

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2011

**Feedback to Consultation Process on CP 51
on the proposed Fitness and Probity
Regime in Part 3 of the Central Bank
Reform Act 2010**

Feedback to Consultation Process on Consultation Paper 51 on the proposed Fitness and Probity Regime in Part 3 of the Central Bank Reform Act 2010

Introduction

The Central Bank of Ireland received and published 50 responses to Consultation Paper 51 on the proposed Fitness and Probity Regime in Part 3 of the Central Bank Reform Act 2010 from entities and individuals. They can be broken down as follows:

- 3 Individuals;
- 15 Representative Bodies;
- 6 Solicitor firms;
- 1 Accountancy firms;
- 25 Regulated entities.

Where requested, follow up meetings were held with a small number of respondents who specifically sought meetings and whose submissions indicated that meetings would be useful. The Central Bank welcomes the submissions received and the meetings with industry and various associations. These have proved useful in refining the approach adopted in respect of the Regulations and Standards.

The attached Schedule captures the proposals, key recurring themes and sets out whether there was a change in the position ultimately adopted in the Regulations and Standards. It also states where guidance has been requested and been provided in the Draft Guidance which the Central Bank of Ireland published on 1 September 2011. The key points made are referred to in summary form here. The full text of the submissions (received as at 20 May 2011) is available on the Central Bank website.

Having considered the submissions received, the Central Bank has:

- Noted the issues which were generally agreed;
- Clarified the Regulations and Standards where respondents sought more clarity and where we thought further clarity was needed;
- Provided guidance where respondents sought guidance and where we thought guidance was needed;
- Revised the Regulations and Standards where we were persuaded by rationale put forward by respondents; and
- Retained core parts of the Regulations and Standards which we are satisfied will enhance the Fitness and Probity regime in the Irish financial sector in the long term.

Schedule of feedback summarising key changes to the Fitness and Probity Regime following the Consultation Process on CP 51

The following table sets out on a section by section basis a description of the proposed Regulations and Standards contained in the Consultation Paper, details of the number of responses received on each section and details of any changes to the Regulations and Standards. We have omitted sections of the Consultation Paper where no comment was received.

Generally where more than 10% of respondents commented on a particular section we have also included a brief synopsis of the recurring themes arising in those responses. In some cases a brief synopsis of the recurring themes was also included where comments were received from less than 10% of respondents but which resulted in a change in the final text of the Regulations and Standards.

The feedback received on the Consultation Paper is set out at pages 3 to 22. The relevant feedback in relation to changes to the Regulations is contained at pages 23 to 37 and the relevant feedback on changes to the Standards is contained at pages 38 to 53.

Feedback on Consultation Paper

Para. No.	Content	No. of comments received	Summary of Key Comments	Nature of Change (if any)
1	Measures being introduced to address the causes of the financial crisis.	10	<ul style="list-style-type: none"> Request for definition of “regulated financial services provider”. Query regarding what interim process will apply to approvals for appointments under the existing regime that are outstanding on 1 September or will that regime simply terminate. Query regarding the status of persons who are already approved under the current regime, whether they will continue to be approved and how they may be matched against new Controlled Functions (‘CFs’)/ Pre-Approval Controlled Functions (‘PCFs’). Query as to how firms should approach new appointments between now and the beginning of the new regime. Query as to whether an individual will have to update the Bank if there are any material changes to their circumstances. 	<p>Defined in Section 2 of the Central Bank Act 1942.</p> <p>Guidance provided.</p> <p>Guidance provided.</p> <p>Guidance provided.</p> <p>Guidance provided.</p>

			<ul style="list-style-type: none"> • Query as to whether the Central Bank will conduct a retrospective review or take action against firms for the retrospective breaches of the new Fitness and Probity regime ('the regime'). 	<p>An assessment of the fitness or probity of a person occupying a controlled function, informed by past personal history, is not a retrospective review of that past personal history. That past history is not being judged. Rather, that past personal history is informing the assessor and assisting the assessor in making the assessment today of whether the person currently complies with the Standards.</p>
5	<p>Purpose of the consultation concerns two aspects of the new regime</p> <p>i) Designation of PCFs and CFs and;</p> <p>ii) The Standards of fitness and probity.</p>	1	<ul style="list-style-type: none"> • Request that reliance should be on due diligence for non-senior roles and they should not be included as CFs. 	<p>CFs contain an exemption for certain call centre staff and guidance provided on due diligence required for PCFs and CFs.</p>
6	<p>List of the existing powers that operate in addition to the Fit and Proper Regime.</p>	8	<ul style="list-style-type: none"> • Industry welcomes the commitment to adopt a proportionate & risk based approach. Clarification sought as to what this means in practice. • Request that any new regime should supersede any 	<p>Guidance provided.</p> <p>No change – reflects legislative</p>

			<p>previous requirements in order to limit confusion.</p> <ul style="list-style-type: none"> • Request that the regime recognises equivalent requirements in other jurisdictions to ensure a level playing field and that Ireland is not placed at a competitive disadvantage. • Concerns expressed that any suspension/termination of employment required following a breach of the regime would conflict with existing contractual commitments and employment law. • Clarification sought regarding appeals mechanism. • Request for information on the statutory basis for the power of suspension and removal in respect of existing PCFs. 	<p>position.</p> <p>Changed – to allow certain expedited applications.</p> <p>No change.</p> <p>Guidance provided refers to right of appeal.</p> <p>Guidance provided – identifies relevant chapters of legislation.</p>
8	Definition of a CF.	23	<ul style="list-style-type: none"> • Guidance provided on acceptable types of due diligence. 	<p>Definition of Controlled Function has been amended by creating 11 categories which incorporates the definition provided under the Central Bank Reform Act 2010 (the Act) and activities included in the Minimum Competency Code. Certain call centre staff are also</p>

			<ul style="list-style-type: none"> • Clarification sought on whether CFs are senior management only. • Concern raised over the broad scope of the definition of CFs and potential for broad interpretation and inconsistencies. • Concern raised that the regime may create a large burden of compliance, especially in larger organisations. • Request that the regime be risk related and limited to: <ul style="list-style-type: none"> • staff with significant material influence on the affairs of the regulated financial service provider; • management level (responsibility could then be enhanced amongst those functions to set behavioural standards); and 	<p>exempted from the Standards of Fitness and Probity issued under section 50 of the Act.</p> <p>Definition of CF changed as outlined above.</p> <p>Changed.</p> <ul style="list-style-type: none"> • Regulations now define 11 categories of CFs some of which are linked to activities covered by the Minimum Competency Code ('the MCC'). • Exemption granted in the Standards for certain junior staff who will continue to be subject to the MCC. • Definition of CF changed as outlined above.
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			<ul style="list-style-type: none"> • a specific list of CFs. • Clarification sought on the level of due diligence required of firms. • Guidance sought on extent of monitoring staff in CFs a firm should engage in to ensure their continued compliance. • Request that the focus should be on heads of function and roles with line management responsibility as they are responsible for employing individuals in the first instance. 	<p>Guidance provided.</p> <p>Guidance provided.</p>
9	Definition of a PCF.	16	<ul style="list-style-type: none"> • Clarity sought in relation to the application of the new regime to people already approved as a PCF moving to another PCF (within or outside the firm), whether re-application would be necessary and whether these applications would be fast tracked. • Concerns expressed regarding outsourced PCFs and how they are treated in the new regime. • Concerns expressed that (a) the inability of an employer to offer a PCF position to an individual before receiving Central Bank approval may have practical problems around completing the online IQ and obtaining references from previous employers and (b) this poses a significant recruitment challenge. 	<p>Guidance provided.</p> <p>Guidance provided.</p> <p>Guidance provided.</p>

			<ul style="list-style-type: none"> • Request that the timeline for applications should not negatively affect the recruitment process. • Request for the inclusion of a provision to allow a person to serve as a PCF (or CF) for an interim period in the case of unforeseen absence. • Clarification sought on the issue where there might be considerable overlap in terms of which functions are considered to fall within which category (whether CF or PCF). • Request that the Central Bank should designate and specify a response time to applications. • Request for a written response to be provided by the Central Bank to the individual and institution in refusing or suspending an application. 	<p>No change.</p> <p>Guidance provided.</p> <p>Guidance provided.</p> <p>No change.</p> <p>No change - suspension notice covered in the Act.</p>
11	Entities must vet the fitness and probity of proposed appointees.	5	<ul style="list-style-type: none"> • Clarification sought as to when an entity should notify the Central Bank of its intention to offer a position to a prospective employee that falls within a PCF. • Concerns expressed about the interview process and the ability to obtain references. 	<p>Guidance provided.</p> <p>Guidance provided on interview and approval</p>

			<ul style="list-style-type: none"> • Observation made that there are potential limitations to independent verification of appointee information. 	<p>processes.</p> <p>Guidance provided on acceptable types of due diligence.</p>
13	"Giving of assistance" may capture staff such as call centre staff, it is important that the managers/supervisors at the centre have the responsibility for ensuring proper process and information to customers rather than the call centre staff are captured by the new powers.	6	<ul style="list-style-type: none"> • Agreement expressed that staff on the level of 'call staff' should not be included as CFs. 	<p>Changed.</p> <p>See response as above.</p>
14	Roles outside of CFs and PCFs will remain a matter for firms.	3	<ul style="list-style-type: none"> • Clarification sought on what the standards of the regime are for people outside of CFs or PCFs. 	<p>No change – new regime does not apply to anyone outside the scope PCF and CF.</p>
16	Paragraph asked particular questions about the designation of CFs and PCFs.	29		

<p>16 (i) a</p>	<p>Do you consider any PCFs or CFs should be removed from the list, if so, why?</p>	<p>-</p>	<p><u>PCFs</u></p> <ul style="list-style-type: none"> • Broad general agreement with the list of PCFs contained in the draft Regulations, however the roles captured by some of the PCF titles not clear. • Request for the Office of Secretary to be removed from the list. • Query as to whether the Chairman of the Nominations Committee should be included as a PCF. • Request for Chief Investment Officer to be added to the list. <p><u>CFs</u></p> <ul style="list-style-type: none"> • Requests received: <ul style="list-style-type: none"> • For a narrower definition of CFs and the inclusion of a non-exhaustive list of prescribed CFs. • To remove non-senior staff from the scope of a CF. • To remove sales employees from the scope of a CF. • To exclude customer facing staff where the Minimum Competency Code should be sufficient for these levels of staff. • Request for proportionality to be used for smaller firms using group functions i.e. if the group PCFs are approved 	<p>No change.</p> <p>No change.</p> <p>Changed - added Chief Investment Officer position to list of PCFs.</p> <p>Definition of CF changed in the Regulations as stated above and exemption from Standards as outlined above.</p> <p>Changed – guidance provided on expediting certain</p>
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			<p>by another EU regulator they should be exempt from compliance with the Irish Standards.</p> <ul style="list-style-type: none"> • Clarity sought on whether an individual must apply for approval when moving positions within one company or to a different company. • Clarity sought on whether firms would have to identify outsource providers as CFs and how would they apply the Standards to these staff. 	<p>applications for approval and outsourcing.</p> <p>Guidance provided.</p> <p>Guidance provided on outsourcing.</p>
16 (i) b	Do you consider any other positions or functions should be added to the lists of CFs and PCFs, if so, why?	-	<ul style="list-style-type: none"> • General consensus from respondents that the list of PCFs is comprehensive. • Suggestion that the following should be added to list of PCFs: <ul style="list-style-type: none"> • Head of Product Pricing; • Head of HR; • Head of IT; • Head of Customer Service; • The Auditor; • Internal legal advisors and Head of Legal/ Chief Counsel; and • Chief Investment Officer. 	Changed - 1 PCF added.

<p>16 (i) c(1)</p>	<p>Should we formally exempt specific categories of staff from the definition of a CF;</p>	<p>-</p>	<ul style="list-style-type: none"> • Recommendation received that CFs should be limited to Directors and Senior Managers who give advice or assistance to a customer, and make it clear that effective supervisory responsibility for the actions of staff below Director and Senior Management level remains with the Directors and Senior Managers who are responsible to the Central Bank. • Suggestion made that the Central Bank should exercise its power to specifically prescribe CF roles and should not designate anyone below manager level as a CF. • Suggestion made that certain categories such as those persons providing “part of” a CF should be expressly excluded from the list. • Suggestion made to adopt a tiered approach to CFs with different levels of vetting based on proportion and risk. 	<p>Changed the CF definition in the Regulations and application of the Standards as outlined above.</p> <p>As above.</p> <p>No change – reflects legislation.</p> <p>As above.</p>
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16 (i) c(2)	Should we provide non statutory guidance to firms on what we consider appropriate levels of due diligence?	-	<ul style="list-style-type: none"> • Guidance requested on the following areas: <ul style="list-style-type: none"> • appropriate levels of due diligence; • definition of CFs; • the standards being applied; • garda vetting; • other 3rd party verifications; • contingency process in the event of; non co-operation from 3rd parties; • self-certification; • data protection issues; and • how the risk based approach might work. • Guidance sought regarding the definition of financial soundness. • Suggestion made that guidance should be issued on an industry basis rather than general basis, given the wide range of regulated financial service providers ('RFSPs'). 	<p>Guidance provided based on the final Standards.</p> <p>The Financial Soundness Standard has been amended.</p>
18	Standards of Probity shall 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.	1	<ul style="list-style-type: none"> • Request for non-executive directors to be treated distinctly separate and that the board itself should be treated as a collective entity considering the diversity of skills and personnel on boards. 	No change – the new regime applies to individual directors, corporate governance codes deal with the collective responsibilities of the board.

19	Where MCR applies, the entity shall ensure that the proposed appointee meets those requirements.	1	<ul style="list-style-type: none"> • Guidance sought on how the regime's requirements will interact with other existing regulatory requirements. 	New regime is in addition to any existing powers which the Central Bank has.
20	Lists the factors to be considered when assessing the competence and capability for appointment to a CF or PCF.	5	<ul style="list-style-type: none"> • Guidance sought on how regulated firms may assess the "degree of competence and proficiency to undertake a relevant function that the person has demonstrated in a previous or current role" when the proposed CF or PCF has never worked for them before. • Concerns raised over the ability to obtain references from an employer of a prospective CF/PCF before they have terminated employment with their current employer. • Concerns raised that it would be too difficult to realistically determine whether a person performed a function in a regulated financial services provider which contributed to that entity requiring state financial support. • Suggestion made that proposing firms should be permitted to make an offer to appoint a person to a PCF, whose appointment, on acceptance by the proposed PCF holder of that offer, remains subject only to Central Bank approval. 	<p>Changed - Standards revised and Guidance provided (e.g. on appropriate levels of due diligence).</p> <p>Guidance provided on offers of appointment to a PCF.</p> <p>No change.</p> <p>Guidance provided.</p>

21	Definition of Probity.	3	<ul style="list-style-type: none"> • Requested narrower and detailed definition of 'probity' together with guidance. 	Guidance provided.
22	Financial soundness may cover personal debts and association with bankruptcy or similar of a company.	9	<ul style="list-style-type: none"> • Clarification sought on: <ul style="list-style-type: none"> • how a regulated firm can determine the financial soundness of a CF/PCF; • whether employers have to conduct independent investigations; • how often would this requirement have to be satisfied. • Request made that given the recent economic turbulence it is not uncommon for individuals to have financial difficulties and therefore this requirement may be disproportionate, intrusive and problematic. • Comment made that such a requirement may impede the recruitment of top staff. 	<p>Changed – scope of Financial Soundness Standard has been reduced.</p> <p>As above.</p> <p>As above.</p>
23	Where a person has been associated with an entity that faced financial difficulty this may bring into question the individuals competence, honesty and integrity.	3	<ul style="list-style-type: none"> • Concern raised that this is too harsh given that businesses fail for various reasons and may not establish anything about that person. • Request made for guidance to assist firms in determining whether a person's personal financial history meets the financial soundness Standards. 	Changed – scope of Financial Soundness Standard has been reduced.

25	Persons in existing PCFs are not required to seek written approval to continue in that role or function.	1	<ul style="list-style-type: none"> • Suggestion made that it is excessive for an authorised CF to be required to reapply if taking up a new PCF position, even within the same firm. 	No change.
27	The Bank will review the fitness and probity of persons in PCFs in financial services providers receiving or having received State financial support.	3	<ul style="list-style-type: none"> • Suggestion made that this provision is prima facie discriminatory as it will test senior officials in these institutions alone and impose higher standards and burdens of proof. 	No change – adopting a risk based approach to using powers.
31	The new regime will come into effect on 1 September 2011.	8	<ul style="list-style-type: none"> • Suggestion made that the Central Bank should clarify transitional arrangements. • Comment that the commencement date of 1st Sept 2011 is unrealistic and difficult. • Comment that a lengthier transition period is requested to ensure firms to assess the impact of CP51 and prepare for compliance with the regime. • View expressed that there should be a transition period that gives entities sufficient time to enable them to review persons in CFs for compliance with the new Standards of fitness and probity. 	<p>Guidance provided.</p> <p>Changed - commencement date extended to allow for phased implementation from 1 December 2011 until 1 December 2012.</p> <p>Changed as above.</p> <p>Changed as above.</p>

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.	2	<ul style="list-style-type: none"> • Query raised as to whether regulated entities will be required to submit details of the individuals holding CFs to the Central Bank. • Suggestion made that regulated entities should be permitted to utilise their existing pre-employment screening procedures as due diligence for CFs. • Suggestion made that for CF roles, a form of self-certification by the individual should be sufficient and that the regulated entity should only be required to pro-actively verify information where it has a reasonable doubt as to its accuracy. 	<p>Guidance provided.</p> <p>Guidance provided.</p> <p>Guidance provided.</p>
34	Firms must submit to the Bank a list of individuals carrying out PCFs at the date upon which the Regulations come into effect. Firms have until 31 December 2011 to provide this list.	4	<ul style="list-style-type: none"> • Query raised as to whether the requirement to submit a list of PCFs approved by the Board to the Central Bank will be an annual requirement. 	Guidance provided.

37	All applications will be dealt with by the Central Bank's Regulatory Transactions Department in consultation with the relevant supervisory Department.	10	<ul style="list-style-type: none"> • Request that the Central Bank commit to dealing with applications within a certain time frame. • Suggestion made that temporary approval could be issued until full review was completed. • Queries raised about how the Regulatory Transactions Department (RTD) will interact with supervisory teams. • Suggestion made that any conflicts with applications should be addressed in open dialogue to ensure no misunderstandings. 	<p>No change.</p> <p>Guidance provided on the process.</p> <p>Guidance provided on the process.</p> <p>No change. Guidance provided on the interview process.</p>
38	The Bank will introduce a more automated process with an online Individual Questionnaire.	10	<ul style="list-style-type: none"> • Request made that the Central Bank release the online Individual Questionnaire ('IQ'), including the required declarations that the proposed holder of the PCF and the proposing firm are required to confirm, for comment in advance of the new regime. • View expressed that the questionnaire should be tailored and proportionate. • Suggestion that persons could be subject to a probation period, in which the relevant checks could take place. • Query as to whether a copy or the original degree has to be produced where an individual is required to submit 	<p>New I.Q. will be published by 1 December 2011. The Central Bank has liaised with industry representatives on content.</p> <p>As above.</p> <p>No change.</p> <p>Guidance provided - copies of transcripts are sufficient.</p>

			<p>evidence of a qualification.</p> <ul style="list-style-type: none"> • Query as to whether there will be questions in relation to health in the IQ. • Query raised as to whether the questionnaire will be limited to a time scope, e.g. previous 10 years back. • Suggestion made that institutions would appreciate guidance and bilateral discussions to discuss the practical implementation. 	<p>Changed - Health Standard removed.</p> <p>No change - no time limit on queries for probity. Changed – enquiries in relation to employment history limited to previous 10 years.</p> <p>Guidance provided.</p>
39	The automated process will ensure that applications received through the proposing firms will be validated at point of submission to the Bank, thus ensuring that only fully completed application will be accepted.	8	<ul style="list-style-type: none"> • Request made for the Central Bank to confirm what the appropriate Garda clearance would be and the circumstances in which this would be deemed necessary. • Concern raised that the Garda clearance check is already under significant pressure and it is unlikely that it could cope with the additional volume of clearance requests. 	<p>Changed – the new regime will not require additional Garda checks by industry. The guidance provided confirms that self-certification will be considered satisfactory on due diligence under the new regime.</p> <p>Changed as above.</p>

			<ul style="list-style-type: none"> • Query raised as to whether a minor offence would disqualify an applicant. • Suggestion made that specific reference should be made to a tax clearance certificate. 	<p>Guidance provided.</p> <p>No change - no reference is made to a tax clearance certificate.</p>
41	Questions relating to the Standards at appendix 2.	16		
41 (i)	Do you consider the Standards comprehensive, if not, have you additional Standards to add?	-	<ul style="list-style-type: none"> • General consensus received that the Standards are comprehensive. • Suggestion made that ethics should be included and that formal training should be provided if they cannot demonstrate the necessary characteristics. • Query raised as to what steps a person might take if they are in contravention of the Standards. • Suggestion made that the practical application of the financial soundness Standard needs further consideration in relation to data protection, cut off periods, and on the basis that in this current climate it may be untenable. • Request made to include a whistle-blowing provision and for firms to have their Fitness and Probity policy approved by the board. 	<p>No change.</p> <p>Guidance provided on disclosure.</p> <p>Changed Standard on Financial Soundness.</p> <p>No change.</p>

41 (ii)	Do you consider any of the Standards superfluous?	-	<ul style="list-style-type: none"> • Consensus expressed that Standards are not superfluous however concern raised that certain parts of the proposed code may conflict with employment law. • Suggestion that there appears to be a large overlap between 4.1(a) and 4.1(o). • Suggestion that some Standards may prove problematic including <ul style="list-style-type: none"> - the extent to which complaints against an individual should be considered; - forced resignation or dismissal following a takeover/merger; - the extent to which misconduct or complaints should be considered if that person was cleared; - the extent to which physical and mental health can be tested; and - the extent to which a firm can substitute their view for the forthcoming judgement of others. • Concern expressed that the breadth and reach of the Standards goes too far and should not be imposed on junior staff. 	<p>Changed Standards in some cases and guidance provided on due diligence.</p> <p>Changed.</p> <p>No change.</p> <p>No change.</p> <p>No change.</p> <p>Changed- Health Standard removed.</p> <p>No change.</p> <p>Changed Standards as stated above. Exemption from Standards granted to certain junior staff.</p>
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41 (iii)	Do you consider that the Standards specified are sufficiently clear to be adopted by firms for their internal fit and proper process?	-	<ul style="list-style-type: none"> • Alleged that not all Standards are sufficiently clear. (Specific issues are set out below in relevant Standards) • Suggestion made that it is unclear what levels of staff are subject to the requirements and what level of on-going monitoring will be required. • Query raised as to whether individuals will be required to disclose any issues the firm is not aware of. 	Changed Standards in some cases and guidance provided on application of the Standards.
42	Would non statutory guidance be useful to firms?	15	<ul style="list-style-type: none"> • Consensus view is that guidance would be useful, as set out throughout this document. 	Guidance provided.
43	Final Regulations and Standards will be published by 1 September 2011.	2	<ul style="list-style-type: none"> • Suggestion made that the Central Bank should allow sufficient time for firms to receive and review revised Regulations, Standards and guidance before they become effective. • Concern raised regarding the timeframe for implementation. 	<p>Guidance published and period for implementation extended.</p> <p>Period for implementation extended.</p>

Feedback on Appendix 1 - Draft Regulations

No.	Regulation	No. of comments received	Summary of Key Comments	Nature of Change
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.	1	<ul style="list-style-type: none">• Request for guidance on how a person in a temporary CF position could avail of temporary approval for a PCF role.	Guidance provided.

9	<p>(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.</p> <p>(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.</p>	5	<ul style="list-style-type: none">• Suggestion made that this is too broad and difficult to apply to outsourced functions.• Concern raised that the wording is confusing and unclear.	Guidance provided.
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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.	7	<ul style="list-style-type: none">• Suggestion made that persons operating in temporary position should not be required to submit a full application. Request for guidance on the issue.	Guidance provided.
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	2	<ul style="list-style-type: none">• Concern raised that this may cause difficulty when recruiting externally or it may deter the best candidates.	No change.

	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.			
Schedule 1				
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.	4	<ul style="list-style-type: none"> • Concern raised regarding the broad definition of CFs which may capture significant numbers of staff, especially at junior level where MCR would be more appropriate. • Suggestion made that customer-facing staff should be excluded from the scope of a CF. 	CFs amended as set out above. Now defined as CF1.
2	A function in relation to the provision of a financial service which is related to ensuring, controlling or	4	<ul style="list-style-type: none"> • Request for narrower definition. • Suggestion to limit CF's so it applies to compliance/regulatory risk personnel who report to PCF-13 (and possibly PCF-14 and 16). 	Now defined as CF2.

	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:	8	<ul style="list-style-type: none"> • Comments set out below in relevant sections 	
3(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 ;	-	<ul style="list-style-type: none"> • Clarification requested on whether this includes back office processing staff, administrative staff and operational staff. 	CFs 3 to 9 (inclusive) created in the Regulations and some staff exempted from application of the Standards of Fitness and Probity.

3(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;	-	• Clarification sought on who was captured by this.	Now defined as CF10.
3(c)	dealing in or with property on behalf of the regulated financial service provider, or providing instructions or directions in relation to such dealing.	-	• Clarification sought on who was captured by this.	Now defined as CF11.

Schedule 2 - Part 1				
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:	13	<ul style="list-style-type: none"> • Suggestion made that the requirements may be excessive for captives. • Suggestion made that EIOPA guidance in relation to Fitness and Probity should be a minimum benchmark. • Suggestion made that some PCFs may not translate across all governance structures in industry. • Request made that guidance incorporates details on specific competencies and skills required for these roles. 	No change.
1(h)	The office of secretary (PCF-9).	-	<ul style="list-style-type: none"> • Request made to omit from the list of PCFs. • Clarification sought on whether a separate corporate body acting as company secretary may present problems. 	<p>No change.</p> <p>Guidance provided on outsourcing.</p>
4	In the case of each regulated financial service provider established in the State:	6		
4(b)	Head of Compliance (PCF-13),	-	<ul style="list-style-type: none"> • Guidance sought where a PCF-16 reports to PCF-13 is only PCF-13 a PCF. 	Guidance provided.

4(e)	Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF-16),	-	<ul style="list-style-type: none"> Guidance sought when this role is not divided into separate roles. 	Guidance provided.
4(f)	Branch Manager of branches in other EEA countries (PCF-17),	-	<ul style="list-style-type: none"> Request made to omit this as a PCF unless role is occupied by a senior manager with significant responsibility. 	No change.
4(g)	Head of Retail Sales (PCF-18).	-	<ul style="list-style-type: none"> Request made to omit this as a PCF unless role is occupied by a senior manager with significant responsibility. 	No change.
Schedule 2 - Part 2				
1	In respect of an Insurance undertaking or Reinsurance undertaking: i. Head of Underwriting (PCF-19); ii. Head of Investment (PCF-20); iii. Chief Actuary (PCF-21).	3	<ul style="list-style-type: none"> Concern raised over compatibility with requirements in Solvency II. Suggestion made that it is excessive for life insurers. 	No change.

2	In respect of a Credit Institution: i. Head of Treasury (PCF-22); ii. Head of Credit (PCF-23); iii. Head of Asset & Liability Management (PCF-24).	1	<ul style="list-style-type: none"> Request made to omit roles (i), (ii), and (iii) unless occupied by a senior manager with significant responsibility. 	No change.
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 authorised or required to be authorised under section 10 of the Investment Intermediaries Act 1995 (IIA) other than: (a) an investment business firm which solely carries on the	1	<ul style="list-style-type: none"> Comment made that Investment Management firms do not have Heads of Trading as they do not operate proprietary books. Instead it is submitted that the Chief Investment Officer would be closest to this. Guidance sought on where a RFSP does not have an existing compliance committee. 	<p>No change to PCFs 29, 30.</p> <p>Changed –</p> <ul style="list-style-type: none"> PCF 31 – now added to include Chief Investment Officer. PCF 32 – renumbered Head of Investment. Removed Chairman of the Compliance Committee as a PCF.

	<p>business of an investment product intermediary (within the meaning of section 25 of the IIA) ; or</p> <p>(b) an entity authorised or required to be authorised under section 10 of the IIA which solely carries out:</p> <p>(i) 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</p> <p>(ii) custodial operations involving the safekeeping and administration of investment instruments:</p>			
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	<p>i. Branch Managers within the State (PCF-29);</p> <p>ii. Head of Trading (PCF-30);</p> <p>iii. Head of Investment (PCF-31);</p> <p>iv. Chairman of the Compliance Committee (PCF- 32).</p>			
5	<p>In respect of:</p> <p>(a) an entity authorised or required to be authorised under section 10 which carries out:</p> <p>(i) 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</p> <p>(ii) custodial operations involving the</p>	1		<p>Changed -</p> <ul style="list-style-type: none"> • PCFs 33 to 37 – definitions slightly amended to incorporate new legislation.

	<p>safekeeping and administration of investment instruments; or</p> <p>(b) Trustees within the meaning or 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:</p> <p>i. Branch Managers within the State (PCF-33); ii. Head of Transfer</p>			
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	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,	-		Changed - • PCFs 38 to 40 – definitions slightly amended to incorporate new legislation.

	<p>Companies and Miscellaneous Provisions Act 2005:or</p> <p>(c) General Partner within the meaning of the Investment Limited Partnership Act 1994:</p> <p>i. Head of Transfer Agency (PCF-38);</p> <p>ii. Head of Accounting Valuations (PCF-39);</p> <p>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).</p>			
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7	In respect of a Payment Institution authorised under the European (Payment Services) Regulations 2009 or an E-Money Institution within the meaning of the European Communities (Electronic Money) 2002: i. Branch Managers within the State (PCF-41).	-		Changed - • PCF 41 – definition amended slightly to incorporate new legislation.
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Feedback on Appendix 2 - Draft Standards

No.	Standard	No. of comments received	Summary of Key Comments	Nature of Change (if any)
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.	6	<ul style="list-style-type: none"> • Clarification sought on whether the new regime will replace the current MCR or bolster it. • Suggestion that management companies and UCITS Self-Managed Investment Companies should not be included as similar requirements do not exist in other jurisdictions. • Concern expressed on whether UCITS and non-UCITS are included within the definition of regulated financial service provider. • Suggestion that Collective Investment Schemes (CIS) do not fall within the definition of regulated financial service provider and thus fall outside the scope of the 2010 Act. CIS is a product, not a service so certain regulations while applicable to the distributors of CIS, do not apply to CIS themselves. 	<p>Changed – now refers to Credit Unions being excluded from scope.</p> <p>No change.</p> <p>No change.</p> <p>No change.</p>

1.2	<p>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.</p> <p>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:</p>	2	<ul style="list-style-type: none"> • Suggestion raised that there are possible contradictions between the right of the Central Bank to sanction staff and the Unfair Dismissals Act. • Suggestion that some Standards may prove problematic including <ul style="list-style-type: none"> - the extent to which complaints against an individual should be considered; - forced resignation or dismissal following a takeover/merger; - the extent to which misconduct or complaints should be considered if that person was cleared; - the extent to which physical and mental health can be tested; and - the extent to which a firm can substitute their view for the forthcoming judgement of others. 	<p>No change.</p> <p>No change.</p> <p>No change.</p> <p>Standard removed.</p> <p>No change.</p>
iii	Cause that person to be the subject of a prohibition notice under Section 43 of the Act.	-	<ul style="list-style-type: none"> • Query raised as to what steps a person might take if they are in contravention of the Standards. 	No change.

1.3	<p>Definitions In this Code:</p> <p>a) 'Act' means the Central Bank Reform Act 2010;</p> <p>b) 'Bank' means the Central Bank of Ireland;</p> <p>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.</p>	-		<p>Changed –</p> <p>1. Includes references to definitions of Controlled Functions, and Pre- Approval Controlled Functions, the Regulations and the Standards.</p> <p>2. Includes provisions on commencement dates for the Standards.</p> <p>3. Includes exemptions for certain staff from the scope of the Standards.</p>
2.1	A person to whom this Code applies shall comply with these Fitness and Probity Standards at all times.	4	<ul style="list-style-type: none"> • Clarification sought on whether a service provider who has no free power over assets would remain outside of the scope. 	Changed scope, as set out above.
3.1	A person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.	5	<ul style="list-style-type: none"> • Guidance sought on the appeals process. • Clarification sought on where the service provider exercises no free power over the assets does it remain outside the scope of this provision. 	Guidance provided.

3.2	Without limiting the generality of paragraph 3.1, the person must be able to demonstrate that he or she:	16	<ul style="list-style-type: none"> • Clarification sought on whether a person must satisfy all requirements. 	Guidance provided.
(a)	Has professional or other qualifications and capability appropriate to the relevant function;	-	<ul style="list-style-type: none"> • Guidance sought on a benchmark for "capability". • Clarification sought on whether Minimum Competency Requirements would be sufficient for customer roles. 	Guidance provided.
(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	-	<ul style="list-style-type: none"> • Guidance sought on how a firm is to assess the extent to which an employee contributed to the need for state support. • Comment received that 3.2(c) is unclear in relation to 'competence and proficiency' and there is a possibility it may hinder career development. 	<p>This is for a firm to determine.</p> <p>'Competence and proficiency' is for a firm to determine.</p>

	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.			
(e)	Has a clear and comprehensive understanding of the regulatory and legal environment appropriate to the relevant function;	-	<ul style="list-style-type: none"> • Concern raised that this requirement could restrict recruitment from other jurisdictions. 	No change.
(f)	Is capable of performing the relevant function on a continual basis having regard to his/her physical and mental health;	-	<ul style="list-style-type: none"> • Concern raised on regarding the monitoring of physical/mental health. Comment that there would be problems with employment legislation and data protection. Guidance sought on how this could be assessed. 	Standard removed.

(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;	-	<ul style="list-style-type: none"> • Guidance sought on what concurrent responsibilities may impair a person's ability to discharge their duties. • Comment that 3.2(g), where a person must 'not allow conflicts of interests to arise', may not always be possible. 	No Change.
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:	15	<ul style="list-style-type: none"> • Suggestions made to remove all references where proceedings are pending as it is deemed inappropriate to pre judge. • Guidance sought on the level of materiality to be applied. 	Changed in parts - some Standards removed or merged with other Standards and text changed in others.

(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;	-	<ul style="list-style-type: none"> • Comment as to whether it is fair to request a person to disclose any complaint, disciplinary proceeding, or investigation against them. 	Changed text and expanded – merged with standard 4.1(n) and (o).
(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;	-	<ul style="list-style-type: none"> • Suggestion made that an element of materiality should be applied to this requirement. • Guidance sought as to when a complaint would adversely affect one's ability to perform a role. • Clarity sought on whether this requirement still applies if the person was cleared of the charge. 	Changed.
(c)	the person has been the subject of any existing or previous investigation or	-	<ul style="list-style-type: none"> • Suggestion made that this requirement could be merged with 4.1 (j). 	Changed.

	disciplinary proceedings, by the Bank, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;		<ul style="list-style-type: none"> • Guidance sought on what is captured by "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;	-	<ul style="list-style-type: none"> • Suggestion made that this requirement should only be considered in cases where the dismissal or resignation is the result of allegations of malfeasance or quasi criminal record. 	Changed.
(e)	the person has been a director of a company that was struck off the register of companies by the Registrar of Companies;	-		Changed text (to deal only with involuntary strike off).
(f)	the person has been disqualified or restricted from acting as a director or disqualified from acting in any managerial capacity;	-	<ul style="list-style-type: none"> • Guidance sought on how this could be vetted. 	No change - guidance provided on due diligence.

(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;	-	<ul style="list-style-type: none"> • Request received to delete this requirement as: <ul style="list-style-type: none"> - it is already adequately captured by 4.1 (b), (h) and (l). - there may be instances where the charge is not material or sufficient time may have passed. • Suggestion made that there should be a presumption of innocence if there was no successful prosecution. 	<p>Changed (merged with other Standards).</p> <p>Relevant constitutional rights and rights of natural justice will be observed within the new regime.</p>
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(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;	-	<ul style="list-style-type: none"> • Suggestion made to allow for the presumption of innocence. 	Changed – merged with new standard 4.1 (g).
(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;	-	<ul style="list-style-type: none"> • Suggestion made to allow for the presumption of innocence. • Guidance sought to aid firms in determining what constitutes "reasonable grounds". 	Changed – merged with new standard 4.1 (g).

(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;	-	<ul style="list-style-type: none"> • Suggestion made to allow for the presumption of innocence. • Clarification sought as to whether the relevance of the investigation should be dependent on the outcome. 	Changed – now covered by Standards 4.1(c) and (j).
(k)	the person has accepted, acknowledged or consented to civil liability for fraud or misrepresentation under any law in any jurisdiction;	-	<ul style="list-style-type: none"> • Request received to delete this requirement or to provide guidance on the difference between acknowledged and consented. 	Changed - now merged in Standard 4.1 (g).
(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;	-	<ul style="list-style-type: none"> • Clarification sought on what "civil penalty enforcement" means. • Suggestion made that only regulatory authorities relating to financial services should apply. 	No change.
(m)	the person has been untruthful or provided false or misleading information to the Bank or been	-	<ul style="list-style-type: none"> • Suggestion made that (j) negated the need for this requirement and should be deleted. • Guidance sought on how to vet this. 	No change.

	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;	-	<ul style="list-style-type: none"> • Suggestions made that the scope should be narrowed in this requirement to not include people who have voluntarily withdrawn. • Guidance sought on the interpretation of "influence" and suggestion to alter it to "significant influence". • Suggestion made that "onerous condition" was too subjective. 	Changed – merged in Standard 4.1 (a).
(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;	-	<ul style="list-style-type: none"> • Suggestion to delete - "As a result of the removal of the relevant registration, authorisation, membership or licence". • Suggestion that there appears to be a large overlap between 4.1(a) and 4.1(o). 	Changed - now merged in Standard 4.1 (a).

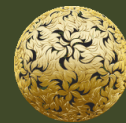
(p)	the person or any business with which the person held a position of responsibility or influence has been investigated, disciplined, censured, suspended or criticised by a regulatory or professional body, a court or tribunal, whether publicly or privately;	-	<ul style="list-style-type: none"> • Guidance sought as to whether this requirement was still relevant if the investigation yielded no prosecution. • Guidance sought for when a person is unaware that that a business in which he/she held a position of responsibility was investigated. • Request made to delete the word "criticised" from the requirement as it is too onerous. 	No change.
(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.	-	<ul style="list-style-type: none"> • Suggestion made that requirement (q) was superfluous as it is captured in other requirements. 	No change.
5.1	A person shall manage his or her affairs in a sound and prudent manner.	7	<ul style="list-style-type: none"> • Suggestion made to delete this requirement as it is excessive. • Guidance sought on detailed due diligence needed for this requirement. • Suggestion made that a maximum time limit should be introduced of 12 years, as that is how long bankruptcy last in Ireland. 	Changed - guidance provided on due diligence.

			<ul style="list-style-type: none"> • Suggestion made to provide for an allowance for negative equity in relation to financial soundness. 	
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:	6		
(a)	the person is or has been unable to fulfil any of his or her financial obligations, whether in the State or elsewhere;	-	<ul style="list-style-type: none"> • Request received to delete this requirement as it is excessive. • Suggestion made that requirement (a) is superfluous as it is captured in the other requirements below. 	Changed – removed proposed standard.
(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	-	<ul style="list-style-type: none"> • Request made to delete this requirement as it is excessive. • Suggestion raised that this requirement is only relevant if the individual is not adhering to the terms of the agreement and request made that the requirement should be amended to reflect this. 	Changed.

	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;	-	<ul style="list-style-type: none"> • Request made to delete this requirement as it is excessive. • Request made to alter the wording of the current IQ. 	No change.
(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	-	<ul style="list-style-type: none"> • Suggestion made that "outside the state" is captured by the term "State or elsewhere". 	Changed – proposed standard removed.
(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).	-	<ul style="list-style-type: none"> • Suggestion made that this requirement should apply to those at a senior management level only. 	Changed –the scope of the standard has been narrowed.
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.	1	<ul style="list-style-type: none"> • Request to move this requirement to section 2 as it is general in nature. 	Moved to section 2.

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.	1	<ul style="list-style-type: none">• Request to move this requirement to section 2 as it is general in nature.	Moved to section 2.
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