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Governance, Accounting and Auditing Policy Division
Policy and Risk Directorate
Central Bank of Ireland
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Consultation Paper 51 – The Fit and Proper Regime Goodbody Stockbrokers Submission

We welcome the opportunity to provide you with comments in respect of Consultation Paper 51: The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010 (“CP51”).

Our comments are provided under the two broad themes of Controlled Functions and Standards of Fitness & Probity.

1 Controlled Functions

1.1 Pre-Approval Controlled Functions

The Central Bank Reform Act states that “The Central Bank must approve in writing the appointment of a person to a PCF before a firm can offer to appoint that person to the function.” This will be almost impossible to operate in practice and we would suggest that the current regime be continued whereby a firm can appoint a person to a PCF subject to the approval of the Central Bank. There will be difficulties in the completion of the online IQ particularly around obtaining previous employer reference checks if the regulated firm is not in a position to make an offer to the applicant until the Central Bank approves the appointment in writing. It is worth noting that it is current industry practice that many employers only provide a statement of fact relating to the dates of the individual’s employment as a reference as opposed to any qualitative analysis. While we welcome the introduction of an online IQ application process we would stress the importance of the timeliness of the responses from the Central Bank of Ireland.

1.2 Provision of Assistance to a Customer

Part 3(a) of Schedule 1 – Controlled Functions (CF) of the Central Bank Reform Act 2010 states:

“3. 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 or 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;”

This definition brings into scope many administrative staff members who provide assistance to customers on a daily basis. We believe the Central Bank should specifically exempt staff who provide “assistance to a customer” as a CF. The inclusion of such staff within the CF regime will capture almost all staff of a stockbroking firm. While we recognise the importance of capturing staff who exercise a significant influence on firms or staff at managerial levels within a CF, the inclusion of administrative staff adds little or no value. This would lead to a significant undue burden on firms. The current Minimum Competency Regime which captures staff providing advice to customers works well and could be used as a framework for the Fitness & Probity Regime. The Minimum Competency Regime makes a distinction between staff providing advice to retail and institutional clients. We believe that this distinction should also be made in the Fitness & Probity Regime thereby exempting staff who provide advice to institutional or professional customers.

1.3 Control over Property of a Customer or the Firm

2. Part 3(b) and 3(c) of Schedule 1 – Controlled Functions of the Central Bank Reform Act 2010 states:

“3. 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 or more of the following ways:

(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 description brings into scope many operational staff that process transactions and property on behalf of clients held in either their own name or the name of a nominee company as well as property on the firm’s behalf. Many of these staff are in entry-level roles and their inclusion in the regime would not be consistent with the Central Bank of Ireland’s stated aim of adopting a ‘proportionate and risk based approach in the use of our powers’. Processes around dealing with client and the firm’s property have been developed so there is clear segregation in the processing of these types of transactions. We suggest that an exemption is provided by the Central Bank of Ireland to reduce the administrative time and effort in conducting due diligence on staff that fall into this category. We believe that only the Heads of Department and possibly



supervisory staff should be covered as CFs and Fitness & Probity standards and due diligence apply accordingly.

1.4 Non Statutory Guidance on Due Diligence

We believe that the Central Bank of Ireland should provide further non-statutory guidance on what they believe to be appropriate levels of due diligence which firms should carry out prior to appointing staff to Controlled Functions. In the area of Financial Soundness, it is our view that this should take the form of a self-certification process (i.e. the completion of a questionnaire). In the event that Management are aware of issues around an employee then an enhanced form of due diligence should be carried out by the firm to determine whether the employee meets the Fitness and Probity standards.

1.5 Outsourcing of CFs

Many regulated firms outsource functions to other firms and some of these functions may come within the definition of CF. The regulated firm may be legally constrained from carrying out a due diligence exercise on staff in CFs employed by another firm. Hence, the regulated firm should be allowed to rely on assurances from the service provider providing the outsourced services that they have carried out the appropriate level of due diligence to meet the Fitness and Probity standards. In the event that the entity providing the outsourced services is also a regulated entity, we are of the view that the responsibility to implement the Fitness & Probity regime is that of the service provider providing the outsourced services.

2 Fitness & Probity

2.1 Financial Soundness

The consultation paper states *'Where a person has failed to manage his or her debts of financial affairs satisfactorily, especially where that caused loss to others, the person's competence, honesty and integrity may be in doubt'*. We believe this definition is too broad and should be limited to cases of personal insolvency.

In addition, the wording in Section 23 is far too broad. The current wording will capture individuals who have made passive syndicated investments (with no operational role in the syndicate) in the event that the investment subsequently becomes insolvent. It is surely an unintended consequence that such a person's competence, honesty and integrity may be called into question if they are associated with an entity that became insolvent or went into administration.

2.2 Non Statutory Guidance on Financial Soundness

Further to Point 2.1 above, non-statutory guidance would be useful to assist firms in determining whether a person's personal financial history meets the financial soundness standards. This may also provide protection for a firm in the event that a staff member, who has been removed from a CF function, takes a case against the firm.



2.3 Understanding of the Regulatory & Legal Environment

The Paper states:

“Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she:

(e) Has a clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function;

There may be instances where regulated firms wish to appoint individuals who have experience in the financial services industry gained in another jurisdiction. While their experience gained in the other jurisdiction would be very relevant for the role, they may not be able to demonstrate that they have a comprehensive understanding of the Irish regulatory and legal environment and hence would not satisfy the competence requirements set out.

Please do not hesitate to contact me if you require additional information on the above.

Yours sincerely



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Head of Compliance

