

From:
Sent: 16 May 2011 20:11
To: fitandproper
Subject: Fit and Proper Regime

My review of the Consultation Paper raises the following issues as set out below:

Section 1: Introduction:

There is no reference to past behaviour.

Section 2: Central Bank Reform Act, 2010

There is a clean starting point which totally fails to address past behaviour. Those in a position of power who make decisions on PCF's and CF's do not have to explain past breaches of Company law, legal and regulatory requirements. CP51 gives them and the Central Bank a free pass to forget about the past.

Section 3: Purpose of this consultation

It is not clear if those CF's who engaged in fraudulent or negligent past behaviour should face sanction bearing in mind that the Central Bank would have been aware or was not doing their job correctly at the time.

Section 4: Terminology and Legal Basis

- CF's are put into positions to ensure that they do as they are told by senior management as opposed to their legal and regulatory requirements yet the forward looking nature of CP51 ensures that those who should not be in a position of power and influence will get away with it.
- Individuals are permitted to hold multiple PCF/CF's positions which allows senior management to control how their compliance, risk and reporting functions are manipulated as there is no independence and this is permitted by the Central Bank.

Section 5: Standards of Fitness and Probity

- There is no reference to past behaviour as senior managers are allowed to make decisions when they should be facing sanctions, see point '25'.
- The vast majority of Directors have no understanding of Company Law and are given jobs as part of the golden circles with the full knowledge of the Central Bank. The Central Bank continues to do nothing about this and will not address this issue as it may question the performance and connections between Directors and the Central Bank to date.

Section 6: Transitional arrangements

Point 32 shows the real power of CP51 as the Central Bank is not responsible and continues their track record of having plenty to say but does nothing.

The easy way that senior managers 'fooled' Boards and the Central Bank in the past.

- Payoffs for employees who raise breaches of Company law, legal and regulatory requirements. Legal Firms and Senior Management are aware of specific breaches of Company law, legal and regulatory requirements but bury the truth and hope that the Central Bank does not ask the right questions which it never does.
- Monies are moved across segregated accounts to cover operational losses so the reported performance is a work of fiction. Senior Management will not be able to reconcile their operational losses to their bank accounts as they fraudulently engage in false reporting but auditors and the Central Bank never check this or ask the right questions.
- Netting off gains and losses and manipulating reporting to all.

- Auditors will sign off on anything and similar to Legal firms should be in the scope of CP51 where they sign off on accounts which subsequently show fraud and criminal behaviour but it is not in the interests of all.

Questions to ask:

- Do you intend asking those in Senior positions are they or did they ever engage in behaviour contrary to Company law, legal and regulatory requirements and their obligations?

It is common knowledge within the Financial Services Sector and the Funds Industry that those who are currently in Senior Management and Board positions are the same individuals who since at least 1990 were allowed to engage in behaviour which permitted them to mask the true performance of the Companies for their personal financial gain in terms of salary and other benefits. Failure to ask the right questions will allow those who have gotten to a position of power and influence by breaching Company law, legal and regulatory requirements to continue to act in a position of power and set the standards which appears to be one of the objectives of CP51 as it is all 'forward looking' seeking 'pre-approval'.

- If an individual or management team leave 'overnight', it should raise a red flag as the reality is that someone may have found the truth about how performance has been masked or a breach of legal and regulatory requirements. Instead of reporting to the Central Bank, all leave with payoffs and the Company says nothing. In some cases parent companies will have been lied to by local management but if they report this issue to local or own regulator it raises questions about how they were fooled so they do and say nothing compounding the problem. The Central Bank will not ask the right question why did an individual/team leave as it knows the answer but will still allow them to work within financial services under their current fitness and probity regime.

- Will you ask Companies through their HR departments, have they made any payments to employees who raised issues relating to legal and regulatory breaches and if so can they explain why they were paid off and was there an obligation on the company and the legal firm to report any breaches.

- It is common knowledge that legal firms draw up confidentiality agreements with Companies on the instruction of senior management who have breached Company law, legal and regulatory requirements to ensure that deliberate criminal negligent actions never see the light of day. Legal Firms who work with Companies should be within the scope of CP51 and should be asked to state are they aware of breaches of Company law or legal or regulatory requirements.

- If a current Senior Manager has engaged in past behaviour which breached Company law, legal and regulatory requirements which the Central Bank were aware of and did noting in the past or are aware of now, what will happen?

- There is no sanction for past behaviour?

Summary:

- CP51 is a whitewash which allows current Senior Management, Directors of Companies and the Central Bank not to be accountable for their actions to date but they are allowed to make and take decisions. They are also allowed to set the standards for the future which is explicitly stated in point 25 and shows that this exercise is a waste of time and it is not even a good PR exercise.

- The only way to understand how PCF's operate is to interview those who report into them. If the Central Bank chooses to do this, it runs the risk of finding out the truth which does not appear to be an objective of CP51. Maybe those outside Ireland will be impressed by this pretence but the only certainty is that no action will be taken as it will force questions to be raised about all parties in the past who did and said nothing as it was in their collective best interests but not the Irish Financial sector.

Ms. J Whyte