate of Compliance for Grandfathered Staff leaving an institution & Proposed Requirement 4.4

We support the proposal to issue an FR-approved industry standard certificate when a grandfathered individual ceases employment with a financial institution. We would however recommend the following:-

(i) that such a certificate would be produced and issued at a specific point in time, i.e. the date of departure, and would reflect their status at that date;

(ii) that the draft template provided by the Authority be revisited in a way that reflects precise details of experience levels by MCR Product Category and in tabular format for ease of understanding. This Certificate should give experience levels at Category level.

Additional Proposals

7. Phasing out of Grandfathering

We believe that grandfathering is an important mechanism for recognising and valuing the vast experience and knowledge levels of staff gained over their many years of service in the financial services industry and that this principle should be preserved. We would be strongly against the phasing out of Grandfathering.

While we recognise that there may have been issues in its operation (as referred to by the Authority), we would suggest that these have been to do with process rather than competency issues. The industry has invested heavily in implementing robust processes around Grandfathering, including collating documentation specifically for each individual. In addition, the work undertaken by the Authority through its themed inspections has gone a considerable way to addressing the issues that have arisen and can further ensure that the grandfathering process is fit for purpose.

8. Internet

We do not believe that individuals "setting up internet sites" as referred to would need to be accredited. As set out in Section 2.1.1, the Requirements should apply to those individuals in regulated firms that provide advice. It is only where these activities are provided by a regulated firm via the Internet that the Requirements should apply. In such a situation, the Requirements should only apply to the individual providing the advice and not, for example, to the web developer who simply posts information on the website. In addition, we believe that there must be a distinction between pure web information or advertising to the general public as opposed to tailored on-line communications to individual customers – the former not in our view constituting advice and in any case subject to existing CPC Advertising Requirements. We would need a more specific indication as to what type of Internet activities the Authority might have in mind with respect to these new Requirements before we could give any further view.

9. Outsourcing

The section on Outsourcing refers to the activity of the professional management of claims for an insurance or re-insurance undertaking but then proposes that 'the Requirements are complied with by firms undertaking certain activities on an outsourced basis' which would appear to be of a far broader scope. We would seek clarification as to which outsourced activities exactly are proposed to be subject to these new Requirements.

10. Continuous Professional Development (CPD)

We would make the following comments on the specific proposals under this section. Comments or queries in relation to CPD arising from other sections of the paper are made elsewhere in this response.

- The Authority appears to state that individuals who currently hold a recognised qualification and are grandfathered across MCR product categories may be required to complete 120 hours CPD over a 3 year cycle. There should be a requirement for a grandfathered individual to complete CPD to a level consistent with an individual holding a single qualification covering the same accredited activities, as long as it is relevant and widely spread. Grandfathered individuals should not be disadvantaged against a comparable individual who holds a qualification.
- On that basis, we propose that an MCR accredited individual (irrespective of whether grandfathered / qualified or a mix of both) should only be required to complete 15 formal hours per annum.

11. Loan Restructuring

We consider that staff who are engaging directly with a customer on restructuring their loan, involving new products or additional credit facilities, would be providing advice and hence require adequate accreditation. However, a clear distinction would need to be drawn between restructuring in the sense of the incorporation of additional facilities or product types for the consumer and the pure 'rescheduling' of repayments to facilitate the paying down of debt.

For example, a customer in trouble with their existing debt may engage with the bank to take out a term loan to restructure existing loan facilities. An employee advising a customer in this situation would need to be accredited.

This contrasts with the situation where the bank has a non-performing loan and is seeking to recover the loan from the customer. In this situation, the bank employee may be able to agree with the customer that they will make lower repayments than those originally scheduled. In this case, it is only the repayment amount on the existing loan that is changing. For example, the bank may agree with the customer that they will pay €200 a month for 6 years as opposed to €400 a month for 3 years. We believe that individuals conducting this type of activity are not engaged in the provision of advice to consumers and, consequently, accreditation would not be necessary.

12. Investment management.

We do not believe that individuals who are managing investments on behalf of consumers in accordance with agreed mandates and who have no dealings with consumers nor provide advice to consumers should be required to become accredited individuals.

13. Administrative functions

We would be of the view that any changes introduced in this area should clearly set out the specific activities covered and make a clear distinction based on the nature of the administrative function i.e. the effecting of an amendment to a policy by purely acting on the instruction of a customer as opposed to being subject to any engagement with the customer on options available or the best course of action.

Additional comments on points requiring clarification or confirmation

We would seek clarification or confirmation generally at the earliest opportunity on the following points.

14. Section 2.2 Retail financial products

We note the Authority has included a number of new products within the scope of the Requirements. We believe that the full 4-year lead in period should be afforded to staff currently engaged in these activities in order to obtain the necessary qualifications. Furthermore, an individual's experience related to these products should be taken into account in accordance with the existing grandfathering requirements.

15. Section 2.4 Recognised Qualifications

Appendix 2 of the Requirements sets out the recognised qualifications for the Retail Financial Product Categories (1) Shares, Bonds & Other Investments and (2) Savings, Investments & Pension Products. The recognised qualifications for both these categories are limited to the QFA, Professional Certificate in Stockbroking and membership of the Irish Institute of Pensions Managers. There are other qualifications such as CISI (Chartered Institute for Securities & Investment) and SIA (Society Investment Analysts) and their respective CPD courses which should also be recognised

16. Section 2.6 New entrants/ new activities

We believe that where a regulated entity has complied with the obligations set out in 1-4, they have fulfilled all their obligations under the Requirements in respect of new entrants. We would welcome clarification on whether the final paragraph of this Section envisages additional obligations on employers.

17. Section 4.1 Register

We note the more detailed requirements in respect of the information to be recorded on the register, and recognise the additional clarity this can provide for consumers seeking financial services. However, we do not support the inclusion of the name of the supervisor on the Register for a number of reasons;

- by its nature supervision is managed locally on an ongoing basis whereas, in large institutions, the register is maintained centrally. Business requirements may require the supervisor to change on a more frequent basis than would be the case for the status of the accredited individuals.

- the purpose of the Register is to enable the consumer determine that they are being dealt with by an accredited individual. The name of the supervisor is not in itself relevant to that information requirement.

The requirement to maintain a record of the supervisor of those staff who are new entrants or new to a particular activity is addressed separately through Section 4.3 of the Requirements. We therefore suggest that the requirement to record the name of the supervisor in the register be removed.

18. Relevance and quality of curriculum

In our view, the quality of the curriculum of a qualification is as significant as the obligation itself to undertake the qualification. We believe that the courses leading to qualifications should be of high quality, and that the learning material should be up to date and relevant. It is important that any reviews of a qualification by the Authority reflects the need for regular updating of the course to reflect changes in the industry.