



Governance, Accounting and Auditing Policy Division
Policy and Risk Directorate
Central Bank of Ireland
PO Box 559
Dublin 2

20 May 2011

Ref: Submissions of FEXCO on Consultation Paper 51: the Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010 (the "Consultation Paper")

Dear Sirs,

1 OVERVIEW

1.1 We have set out below our comments on the Consultation Paper relating to the proposed implementation by the Central Bank of the powers given to it by Part 3 of the Central Bank Reform Act 2010 (the "**2010 Act**") to "*ensure the fitness and probity of persons in positions of significant influence in regulated financial service providers*".

1.2 **Note:** In January 2011, FEXCO (following regulatory approval of the transaction) completed the acquisition of the Goodbody group of companies. Please note that Goodbody Stockbrokers is submitting a separate submission on the Consultation Paper and the comments outlined below are in addition to those provided in the Goodbody Stockbrokers submission.

2 CONTROLLED FUNCTIONS AND PRE-APPROVAL CONTROLLED FUNCTIONS

2.1 Controlled Functions (CFs)

We note that pursuant to Part 3(a) of Schedule 1 of the draft regulations, the Central Bank proposes to prescribe as a CF the following:

"A function in relation to the provision of a financial service which is likely to involve the person responsible for its performance in the provision of a financial service by a regulated financial service provider in one of more of the following ways:

(a) the giving of advice or assistance to a customer of the regulated financial service provider in the course of providing or in relation to the provision of, the financial service;

(b) dealing in or having control over property of a customer of the regulated financial service provider to whom a financial service is provided or to be provided, whether that property is held in the name of the customer or some other person;

(c) dealing in or with property on behalf of the regulated financial service provider, or providing instructions or directions in relation to such dealing."

The employees whose functions would fall within this definition of CF would include a wide range of employees who are not in any position to exercise significant influence in the firm.

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The reference to “*giving ...of assistance*” should be deleted from subparagraph (a) as it would bring into scope administrative and operational staff who give assistance to customers as part of a firm’s day to day operations.

The reference to “*dealing in*” in subparagraphs (b) and (c) should be reconsidered as it would bring into scope administrative/back-office staff processing transactions, transferring funds etc on behalf of customers and/or the firm as part of their day to day duties.

In response to the queries raised on page 16 of the Consultation Paper, we respond as follows:

(1) Yes the Central Bank should formally exempt specific categories of staff from the definition of CF. It should exempt all employees who are under the supervision of and/or carry out their duties in accordance with the instructions of a head of department (which head of department would constitute a CF or a PCF).

(2) The Central Bank should issue non-statutory guidance to firms on what is the appropriate level or types of due diligence which firms should carry out prior to appointing managerial and/or supervisory staff.

2.2 CFs carried on at the office or location of “another person”

We note that Section 20 of the 2010 Act provides that a CF remains a CF even if “*it is carried on at the office or location of another person, whether or not the other person is a regulated financial service provider*”.

It is submitted that, to the extent that a CF is carried on at the office or location of another person, that the firm, having carried out due diligence on that other person, should be entitled to rely on a declaration from that other person that managers performing CFs meet the applicable fitness and probity standards.

We note that the new statutory fitness and probity powers shall apply to all entities regulated by the Central Bank with the exception of the credit unions. It is submitted that where the “*other person*” is a credit union providing the firm’s financial services to customers on behalf of the firm:

- (a) the functions of credit union tellers serving customers availing of the firm’s financial services and of credit union back-office staff processing such transactions on behalf of those customers should not constitute CFs;
- (b) the firm should not (to the extent that any CF in respect of the firm’s financial services is carried out within a credit union) have to apply a standard of due diligence which is higher than the Central Bank is itself currently applying to holders of CFs in those credit unions; and
- (c) to the extent that any CF in respect of the firm’s financial services is carried out within a credit union, the firm should be permitted to adduce evidence that person who holds a CF in respect of the provision of credit union services (e.g. lending) to customers is sufficiently fit and proper to hold a CF in respect of the provision of the firm’s less complicated financial service to customers.

2.3 Pre-Approval Controlled Functions (PCFs)

We note that Section 23 of the 2010 Act provides as follows: “*A regulated financial service provider shall not offer to appoint a person to perform a pre-approval controlled function unless the Bank has approved in writing the appointment of the person to perform the function. An offer made in contravention of this subsection does not create any contractual obligation*”.

We believe that this will create difficulties on a practical level. It will create difficulties for the proposed PCF holder who will be required to complete the IQ form (including the provision of the details of his most recent employer details as a referee) without first having received an offer of employment from the proposing firm. It will also create difficulties for the proposing firm which, having obtained the Central Bank's approval to the appointment, makes the offer to the proposed PCF holder and the PCF holder rejects the offer. In such circumstances, and given that the fit and proper process often proves time-consuming, the proposing firm will need to consider whether an IQ should be submitted to the Central Bank for more than one candidate.

It is submitted that proposing firms should be permitted to make an offer to appoint a person to a PCF which appointment, on acceptance by the proposed PCF holder of that offer, remains subject only to Central Bank approval.

3 **FITNESS AND PROBITY**

3.1 In response to the request for comments on page 31 of the Consultation Paper, we agree that non-statutory guidance on the statutory standards would be useful to firms. We would request that guidance is provided on the following issues:

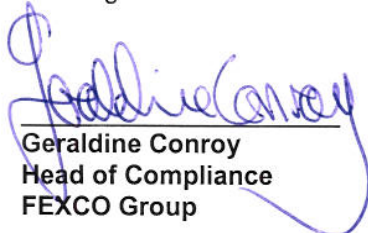
- (a) the extent to which persons can self-certify that they meet the requirements of the statutory standards particularly with respect to probity and financial soundness. If a firm becomes aware or has reasonable grounds to believe that a person has in the past failed to manage his debts or financial affairs satisfactorily, then the firm should conduct enhanced due diligence.
- (b) Guidance on what action a firm should take when a person in a CF or PCF fails to return the documentation or information on time or if they refuse to return the information or documentation.

4 **TIMING**

We note that the Central Bank shall publish the final regulations and the standards by 1 September 2011 and that it is proposed to implement the new test with immediate effect from 1 September 2011.

We would submit that the Central Bank should allow a period of at least three months (to allow firms to compile the list of CFs and PCFs in line with the final regulations and to request and obtain the personal information required from those CFs and PCFs) between the date on which the final regulations and standards are published and the date of implementation.

Kind regards



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