

20 May 2011

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

**Re: "Fit and Proper Regime"
Submission on Consultation Paper 51**

Dear Sir/Madam,

Pershing Securities International Limited ["PSIL"] welcomes the opportunity to respond to Consultation Paper 51: *The Fit and Proper Regime in Part 3 of the Central Bank Reform Act 2010* ("CP51"). PSIL is an affiliate of Pershing LLC and a subsidiary of The Bank of New York Mellon Corporation. The firm is a leading provider of outsourcing solutions for stock broking firms in Ireland and is a settlement only member of the Irish Stock Exchange. Our UK-based sister company, Pershing Securities Limited, is a Clearing member of the Irish Stock Exchange.

From our group's offices in London, Liverpool, and Dublin, we provide operational, IT, regulatory, and investment support and solutions on an integrated basis for clients in Ireland, the UK, and continental Europe.

We note the provisions of Part 3 of the Central Bank Reform Act 2010 ["CBRA"], in particular the provisions of Section 20 regarding controlled functions. Section 20(1) of CBRA grants the Central Bank the power to designate controlled functions, and specifies in Section 20(2) the broad selection criteria for designation of such controlled functions. The Central Bank's current proposals for designation are set out in Schedule 1 of the draft Statutory Instrument forming Appendix 1 of CP51¹.

As this Schedule is currently drafted, the Central Bank is proposing to designate a broad range of activities, in particular clause 3 which includes "*the giving of advice or assistance to a customer*" and "*dealing in or having control over property of a customer...whether that property is held in the name of the customer or some other person*". Given that PSIL provides clearing and settlement services as its primary activity, it is likely that this broadly worded clause will have significant application for PSIL.

The importance of Section 20(4) of CBRA in particular has relevance for firms such as PSIL which form part of tightly integrated global groups operating on a pan-European basis. This subsection states that:

"A controlled function remains a controlled function even if—

- a) it is carried on at an office or location outside the State,
- b) it is carried on at the office or location of another person, whether or not the other person is a regulated financial service provider, or
- c) it relates to a business of a regulated financial service provider established in the State conducted by that provider outside the State."

¹ Pages 39-40 of CP51



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As currently drafted, the lack of a geographical or entity-level limitation on the proposed controlled functions will have a considerable effect on firms such as PSIL, which organise their affairs on a pan-European basis. For example, PSIL outsources certain activities relating to the settlement of customer property to UK sister company Pershing Securities Limited, which is a FSA regulated entity and the appropriate staff are registered under that Fit & Proper regime. Such outsourcing is explicitly permitted under the MiFID Regulations² which govern PSIL's activities and is compliant with the quality standards for such outsourcing as set out in MiFID Regulation 105.

As the CP51 proposals currently stand, PSIL will remain liable to ensure that such outsourced work is performed only by persons that PSIL can demonstrate are fit and proper within the meaning of the Central Bank requirements, notwithstanding that they are performed by persons in another jurisdiction and are working for a different entity. Such individuals will in most cases already be subject to fit and proper requirements imposed by their home state regulator, which may not align with the criteria proposed by the Central Bank.

While we appreciate the desire of the Central Bank to have appropriate anti-avoidance provisions, the lack of a geographical, entity or other scope limitation to the requirement for controlled functions to be performed only by persons demonstrable as meeting Irish fit and proper requirements poses significant compliance difficulties for Irish firms properly outsourcing certain activities, whether within their global group or outside of it.

This places the burden of dual regulation both on the firm and the Central Bank. The lack of limitation also places Irish firms at a material competitive disadvantage compared to foreign firms which passport their services into the State and which are not subject to such stipulations as they are not regulated financial services providers within the meaning of the CBRA.

We would respectfully suggest that the scope of the fitness and probity standards in Section 2 of the proposed Code of Conduct³ be amended to exclude outsource service providers, provided that the regulated financial services entity remains responsible for the work undertaken on its behalf and the work is undertaken by another regulated entity.

We greatly appreciate this opportunity to engage with the Central Bank in our mutual interest of improving financial services regulation as a whole.

Yours sincerely,



Patricia Donnelly
Compliance Officer

² European Communities (Markets in Financial Instruments) Regulations 2007 (as amended)

³ Page 51 of CP51