



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2011

**Consultation Paper 51:
The Fit and Proper Regime in Part 3 of
the Central Bank Reform Act 2010**



Contents

Section Number	Contents	Page Number
1	Introduction	2
2	Central Bank Reform Act, 2010	4
3	Purpose of this Consultation	7
4	Terminology and Legal Basis	9
	- Controlled Functions (CFs)	10
	- Pre-approval Controlled Functions (PCFs)	12
	- Questions relating to PCFs and CFs	15
5	Standards of Fitness and Probity	18
	- Fitness - Competence and Capability	19
	- Probity	21
	- Financial Soundness	22
	- Persons exercising functions prescribed as controlled functions on commencement of the Regulations	24
	- Regulated financial services providers which have received State financial support	26
6	Transitional arrangements	27
7	Processing Fitness and Probity applications	29
8	Questions relating to the proposed Standards of Fitness and Probity	31
9	Implementation/Further considerations	32
10	Making submissions	33
	Appendix 1 Draft Regulations	34
	Appendix 2 Draft Fitness and Probity Standards	48

Section 1: Introduction

1. Two critical factors emerge from most if not all analyses of the financial crisis. The first relates to weak or absent corporate governance and the second relates to individuals at board or senior management level who were complacent, lacked the knowledge and expertise to challenge at board or senior manager level or who simply did not understand the risks associated with their business and the wider economy. The Central Bank of Ireland (“the Central Bank”) is addressing these shortcomings. First, we have introduced a comprehensive corporate governance regime for banks and insurers and we are in the process of developing appropriate corporate governance regimes for other sectors of the financial services industry under our supervision. Secondly, we sought additional statutory powers to enable us to apply an enhanced fitness and probity regime to individuals across all regulated financial services providers.

2. In doing so, we wanted to raise the bar in Fitness and Probity in three ways:
 - In our gatekeeper role, by being able to prevent individuals from entering into senior positions in regulated firms, where we had concerns as to their fitness and probity;
 - In our ongoing supervisory role, by being able to investigate, suspend, remove or prohibit individuals from senior positions in the financial services industry where concerns arise about their fitness and probity; and

- By setting high statutory Standards of Fitness and Probity for all individuals in the financial services industry to follow and which could be enforced in the event of non-compliance.

Section 2: Central Bank Reform Act, 2010

3. The necessary statutory regime was provided for in the Central Bank Reform Act, 2010 (the Act). The Act has given us the regulatory tools to:

- (a) Designate as Pre-approval Controlled Functions (PCFs) those positions in regulated institutions which we consider it obligatory to obtain our prior approval before appointing an individual to that role or function;
- (b) Properly scrutinise any proposed appointments of individuals to a PCF in the firms which we regulate (with the exception of credit unions), so as to ensure that the individuals proposed are fit and proper to discharge their responsibilities and obligations to the proposing firm, its stakeholders and the Central Bank. In the event that we are not satisfied, we can refuse to approve the proposed appointment;
- (c) Compel the production of specified information and documentation from individuals or regulated firms and compel attendance before us for interview prior to making such an appointment so that we can investigate fully any concerns which may arise;
- (d) Designate as Controlled Functions (CFs) those positions in regulated firms which we deem are sufficiently important on an ongoing basis such that, where a need arises, we may

investigate, suspend, remove permanently and/or prohibit an individual from carrying out a controlled function in a regulated financial services provider in the future;

- (e) Ensure that proposing firms take all necessary steps to ensure that they:
 - i. only propose suitable individuals to be appointed to a PCF; and
 - ii. monitor individuals carrying out CFs and, where necessary, discipline and/or remove such individuals from CFs where they are no longer fit and proper to carry out those functions.

- (f) Impose statutory Standards of Fitness and Probity which all individuals holding positions as CF or proposed as PCF must meet and which, if breached, may result in regulatory action being taken including:
 - i. refusal to appoint an individual to a PCF; or
 - ii. suspension, removal or prohibition of an individual from carrying out a CF.

- (g) Take enforcement action under the Administrative Sanction Procedure under Part IIIC of the Central Bank Act 1942 in the event of non-compliance with the Act or Standards of Fitness and Probity.

4. In addition, the Act strengthens our ability to obtain accurate, relevant information from individuals and entities by creating certain criminal offences including:

- (a) Failing to appear before the Head of Financial Regulation of the Central Bank where required;
- (b) Failing to produce evidence where required;
- (c) Refusing to answer questions in compliance with an evidentiary notice from the Head of Financial Regulation;
- (d) Providing false or misleading information to the Central Bank or the Head of Financial Regulation.

Section 3: Purpose of this consultation

5. We committed ourselves to carrying out a full public consultation prior to using the powers provided for in the Act. The Central Bank is seeking views on its proposed implementation of the powers given to it by Part 3 of the Act to ensure the fitness and probity of persons in positions of significant influence in regulated financial service providers. This consultation concerns two aspects of the proposed fit and proper regime. They are;

- the designation of positions in regulated financial services providers as PCFs (i.e. the holders of which must be fit and proper before they can take up the positions) and CFs (i.e. those offices the holders of which who can be removed if they are not fit and proper); and
- the Standards of Fitness and Probity which they must meet.

6. Our new powers under the Fit and Proper Regime operate *in addition* to our other regulatory and enforcement powers, including but not limited to:

- Our existing statutory powers in relation to fitness and probity e.g. in relation to refusing applications for authorisations or licences, suspending or revoking authorisations or licences granted and the removal of individuals where specifically provided for in other legislation;
- Our power to impose administrative sanctions pursuant to Part IIIC of the Central Bank Act 1942;
- Our powers of prosecution.

We will adopt a proportionate and risk based approach in the use of our powers.

Section 4: Terminology and Legal Basis

7. Our power to designate those roles or functions which we consider to be PCFs and CFs arises pursuant to section 20 and section 22 of the Act. Our power to issue statutory Standards of Fitness and Probity arises pursuant to section 50 of the Act.

Controlled Functions

8. The following is set out in the Act in relation to a CF

- (a) A CF is a function prescribed by the Central Bank if and only if the function is a function in relation to the provision of a financial service, and it -
- is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a regulated financial service provider, or
 - relates to ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations, or
 - involves 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:
 - 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;
 - 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;
 - dealing in or with property on behalf of the regulated financial service provider, or providing instructions or directions in relation to such dealing.

- (b) A CF remains a CF even if it is;
- carried on at an office or location outside the State,
 - carried on at the office or location of another person, whether or not the other person is a regulated financial service provider, or
 - related to a business of a regulated financial service provider established in the State conducted by that provider outside the State.
- (c) A function may be prescribed as a CF in relation to a specified class or classes of regulated financial service providers or in relation to regulated financial service providers generally.

Pre-Approval Controlled Functions

9. The following is set out in the Act in relation to a Pre-approval controlled function PCFs.

- (a) 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.
- (b) A PCF is a controlled function prescribed by the Central Bank by regulation if the function is one by which a person may exercise a significant influence on the conduct of a regulated financial service provider's affairs.
- (c) The Central Bank may also prescribe a CF as a PCF if the person who performs the function reports directly to the office of director, chief executive or secretary, if the Central Bank is satisfied that it is warranted on the grounds of the size or complexity of the regulated financial service provider and it is necessary and prudent in order to verify compliance by the regulated financial service provider.
- (d) The Central Bank can declare by written notice to the regulated financial service provider that a function is a PCF if;
 - the person who performs the function is concerned in the management of the regulated financial service provider,
 - the function is not prescribed as a PCF by regulation, and

- no other person in the regulated financial service provider performs a PCF.
10. It is important that, in the case of institutions such as credit institutions, insurance/reinsurance undertakings, investment firms and fund service providers, relevant managers below executive level as well as particular post holders (for example, Compliance Officers, Money Laundering Reporting Officers (MLRO), Risk Managers and Heads of Internal Audit) should also be fit and proper.
 11. The Central Bank requires entities proposing to appoint PCFs and CFs to vet the fitness and probity of proposed appointees to ensure that they meet the standards referred to below.
 12. Therefore, the Central Bank expects firms to have effective systems and controls in place to ensure that individuals proposed for PCFs and those appointed to CFs are fit and proper on appointment and remain fit and proper. The Central Bank may carry out reviews of firms' arrangements and maintenance of up to date lists specifying who is carrying out PCFs and CFs. The Central Bank will keep the positions designated as PCFs and CFs under review and will, if necessary, bring more functions within the scope of PCFs and/or otherwise revise the scope of functions falling within the CF part of the Regime.
 13. Some CFs relate to consumer protection in that they capture persons who give advice to consumers e.g. those who advise on investment products, manage investment portfolios etc. Other positions, such as call centre staff, may be captured by the definition

of a CF by virtue of the fact they fall within the statutory description of “giving of assistance”. It is important that the managers/supervisors at the centres who have the responsibility for ensuring proper process and information to customers rather than the call centre staff are captured by the new powers.

14. The fitness and probity and the level of vetting for roles or functions outside the CFs and PCFs will remain a matter for firms, subject of course to complying with the required standards of fitness and probity.
15. We attach at **Appendix 1** the draft Regulations which we propose to issue and which set out on an industry sector basis those positions which we propose to prescribe as PCFs and CFs. While such tables are extensive, they are not exhaustive.

Questions relating to proposed PCFs and CFs

16. We are seeking views on the draft Regulations. The purpose of this Consultation Paper is to obtain feedback on the following areas:

i. Our proposed designation of CFs and PCFs as set out in the Regulations attached as Appendix 1. It should be noted that the Act is prescriptive in setting out the relevant criteria applying to positions which may constitute PCFs and CFs. Comments are invited in particular in response to the following questions:

- a. Do you consider any PCFs or CF should be removed from the list? If so, the reasons why?
- b. Do you consider any other positions or functions should be added to the lists of CFs and PCFs? If so, the reasons why?
- c. Section 20(2)(c) of the Act specifically provides that the Central Bank may prescribe a function as a CF if and only if the function is a function in relation to the provision of a financial service and (among other things)

“Is likely to involve the person responsible for its performance in the provision of a financial service provider in one or more of the following ways:

- i. 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,*

- ii. *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,*
- iii. *dealing in or with property on behalf of the regulated financial service provider, or providing instructions or directions in relation to such dealing.”*

We are mindful that although CFs do not require the prior approval of the Central Bank, firms are still required to carry out appropriate due diligence prior to appointing individuals to CF positions. While the Central Bank does not wish to place undue burdens on firms, it would wish to reserve its ability to remove staff from a range of roles which might be described as providing assistance (as CFs) if they are considered not to be fit and proper. In order to strike a balance, we therefore invite submissions on the most appropriate guidance to firms in relation to the level of due diligence which firms should carry out prior to appointing individuals to CF positions. For example:

- (1) Should we formally exempt specific categories of staff from the definition of a CF; or
- (2) Should we provide non statutory guidance to firms on what we consider to be appropriate levels or types of due diligence which firms should carry out prior to appointing staff thereby allowing for firms to adopt varying levels of

due diligence (for example providing reduced vetting for assistance roles with a lower risk profile, such as call centre staff)?

Section 5: Standards of Fitness and Probity

17. Under Section 50 of the Act, the Central Bank has a discretion to issue statutory Standards of Fitness and Probity to apply across the financial services industry. Where we issue such Standards, these will be the benchmark for considering the fitness and probity of people appointed to PCFs and CFs and may be the basis for refusing to approve the appointment of a person to a PCF, or for removing or prohibiting someone from carrying out a CF if they do not meet those Standards. A copy of the draft Standards of Fitness and Probity is attached at **Appendix 2**.

Fitness – Competence and Capability

18. An individual is required to have the competence necessary to perform the CF or PCF for which he or she is proposed. This is normally tested with regard to the qualifications and experience of the individual. It may also be necessary, depending on the function to which the person is to be appointed, to demonstrate capabilities such as the ability to understand internal governance and risk management concepts and the overall business model of the entity. Whereas common standards of probity should apply, regardless of the size or activity of the entity, the requirements for competence will vary to reflect the nature of the post and the size and activity of the entity.

19. Where the Central Bank of Ireland's minimum competency requirements (as outlined in the paper Minimum Competency Requirements of June 2006) apply, the entity shall ensure that the proposed appointee fulfils those requirements.

20. In considering the competence and capability of a person proposed for appointment to a CF or PCF, the entity should take into account all relevant considerations including:

- The activities and size of the entity;
- The responsibilities of the position - the individual should be aware of the responsibilities involved;

- Whether the person has a sound knowledge of the business and responsibilities he or she will be called upon to undertake. The individual should have a clear and comprehensive understanding of the regulatory and legal environment in which they operate and intend to keep up to date with the changing industry-specific environment;
- Whether the person has shown the capacity (i.e. the competence and capability) previously to undertake similar responsibilities of the position;
- The existing responsibilities of the individual including but not limited to the number of existing directorships held by the individual;
- The degree of competence and proficiency to undertake a relevant function that the person has demonstrated in a previous or current role. If the person performed a function in a regulated financial service provider which received State financial support, consideration shall be given to the competence and skills demonstrated by that person in that function and to the extent, if any, to which the performance of his or her function may have contributed to the necessity for such State financial support.

Probity

21. Individuals proposed for CFs or PCFs should be honest, diligent and independent-minded and should act ethically and with integrity and fairness. Probity may also include individuals ensuring that they act without conflicts of interest. These attributes are used to describe probity. Probity is thus a matter of character illuminated by a person's past behaviour. While we rely on a clear record as an indicator of good character, we recognize that it is not an infallible indicator. Furthermore, it is not easy to define explicitly probity in a way that ensures that the fit and proper test captures all possible aspects of the concept. Probity is broader than any attempted definition or list of qualities.

Entities subject to these standards differ widely in size and in the nature of their activities. Nevertheless, the same standards of probity will apply, no matter the size and activity of the entity.

Financial Soundness

22. Financial Soundness covers two areas - personal bankruptcy or similar and association with the bankruptcy or similar of a company. It is not a matter of personal wealth. Where a person has failed to manage his or her debts or financial affairs satisfactorily, especially where that caused loss to others, the person's competence, honesty and integrity may be in doubt. Where an individual has such issues in his or her past, the Central Bank will enquire further into the matter. It may not necessarily follow that one incident in a person's past (for instance, where a person did experience difficulty, but subsequently honoured all debts) would rule them out. However, it is important for the Central Bank to be aware of such instances in the past so that it can have confidence in the fit and proper test in light of information coming from members of the public or from other sources.

23. Where a person has been associated with an entity that became insolvent, went into administration, was in the control of a Court appointed liquidator or otherwise failed to meet its financial obligations to creditors or beneficiaries, that person's competence, honesty and integrity may be brought into question. As above, it may not necessarily follow that an instance in a person's past (for instance, where their association with a firm was at a very junior level) would rule him or her out. The Central Bank would enquire further into the matter to establish whether or not the circumstances did reflect on the person's probity or competence. As explained in the paragraph above, it is important for the Central

Bank to be aware of any such instances, even where they are not likely to cause an adverse decision.

Persons exercising functions prescribed as controlled functions on commencement of the Regulations

24. The legislative requirement to apply for the Central Bank's pre approval for the exercise of PCFs will apply to all new applicants after the commencement of the Regulations prescribing PCFs.

25. Persons in existing functions which are prescribed as PCFs by the Regulations are not legally required under Part 3 of the Act to seek the Central Bank's written approval to continue in that role or function.

26. However, such persons will fall within the Central Bank's powers concerning CFs and thus the following will apply:

- i. The person will be subject to the Bank's powers of investigation, suspension and prohibition in the Act;
- ii. Regulated financial services providers where the person performs the function must satisfy themselves on reasonable grounds that the person complies with the Standards of Fitness and Probity, where issued under Section 50 of the Act. Furthermore, the regulated financial services provider shall not permit a person to perform a controlled function unless the person has agreed to abide by any such standard; and

- iii. In addition, should such a person propose to take up a new position¹ which is a PCF, that person will require the Central Bank's pre approval in writing for his/her appointment to that position.

¹ A "new position" is a position as a PCF with a different firm (whether of the same authorisation status or not) or a different PCF within the same firm.

Regulated financial services providers which have received State financial support

27. The Central Bank will review the fitness and probity of persons in PCFs in financial services providers receiving or having received State financial support, who intend to continue performing those functions after 1 January 2012.

28. The Central Bank will have particular regard to the competence and skills demonstrated by those persons and to the extent, if any, to which the performance of those functions may have contributed to the necessity for such State financial support.

29. Where the review causes the Head of Regulation to form the opinion that there is reason to suspect the person's fitness and probity to perform the relevant PCF, an investigation may be conducted.

30. The Central Bank will issue prohibition notices in appropriate cases.

Section 6: Transitional arrangements

31. The new regime of Regulations and Standards will come into effect on **1 September 2011**. Individuals who hold positions as PCFs and CFs as at that date will continue in those positions.
32. However, firms are required to comply with Section 21 of the Act which prohibits them from permitting a person to carry out a CF unless the firm is “satisfied on reasonable grounds that the person complies with any standard of fitness and probity in a code issued by the Central Bank under section 50 and the person has agreed to abide by any such standard”.
33. The Central Bank will require firms to identify and maintain a record of the individuals who are carrying out PCFs and CFs at transition to the new regime together with the necessary due diligence undertaken.
34. Firms will also be required to submit to the Central Bank a list of those individuals who are carrying out the specific PCFs in their firm (as at the date upon which the Regulations come into effect). Firms will be given until **31 December 2011** to supply the list of PCFs to the Central Bank.
35. The boards of such firms will be required to sign off when submitting the lists that they are satisfied the individuals are fit and proper according to the Fitness and Probity Standards issued under section 50 of the Act.

36. If not so satisfied, they should discuss their proposed actions with their Central Bank supervisory team.

Section 7: Processing Fitness and Probity applications

37. All Fit and Proper applications will be dealt with by the Central Bank's Regulatory Transactions Department (RTD), in consultation with the relevant supervisory Department. This Department will be the centre for standardised application processing and decision making.

38. The means by which this test is currently carried out will change in a number of respects. The Bank intends to introduce a more automated process, with an online Individual Questionnaire (IQ) form replacing the current paper form. The new online IQ form will be accessible via the Central Bank website and firms will be provided with 'User Accounts', allowing them to log on to the online system. Individual accounts for PCF applicants can then be created by firms, enabling applicants to complete their IQs online. The system will include:

- an online IQ form, to be completed by the proposed holder of the PCF (including pre-formatted Curriculum Vitae sections within the IQ form itself);
- an online declaration by the applicant as to the accuracy and veracity of the information provided;
- an online declaration from the proposing firm, by an appropriate member of the firm, confirming the checks of the individual undertaken by the firm (e.g. appropriate due diligence regarding qualifications and experience, previous employer reference checks etc.) and confirming that the

firm is satisfied that the proposed holder of the PCF is fit and proper;

- where we consider it necessary, we may conduct an interview with PCFs before deciding on whether or not to approve an application.

39. One of the aims of the process will be to ensure that applications received through the proposing firms will be validated at point of submission to the Bank, thus ensuring that only fully completed applications will be accepted. For example, validation will ensure that:

- only valid PCFs can be applied for;
- appropriate firm and applicant details are provided;
- appropriate Garda clearance is attached (where deemed necessary);
- Minimum Competency Requirements have been met (where appropriate);
- any gaps are explained (e.g. employment history, address history);
- all mandatory entry fields are completed and that formats of data entered are appropriate.

40. The new process should provide improved customer experience through a standard engagement model.

Section 8: Questions relating to the proposed Standards of Fitness and Probity

41. We are seeking to obtain feedback on the proposed Fit and Proper Standards as set out in Appendix 2. Comments are invited in particular in response to the following questions:

- i. Do you consider that the Standards are comprehensive in setting the appropriate standards for fitness and probity of individuals working in the financial services industry in Ireland? If not, have you additional standards or considerations to add?
- ii. Do you consider that any of the Standards are superfluous? If so, the reasons why?
- iii. Do you consider that the Standards specified are sufficiently clear to be adopted by firms for their internal fit and proper process?

42. We are considering the benefit of providing guidance on the statutory Standards. Such guidance would be provided on a non-statutory basis and would take into account responses received to this consultation. Comments are therefore also invited as to whether non-statutory guidance would be useful to firms. If so, what issues should the guidance cover to assist firms in carrying out their own fit and proper test for persons proposed or holding both PCFs and CFs?

Section 9: Implementation/Further considerations

43. We shall consider fully all feedback and answers received in relation to the draft Regulations and the draft Fitness and Probity Standards. We shall publish the final Regulations and Standards by 1 September 2011.

44. We propose to implement the new test with immediate effect from 1 September 2011.

45. Depending on responses to the consultation, we may also publish non statutory guidance on the Regulations and/or Standards.

Section 10: Making submissions

46. Please make your submissions in writing and, if possible, electronically as a word document or a .pdf document by email on or before Friday 20 May, 2011.
47. We intend to make all submissions available on our website. We shall not publish any information which we deem potentially libellous or defamatory.
48. Submissions should be marked “Fit and Proper Regime” and sent by email to fitandproper@centralbank.ie
49. In the event that you are unable to send your response electronically please forward it by post on or before Friday 20 May, 2011 to:

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

Governance Accounting and Auditing Division

21 March 2011

Appendix 1

S.I. No. of 2011

**CENTRAL BANK REFORM ACT 2010 (SECTIONS 20 AND 22)
REGULATIONS 2011**

DRAFT

S.I. No. of 2011

CENTRAL BANK REFORM ACT 2010 (SECTIONS 20 AND 22)

REGULATIONS 2011

In exercise of the powers conferred on the Central Bank of Ireland (“the Bank”) by section 20(1) and section 22(2) of the Central Bank Reform Act 2010 the Bank hereby makes the following regulations:

1. These Regulations may be cited as the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2010.

2. (1) Subject to Regulations 4, 5, 7, 8, 9 and 10, the functions in Schedule 1 of these Regulations are prescribed as controlled functions.

(2) Each of the functions prescribed by paragraph (1) is prescribed in relation to all regulated financial service providers to which Part 3 of the Central Bank Reform Act 2010 applies.

3. (1) Subject to Regulations 4 to 11, the functions in Schedule 2 of these Regulations are prescribed as pre-approval controlled functions.

(2) Each of the functions in Part 1 of Schedule 2 of these Regulations is prescribed in relation to all regulated financial service providers to which Part 3 of the Central Bank Reform Act 2010 applies.

- (3) Each of the functions in Parts 2 and 3 of Schedule 2 of these Regulations is prescribed in relation to the class of regulated financial service provider to which the function is stated in Part 2 or 3 to relate.
4. References in these Regulations to a controlled function shall be taken to include a part of a controlled function unless the context otherwise requires.
5. References to a title commonly used for a person who performs a function shall be taken to refer to the functions commonly performed by a person of such title.
6. References in Part 2 of Schedule 2 of these Regulations to a class of regulated financial service provider by reference to an enactment or statutory instrument shall be taken to refer also to the corresponding provider under any enactment or statutory instrument which replaces or succeeds the enactment or statutory instrument referred to in Part 2 of Schedule 2, including as the terms or scope of the definition of such regulated financial service provider may have been amended (including without limitation by expansion of its scope) by such replacement or successor enactment or statutory instrument.
7. A person who performs a function shall be taken to be responsible for the performance of such function notwithstanding that the person in question does not have the title commonly used by a person who performs such function.

8. A person who performs a function of the holder of an office or position shall be taken to be responsible for the performance of such function notwithstanding that the person in question is not the holder of such office or position.

9. (1) A person shall be taken to perform a function where the regulated financial service provider or a person or persons in the regulated service provider are, with respect to that function, accustomed to act in accordance with the directions or instruction of the person in question.

(2) Paragraph (1) shall not be taken to include a person in accordance with whose instruction a person is accustomed to act by reason only that such person does so on advice given by the person in question in a professional capacity.

10. Without prejudice to the generality of Regulations 4 to 9, references to a director shall include:
 - (a) a shadow director within the meaning of section 27(1) of the Companies Act 1990; and
 - (b) an alternate or substitute director.

11. A person shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the person in question being responsible for the performance of such function

in a temporary capacity under an arrangement agreed in writing with the Bank in advance of the person in question assuming such responsibility.

12. Where the Bank approves the appointment of a person to perform a pre-approval controlled function then, unless expressly stated otherwise in the approval in writing, the person shall be so approved to perform the function in or on behalf of the regulated financial service provider or regulated financial service providers named in the application for approval and not in or on behalf of any other regulated financial service provider.

13. These Regulations come into operation on 1 September 2011.

Signed for and on behalf of the
CENTRAL BANK OF IRELAND
on this the [] day of [][]

Schedule 1

Controlled Functions

1. A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a regulated financial service provider.
2. A function in relation to the provision of a financial service which is related to ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations.
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;
 - (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.

Schedule 2

Pre-Approval Controlled Functions

Part 1

Pre-Approval Controlled Functions

in relation to

All Regulated Financial Service Providers

1. In the case of a regulated financial service provider that is a body corporate incorporated in the State, a person who holds or performs the duties of any of the following positions or offices in the regulated financial service provider:
 - (a) the office of:
 - a. executive director (PCF-1),
 - b. non executive director (PCF-2),
 - (b) the office of chairman of the Board (PCF-3),
 - (c) the office of chairman of the Audit Committee (PCF- 4),
 - (d) the office of chairman of the Risk Committee (PCF-5),
 - (e) the office of chairman of the Remuneration Committee (PCF-6),
 - (f) the office of chairman of the Nomination Committee (PCF-7),
 - (g) the office of chief executive (PCF-8),

- (h) the office of secretary (PCF-9).
2. In the case of a regulated financial service provider that is a partnership established in the State, each member of the partnership (PCF-10).
 3. In the case of a regulated financial service provider that is a natural person, that person (PCF-11).
 4. In the case of each regulated financial service provider established in the State:
 - (a) Head of Finance (PCF-12),
 - (b) Head of Compliance (PCF-13),
 - (c) Head of Internal Audit (PCF-14),
 - (d) Head of Risk (PCF-15),
 - (e) Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF-16),
 - (f) Branch Manager of branches in other EEA countries (PCF-17),
 - (g) Head of Retail Sales (PCF-18).

Part 2
Pre-Approval Controlled Functions
in relation to
Specified Regulated Financial Service Providers

A person who performs one or more of the following functions in respect of a regulated financial service provider established in the State:

1. **In respect of an Insurance Undertaking** within the meaning of the Insurance Act 1989 **or a Reinsurance Undertaking** within the meaning of the European Communities (Reinsurance) Regulations 2006, other than a Captive Insurance Undertaking, a Captive Reinsurance Undertaking or a Special Purpose Reinsurance Vehicle:
 - i. Head of Underwriting (PCF-19);
 - ii. Head of Investment (PCF-20);
 - iii. Chief Actuary (PCF-21).

2. **In respect of a Credit Institution** within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992:
 - i. Head of Treasury (PCF-22);
 - ii. Head of Credit (PCF-23);
 - iii. Head of Asset & Liability Management (PCF-24).

3. **In respect of the Irish Stock Exchange Limited:**
 - i. Head of Traded Markets (PCF-25);
 - ii. Head of International Primary Markets (PCF-26);

- iii. Head of Markets Supervision (PCF-27);
 - iv. Head of Operations (PCF- 28).
4. **In respect of an Investment Firm** within the meaning of the European Communities (Markets in Financial Instruments) Regulations 2007 or an **Investment Business Firm** within the meaning of section 10 of the Investment Intermediaries Act 1995 other than:
- (a) an investment business firm which solely carries on the business of an investment product intermediary (within the meaning of section 25 the Investment Intermediaries Act 1995); or
 - (b) an entity authorised or required to be authorised under section 10 of the Investment Intermediaries Act 1995 which solely carries out:
 - the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as a transfer agent or a registration agent for such funds; or
 - custodial operations involving the safekeeping and administration of investment instruments:
 - i. Branch Managers within the State (PCF-29);
 - ii. Head of Trading (PCF-30);
 - iii. Head of Investment (PCF-31);
 - iv. Chairman of the Compliance Committee (PCF- 32).

5. **In respect of:**

(a) **an entity authorised or required to be authorised under section 10 of the Investment Intermediaries Act 1995 which carries out:**

- the administration of collective investment schemes, including the performance of valuation services or fund accounting services or acting as a transfer agent or a registration agent for such funds; or
- custodial operations involving the safekeeping and administration of investment instruments; or

(b) **Trustees within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 or the Unit Trusts Act 1990 or Part XIII of the Companies Act 1990 or Custodians within the meaning of the Investment Limited Partnerships Act 1994 or the Investment Funds, Companies and Miscellaneous Provisions Act 2005:**

- i. Branch Managers within the State (PCF-33);
- ii. Head of Transfer Agency (PCF-34);
- iii. Head of Accounting (Valuations) (PCF-35);
- iv. Head of Trustee Services (PCF-36);
- v. Head of Custody Services (PCF-37).

6. **In respect of:**

- (a) **a UCITS Self Managed Investment Company or Management Company** within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003; or
- (b) **Management Company** within the meaning of the Unit Trusts Act 1990 or Part XIII of the Companies Act 1990 or Investment Funds, Companies and Miscellaneous Provisions Act 2005; or
- (c) **General Partner** within the meaning of the Investment Limited Partnership Act 1994:
 - i. Head of Transfer Agency (PCF-38);
 - ii. Head of Accounting Valuations (PCF-39);
 - iii. Designated Person to whom a director of a UCITS self managed investment company or management company may delegate the performance of the management functions (PCF-40).

7. **In respect of a Payment Institution** authorised or required to be authorised under the European Communities (Payment Services) Regulations 2009 or an E-Money Institution within the meaning of the European Communities (Electronic Money) Regulations 2002²:

- i. Branch Managers within the State (PCF-41).

² These regulations are to be replaced during the course of 2011.

Part 3

Pre-Approval Controlled Functions

in relation to All

Regulated Financial Service Providers established outside the State

1. The manager of a branch in the State of a regulated financial service provider who is established in a country that is not an EEA country (PCF-42).

EXPLANATORY NOTE

(This explanatory note is not part of the Instrument and does not purport to be a legal interpretation.)

[These Regulations give effect to section 20(1) and 22(2) of the Central Bank Reform Act 2010 for the purposes of prescribing controlled functions and pre-approval controlled functions.]

Appendix 2

DRAFT

FITNESS AND PROBITY STANDARDS

(CODE ISSUED UNDER SECTION 50 OF THE CENTRAL BANK REFORM ACT
2010)

1. INTRODUCTION

1.1 Scope

On 1st October 2010, Part 3 of the Central Bank Reform Act 2010 created for the first time in Irish law a harmonised statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions or pre-approval controlled functions in regulated financial service providers. This Code specifies the Standards of Fitness and Probity which all persons performing controlled functions or pre-approval controlled functions shall, at a minimum, comply with.

1.2 Legal Basis

This Code is issued by the Central Bank of Ireland pursuant to the powers set out in section 50 of the Central Bank Reform Act 2010.

This Code may be amended or supplemented by the Central Bank of Ireland from time to time. Failure by a person to comply, or satisfy

the Central Bank as to an ability to comply, with the Fitness and Probity Standards may:

- i. Where the approval of the Central Bank is being sought to permit a person to perform a pre-approval controlled function, lead to approval being refused;
- ii. Where a person is performing a controlled function, or stands approved to perform a pre-approval controlled function, lead to an investigation being conducted in relation to the fitness and probity of that person to perform the relevant function;
- iii. Cause that person to be the subject of a prohibition notice under Section 43 of the Act.

A regulated financial service provider shall not permit a person to perform a controlled function unless the regulated financial service provider is satisfied on reasonable grounds that the person complies with this Code and the person has agreed to abide by such standards.

Failure to do so may expose that regulated financial service provider and/or a person concerned in its management to financial penalties and other sanctions under Part IIIC of the Central Bank Act 1942.

1.3 Definitions

In this Code:

- a) 'Act' means the Central Bank Reform Act 2010;
- b) 'Bank' means the Central Bank of Ireland;

- c) '*Relevant Function*' means a function prescribed, or declared, as a controlled function or pre-approval controlled function under sections 20 and 22 of the Act.

Unless the contrary intention appears, a word or expression used in this Code which is also used in the Act shall have the same meaning in this Code as in the Act.

2. FITNESS AND PROBITY STANDARDS

2.1 A person to whom this Code applies shall comply with these Fitness and Probity Standards at all times.

2.2 In order to comply with section 2.1, a person is required to be:

- a) competent and capable;
- b) honest, ethical and to act with integrity;
- c) financially sound.

3. CONDUCT TO BE COMPETENT AND CAPABLE

3.1 A person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.

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

- (a) Has professional or other qualifications and capability appropriate to the relevant function;
- (b) Has obtained the competence and skills appropriate to the relevant function, whether through training or experience gained in an employment context;
- (c) Has shown the competence and proficiency to undertake the relevant function through the performance of previous functions which if carried out at present would be subject to this Code, or current controlled functions, or performance by the person of any role similar or equivalent to the functions that are covered by this Code. If the person performed a function in a regulated financial service provider, which if performed at present would be subject to this Code, and that regulated financial service provider received State financial support, consideration shall be given to the competence and skills demonstrated by that person in that function and to the extent, if any, to which the performance of his or her function may have contributed to the necessity for such State financial support.

- (d) Has a sound knowledge of the business of the regulated financial service provider as a whole, and the specific responsibilities that are to be undertaken in the relevant function;
- (e) Has a clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function;
- (f) Is capable of performing the relevant function on a continual basis having regard to his/her physical and mental health;
- (g) Shall not allow the conduct of concurrent responsibilities to impair his or her ability to discharge the duties of the relevant function or otherwise allow personal conflicts of interest to arise in carrying out his or her pre-approval controlled functions or controlled functions; and
- (h) Is compliant with applicable Minimum Competency Requirements issued by the Bank.

4. CONDUCT TO BE HONEST, ETHICAL AND WITH INTEGRITY

4.1 Without limiting the generality of subsection 2.2 (b), a person must be able to demonstrate that his or her ability to perform the relevant function is not adversely affected to a material degree where one or more of the following may be applicable:

- (a) the person has previously been refused, prohibited, restricted or suspended from the right to carry on any trade, business or profession for which a specific licence, registration or other authorisation is required by law, in any jurisdiction;
- (b) the person has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by the Bank or an equivalent authority in another jurisdiction. In considering whether or not the complaint adversely affects the person's ability to carry out a relevant function, particular consideration shall be given to the outcome of that complaint if it has been concluded;
- (c) the person has been the subject of any existing or previous investigation or disciplinary proceedings, by the Bank, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;
- (d) the person has been dismissed, or asked to resign and resigned, from any profession, vocation, office or employment or from a

position of trust, fiduciary appointment or similar, whether or not remunerated;

- (e) the person has been a director of a company that was struck off the register of companies by the Registrar of Companies;
- (f) the person has been disqualified or restricted from acting as a director or disqualified from acting in any managerial capacity;
- (g) the person has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction. In considering whether or not the complaint adversely affects the individual's ability to carry out a relevant function, particular consideration shall be given to the outcome of such proceedings or investigation if it has been concluded;
- (h) the person has been convicted of an offence of money laundering or terrorist financing or of an offence involving fraud, dishonesty or breach of a position of trust or is subject to any pending and current proceedings which may lead to such a conviction, under any law in any jurisdiction;
- (i) the person has been the subject of any judgment made by a court or competent authority in any jurisdiction that contains a finding of fraud, misrepresentation or dishonesty or breach of a position of trust entered against the person in any civil

proceedings or he or she is a party to any pending proceedings in respect of which there are reasonable grounds for considering that any such judgement may be made;

(j) the person has been the subject of any investigation or disciplinary proceedings or been issued a warning or reprimand or any other administrative sanction by the Bank, any other regulatory authority, an operator of a market or clearing facility, any professional body or government agency, whether in the State or elsewhere;

(k) the person has accepted, acknowledged or consented to civil liability for fraud or misrepresentation under any law in any jurisdiction;

(l) the person has been the subject of any civil penalty enforcement action taken against him or her by a regulatory authority under any law in any jurisdiction;

(m) the person has been untruthful or provided false or misleading information to the Bank or been uncooperative in any dealings with the Bank;

(n) the person has been in a position of influence with a company, partnership, or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business, or profession or has had any such registration, authorisation, membership or licence revoked,

withdrawn, terminated, or subjected to an onerous condition or has been expelled by a regulatory or government body;

(o) the person has, as a result of the removal of the relevant registration, authorisation, membership or licence been refused the right to carry on a trade, business or profession requiring a registration, authorisation, membership or licence;

(p) the person or any business with which the person held a position of responsibility or influence has been investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately; or

(q) the person has been found by the Bank or other regulatory authority to have perpetrated or participated in any negligent, deceitful or otherwise discreditable business or professional practice.

5. FINANCIAL SOUNDNESS

5.1 A person shall manage his or her affairs in a sound and prudent manner.

5.2 Without prejudice to the generality of paragraph 5.1, a person must be able to demonstrate that his or her role in a relevant function is not adversely affected to a material degree by the fact that one or more of the following may be applicable:

- (a) the person is or has been unable to fulfil any of his or her financial obligations, whether in the State or elsewhere;
- (b) the person has entered into a compromise or scheme of arrangement with his or her creditors or made an assignment for the benefit of his or her creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in the State or elsewhere;
- (c) the person is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in the State or elsewhere;
- (d) the person is or has been the subject of a bankruptcy petition, whether in State or elsewhere;

- (e) the person has been adjudicated a bankrupt and the bankruptcy is undischarged, whether in the State or elsewhere;
 - (f) the person is or has been subject to any other process outside the State that is similar to those referred to in subparagraph (b), (c), (d) or (e); or
 - (g) the person is or was a person concerned in the management of an entity which has been the subject of the issues outlined at paragraphs (a) to (c).
6. Any information provided by an individual pursuant to this Code to the Bank and/or a regulated financial service provider shall be candid and truthful and shall be full, fair and accurate in all respects and not misleading to the best of his or her knowledge.
7. In determining whether an individual has complied with this Code, a regulated financial service provider or the Bank, as the case may be, shall have regard to any applicable guidance issued by the Bank.

T +353 1 224 4104 www.centralbank.ie fitandproper@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Bosca PO 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland**