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Re: Consultation Paper 51: The Fit and Proper Regime in Part 3 of the Central Bank Reform Act

Dear Sir/Madam

We are writing in relation to your request for comments on Consultation Paper 51 ("CP"). We recognise that the Central Bank Reform Act 2010 (the "Act") provides the Central Bank with significant powers in relation to the roles of certain individuals in regulated entities. We welcome the fact that the Central Bank has decided to consult on the manner in which it will use these powers.

We support the continued efforts by the Central Bank to ensure that only those individuals that meet high standards of fitness and probity occupy senior positions in the financial services industry. We believe, however, that it is important to ensure that there is proportionality in the manner in which these standards are introduced. We welcome, therefore, the statement in the CP that the Central Bank intends to adopt a proportionate and risk based approach in the use of its powers.

If the new regime results in thousands of junior ranking employees falling within the definition of a Controlled Function (CF), there is a real danger that the administrative burden of managing the new regime will detract from the critical objective of ensuring high standards of fitness and probity in the financial services industry.

We set out below our main concerns and observations on the CP. We also make specific comments on the Fitness and Probity Standards in the Appendix.

1. Scope

Page 4 of the CP sets out that the Act has given the Central Bank the regulatory tools to "designate as CFs those positions in regulated firms which we deem are sufficiently important on an ongoing basis". This appears inconsistent with the definition of a CF provided on page 10. That latter definition sets out that all roles that involve individuals providing advice or assistance to a customer in the course of providing a financial service are CFs. There are a number of difficulties with this definition.

a) Firstly, the definition will result in all individuals providing "assistance" to customers being caught in the proposed fit and proper regime. The term "assistance" is not defined in financial services legislation. It brings into scope a much broader range of individuals than would otherwise be captured under the "advice" criterion. It will, for example, capture those individuals who simply provide brochures to customers and who are currently specifically exempted from the Minimum Competency Requirements.

b) In addition, the CF designation captures all individuals providing advice or assistance to customers rather than consumers. In these circumstances, the fit and proper regime will be much broader than that set out by both the Consumer Protection Code and the Minimum Competency Requirements.

c) The definition captures all members of staff dealing in or having control over the property of a customer. At the very least this should be restricted to those individuals who have discretionary authority over customer investments.

We agree that all functions which enable the individual responsible for their performance to exercise a significant influence on the conduct of the affairs of a regulated financial services provider should be designated as CFs. However, we do not agree that all individuals caught under the "assistance" or "control over property" criteria should be included in the CF designation. The inclusion of all of these categories of staff in the CF designation could capture in excess of 10,000 staff members in AIB including approximately 5,000 staff caught due to the "assistance" criterion.

Paragraph 16 of the CP asks whether the Central Bank should formally exempt specific categories of staff from the definition of a CF. Rather than specifying the categories of staff which should be exempt from the CF designation, we believe that the Central Bank should exercise its power in the Act to specifically prescribe those roles that should fall within the CF designation. This would ensure that the new regime is focused on those individuals in positions of significant influence in the regulated entity as well as those individuals who occupy positions of trust and influence with customers. We propose, therefore, that the following categories should be prescribed as CFs:

(a) We propose that those individuals occupying manager roles in financial institutions should be designated as CFs. In AIB, all of these managers will be subject to specific obligations set out in the revised AIB Code of Conduct, which will shortly be introduced. These obligations include a commitment to live the values of honesty, integrity and fairness as set out in that Code and to act as role models for all staff in relation to their business and personal dealings.

(b) In addition to the manager grade of staff, we also suggest that the CF designation should capture those staff members involved in the provision of advice as defined under the Minimum Competency Requirements.

2. Due Diligence Levels

The CP sets out that regulated entities must identify and maintain a record of the individuals who are carrying out PCFs and CFs as well as the necessary due diligence undertaken. It is clear from the CP that PCFs will need to complete an individual questionnaire which, presumably, will reflect the Standards of Fitness & Probity set

out in Appendix 2 of the CP. It is not clear, however, what level of due diligence must be carried out for individuals in CF roles.

As suggested in Paragraph 16 of the CP, we agree that a lower level of due diligence should be permitted for individuals in CF roles. We believe that regulated entities should be permitted to utilise their existing pre-employment screening procedures. For example, AIB has implemented vigorous pre-employment processes which include verification of identity, qualifications, references, medical checks etc. AIB also has a policy on staff members' personal financial affairs which imposes obligations on staff to notify AIB where they find themselves in financial difficulties. We also envisage that existing MCR requirements could be used in assessing the fitness of individuals to perform certain roles.

While we understand and agree with the necessity to pro-actively verify the information provided by individuals proposed for PCF roles, we do not believe that the same level of due diligence and verification is warranted for CF roles. For example, it will simply not be possible to carry out Garda clearance checks for all CF roles. The existing system, which requires candidates for PCF-equivalent roles to provide their consent for the Central Bank to carry out a Garda clearance check, is already under significant pressure. It is unlikely that it could cope with the additional volume of clearance requests. Finally, we suggest that for CF roles, a form of self-certification by the individual should be sufficient. The regulated entity should only be required to pro-actively verify information where it has a reasonable doubt as to its accuracy.

We are not convinced that non statutory guidance is required from the Central Bank on required levels of due diligence. Each regulated entity should adopt and document a reasonable approach that would be appropriate for that organisation.

3. Right of Appeal

We are concerned about some aspects of the redress mechanisms available to impacted individuals under the Act and the new fitness and probity regime. Individuals who fail to obtain approval for appointment to a PCF role have a right of appeal to the Financial Services Appeals Tribunal. However, this right of appeal is not available to those individuals in both PCF and CF roles who are subject to a suspension and/or a prohibition notice. In the case of a suspension notice, it is possible that the individual will have to wait for a period of 3 months before they will have an opportunity to state their case before an independent body i.e. the High Court. For a prohibition notice, the individual could have to wait an even longer period of up to 5 months before they get an opportunity to be heard by the Court. We do not understand why individuals in these situations do not have an immediate right of appeal to the Financial Services Appeals Tribunal.

4. Timeframe for Implementation

The CP states that the new regime will come into effect on 1 September 2011. It also states that firms must be satisfied that individuals in CF roles must satisfy the new standards of fitness and probity at that date. This implies that regulated entities must have carried out appropriate due diligence on all impacted staff by that date. Given

the number of staff potentially covered in an organisation the size of AIB (see above), it will be extremely challenging, if not impossible, to meet the 1 September deadline.

We suggest, therefore, that the Central Bank adopt a phased timeframe for implementation. This would involve the introduction of the full regime for PCF roles by 1 September 2011 with CF roles dealt with thereafter in decreasing order of seniority, to be completed by 31 March 2012.

We would welcome an opportunity to meet with you to discuss our comments and concerns on the CP.

Yours sincerely

Philip Brennan
Group General Manager

APPENDIX

Specific Comments on the Fitness and Probity Standards

Section 3.2 (c)

This first sentence of this section requires a person to be able to demonstrate that he or she "has shown the competence and proficiency to undertake the relevant function through the performance of previous functions which if carried out at present would be subject to this Code ...". This appears to imply that only those individuals who have previously worked in the financial services industry can be appointed to a PCF role. We assume that this is not the case and respectfully suggest that the wording be amended. The previous sub-paragraph (b) seems to cover the point adequately.

Sections 4.1(b) and (c)

These provisions refer to complaints and disciplinary/investigative proceedings that may not yet have concluded or where the individual may have been exonerated. It would not be fair to refuse appointment to a PCF role where an individual has simply been the subject of disciplinary/investigative proceedings that did not result in adverse findings for the individual. In addition, it would not be reasonable to refuse an appointment where the disciplinary/investigative proceedings have not been concluded. Delaying the decision until the outcome of such proceedings was concluded would seem to be a reasonable position in these circumstances.