



INVESTMENT
TECHNOLOGY
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Governance, Accounting and Auditing Policy Division,
Policy and Risk Directorate,
Central Bank of Ireland,
PO Box 559,
College Green,
Dublin 2.

20 May, 2011

Re: **CP51 – Fit and Proper Regime (Part 3 Central Bank Reform Act, 2010)**

Dear Sir/Madam,

Investment Technology Group Limited and Investment Technology Group Europe Limited (together "ITG") welcomes the opportunity to respond to the Central Bank of Ireland's ("CBol") Consultation Paper 51 ("CP51") concerning the proposed amendments to the Fit and Proper Regime through Part 3 of the Central Bank Reform Act, 2010.

ITG is a specialised brokerage and financial technology firm that partners with asset managers globally to provide innovative solutions across the investment process. ITGL operates an electronic crossing system in Ireland called POSIT® which is authorised by the CBol as a MTF since the introduction of the Markets in Financial Instruments Directive in late 2007.

In broad terms we welcome the proposed changes set out in CP51 but do seek the CBol's clarification on the practical application of certain aspects to the proposals as set out below.

Financial Service

We suggest 'financial service' be defined or amended to state 'regulated financial service'. Financial service is a very broad term and some regulated firms may have lines of business that do not fall within the regulatory net and it would seem inappropriate that individuals working in client facing roles for an unregulated part of the business should need to apply to the CBol for authorisation as a Fit and Proper approved person. The UK FSA have made this distinction by bringing those acting in a 'regulated activity' within the parameters of the Fit and Proper Regime.

Pre-Approved Controlled Functions ("PCFs")

Please clarify when an entity should notify the CBol of its intention to offer a position to a prospective employee that falls within a PCF? We see some logistical issues in terms of the interview process. A typical scenario could be where an entity invests a considerable amount of time and effort in interviewing candidates and when a suitable one for a PCF is found, the entity would then conduct background checks on the candidate in question. When the checking is complete (up to three weeks), would the entity then apply to the CBol for PCF approval of the respective candidate? A difficulty for industry would arise if a proposed PCF's application is

refused by the CBol. It is highly likely that the proposing entity will have lost the opportunity of offering the position to the second choice candidate. Another issue is reference checking. References from current employers would not be feasible until after an offer of employment has been made and accepted.

Multi-Jurisdiction

We note your proposal that a Controlled Function ("CF") remains a CF even if the function is carried out at an office or location outside the State. Could the CBol please clarify whether a dual application would be necessary in this instance? e.g. will those employees in control functions in a branch within the EU/EEA be required to apply to the CBol for approved status or will the Host State approval be sufficient? Also will employees of tied agents be required to apply to the CBol for approval status?

Financial Soundness

We ask for clarification from the CBol as to how a regulated firm can determine the financial soundness of a CF/PCF? Could the CBol please clarify to what extent an individual would be deemed not financially sound?

Can the CBol please define 'associated' in the context of a person associated with an entity that became insolvent, went into liquidation or was in the control of a Court appointed liquidator. Is that person's financial soundness called into question if they worked in the entity at the time it became insolvent or would they need to have been the managing director, chief financial officer or similar officer level of such an entity at the time of insolvency? In some cases the entity may become insolvent months after the true perpetrator has left so clarification is welcomed in this regard.

Discipline Individuals

The CBol is proposing to 'discipline and/or remove' individuals from CFs where they are no longer fit and proper. Clarification is sought on what the CBol constitutes to be 'discipline' in this instance and the benefit this would bring in the event that an individual is not deemed fit and proper for such instances as they are deemed by the CBol to be lacking specific knowledge of the legal/regulatory structure of an organisation?

Exception to the Fit & Proper Regime

Has the CBol considered applying an exception to the Fit and Proper Regime for emergency situations whereby an individual may act in the capacity of an approved person for an interim period, similar to the UK FSA's 12 week exemption per annum? This would allow a person to fill in for a CF or PCF in the event of their absence from the office.

Competence and Capability

In terms of considering the competence and capability of a proposed CF/PCF we welcome the CBol's guidance on how regulated firms may assess the 'degree of competence and proficiency to undertake a relevant function that the persons have demonstrated in a previous or current role' when the proposed CF/PCF has never worked for them before?

Market practice and employment law issues are likely to make it difficult for industry to obtain references from the current employer of a proposed CF/PCF prior to them handing in their notice or compel a previous employer to provide an accurate and detailed reference. It is common practice that references just state the title and date of commencement and cessation of employment. We welcome the CBol's clarification as to when it suggests we seek such a reference.

Could the CBol please provide guidance as to how regulated firms would determine if a proposed CF/PCF contributed to the necessity for an institution to require State financial support?

Please confirm how employment and anti-discrimination laws will co-exist with the CBol's new requirement that regulated firms must determine whether a proposed CF/PCF 'is capable of performing the relevant function on a continual basis having regard to his/her physical and mental health'? Please specify whether 'physical health' would refer to someone in a wheelchair or with a physical handicap? If so, we suggest the removal of this proposal from the final code.

Due Diligence

We agree that it would be very useful if the CBol provides non-statutory guidance to regulated firms on what level of due diligence should be carried out on what CF/PCF position.

Fitness and Probity

This is an area of great complexity and in order for the CBol's proposals to be effected harmoniously in the market additional guidance; industry training; and increased frequency of examinations should be considered. We believe consumers, industry and the CBol would benefit if there was a greater choice of relevant financial industry courses and an increase in the frequency of examinations in order to meet the Fitness and Probity standards. It would also be beneficial to consumers and industry if the CBol took ownership and control of running the specific regulatory aspect of these courses and exams.

We thank you again for giving us the opportunity to respond to CP51 concerning the proposed amendments to the Fit and Proper Regime.

Please do not hesitate to contact us should you need any clarification on the contents of this letter or would like to discuss further.

Yours sincerely,



David Nolan
Compliance Manager