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1st March 2013

Registry of Credit Unions
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

Re: Response to Consultation Paper 62: Fitness and Probity Regime for Credit Unions (CP62)

Dear Sir/Madam,

When the Central Bank first issued the existing Fitness and Probity regime in December 2011, credit unions were exempt from the requirements set out in the Fitness and Probity Standards. On 30 May 2011, the Government established an independent Commission on Credit Unions (the "CUU") to review the future of the credit union movement and make recommendations in relation to the most effective regulatory structure for credit unions. In April 2012, the Commission published its final report recommending that the scope of Part 3 of the Central Bank Reform Act 2010 (the "Act") should be extended to apply to credit unions. On 24 September 2012, the Minister for Finance commenced Part 3 of the Central Bank Reform Act 2010 for credit unions.

We now welcome the introduction of Part 3 of the Act to the realm of Credit Unions, which will facilitate the implementation of a tailored Fitness and Probity Regime (the "Regime") Furthermore, we welcome Central Bank's engagement with industry and request for submissions in relation to this proposed regime. On drafting our response we have taken into consideration the unique nature of Credit Unions and their important role in the market place as a volunteer co-operative movement and the distinction between them and other types of financial institutions. Furthermore, whilst our response provides views on the approach to be put in place for Credit Unions, we have also been mindful to include any issues which were encountered by all other Regulated Financial Service Providers upon implementation of the existing Fitness and Probity regime. We believe the inclusion of such will aid in the avoidance of similar issues reoccurring and assist in a smoother implementation process for credit unions.

The tailored approach to be introduced not only reflects the unique nature of credit unions but will endeavour to ensure that adequate levels of governance controls are in place to mitigate any risk which may arise. The main risk faced in this case is that without appropriate governance controls credit unions potentially run the risk of their members losing confidence. This can lead to savers withdrawing their funds, which will in turn have a knock on effect on those who wish to borrow as there will be a decrease in surplus funds.

We lay out our response to the questions posed below and have also included additional comments which we feel may add value to the consultation process.

Section 4: Overview of the Fitness and Probity regime for credit unions

(i) **Do you agree with the tailored approach to the designation of CFs and PCFs for credit unions in the draft Regulations? Do you think any additional CFs or PCFs should be designated?**

We concur with the Central Banks's decision that credit unions should not be exposed to the existing Fitness and Probity regime which includes 11 CFs and 41 PCFs. We note that the CUU is in agreement with the Central Bank's stance regarding CFs; however they have inferred that additional PCFs should be designated for larger Credit Unions. They proposed that in addition to Chairman and Manager, the following should also be designated as PCFs;

- All Board Members
- The Chair of the Nomination Committee
- The Chair of the Board Oversight Committee

Whilst we note that there will be a post implementation review, in which designation of PCFs will be reviewed, we would welcome the Central Bank's reasoning behind the initial exclusion of the above.

However, in general we do endorse the tailored approach. The rationale behind such endorsement is that credit unions as a whole are not as sophisticated as most other regulated financial service providers, with the outcome being that the risk posed would not be great enough to warrant the extensive numbers of controlled functions and pre-approval controlled functions that exist in the current regime.

Credit Unions, many of whom do not have access to an array of resources, will find it easier to adapt as we envisage that the cost of the process in terms of training and due diligence requirements will be less costly.

In terms of any additional designations, we would be of the viewpoint that it may be necessary to include "Customer Facing" personnel as CFs. The rationale being such inclusion is that as they interact with customers on a day to day basis they are essentially responsible for instilling customer confidence in the credit union system as a whole. Therefore, one would deem that they may potentially "exercise significant influence on the conduct of affairs". We believe that this should be addressed in the post implementation review.

Please note the below general comments.

- When the new regime is introduced the need for proportionality will be vital to its success. It is crucial that the unique nature of credit unions is taken into account, and the approach to be adopted should be proportionate to the requirements necessary to improve governance standards at both board and management level in order to attain high levels of consumer confidence in this sector. Although, we have referenced the unique nature of credit unions it is pertinent to remember that the majority of credit unions can be relatively small in terms of resource. Proportionality will be key, with the aim being that the execution of the regime does not become overly burdensome, be it via administration or cost encumbrances.

- The Central Bank must be cognisant of the fact that in order for credit unions to operate efficiently and effectively they are highly dependent on volunteers, it is those volunteers that are crucial to the continued success of credit unions. Therefore, although a more structured form of governance is welcome we believe that a cautious approach should be adopted so as not to make certain positions unattractive to prospective new candidates.

- Interlinked with the above is the realisation that the Central Bank does not want the regime to act as a deterrent to prospective highly skilled candidates who may be discouraged if they deem that the levels of scrutiny are too high versus the job at hand. This may result in a loss of the most suitable and competent candidates to other jurisdictions which may not be as heavily regulated when it comes to fitness and probity.

(ii) Do you agree with the phased approach for the implementation of the Fitness and Probity regime for credit unions?

As discussed above it is paramount that the approach to be adopted is proportionate to potential risks faced by credit unions. We agree that this will be effectively managed through phased implementation, the resultant effect will be that those credit unions which pose the highest risk i.e. those with total assets greater than €10 million, will undergo the transition first, and any risk posed by poor levels of candidates at board and management level may be lessened.

Phased implementation will be beneficial to the process as a whole as it will make the process more efficient, with the expectation being that early "teething" problems will be resolved before the vast majority of credit unions must implement the regime in July 2015. Furthermore, phased implementation will also provide those credit unions with assets less than €10 million additional time to ensure that they have an adequate level of resource in place to deal with the task in hand and also the time to ensure that appropriate policies and procedures are in place.

Section 5: Standards of Fitness and Probity for credit unions

(iii) Do you think the draft Standards cover all relevant matters for credit unions?

Overall we are in agreement that the drafts Standards capture the majority of prerequisites needed to satisfy the minimum standards which an individual must meet in order to be deemed suitable and be considered for a CF or PCF. However, please see below further suggestions for inclusion.

Draft Standards	Comments
Section 3.2(d) *"has a sound knowledge of the business of the credit union as a whole, and the specific responsibilities that are to be undertaken in the relevant function"*	We suggested that more detail should be provided on what constitutes "sound knowledge", so as to avoid any interpretation issues.
Section 3.2(f) *"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 function"*	We suggest that a limit should be placed on the exact number of additional roles which can be held. The reasoning for this is so as to avoid any possible conflict of duties, and to ensure that the individual can perform the role to the best of their ability and act in the best interest of customers at all times.
Section 4.1(1) *"the person has held in the past 5 years or currently holds a loan with the credit union which has been or is in arrears for a period of greater than 9 weeks."*	This may be more appropriate to Section 5 which addresses Financial Soundness. In addition, some aspect of materiality should be introduced here. There could be many reason why an account goes into arrears. In the existing Fitness and Probity regime the person's financial soundness is one factor to be considered in their assessment as fit and proper. Is this the case here?
Section 5.1 *"A person shall manage his or her affairs in a sound and prudent manner."*	We suggested that more detail should be provided on what constitutes "sound and prudent", so as to avoid any interpretation issues.

Section 6: Guidance on Fitness and Probity for credit unions

(iv) Do you think that the Central Bank should issue guidance on the Fitness and Probity regime for credit unions?

Yes, it is imperative that guidance on the proposed regime should be issued. A number of interpretation issues arose in the Fitness and Probity regime for Credit Institutions and Insurance Undertakings and the provision of Guidance to support the implementation was a key tool used by firms in understanding their obligations and the Central Bank's expectations. Feedback from our clients made it apparent that the general consensus was that the guidance issued was considered to be too vague, especially on the topic of due diligence. Firms were not aware as to how extensive the due diligence had to be, as a result some firms carried out more due diligence than was required.

Another issue faced by clients was trying to decipher and identify the classes of persons which fell in to CFs and PCFS. We suggest further guidance surrounding this would be beneficial.

It should be noted that poor guidance will be a more time consuming implementation process, which in turn can have several knock-on effects.

(v) Are there any additional areas of the Fitness and Probity regime for credit unions which the guidance should cover?

Whilst we consider that most areas are covered in the proposed guidance, we must reiterate our stance that the guidance provided must be sufficiently adequate to serve its purpose.

In addition to guidance notes we propose that the Central Bank also provide supplementary "FAQs", however, in order to achieve the optimum level of benefit we believe that appropriate FAQs should be issued in a timely manner i.e. at the beginning of the implementation process of the proposed regime. The rationale being that the issuance of "FAQs" will undoubtedly provide for a more effortless and quicker transition process and avoid duplication of questions asked, with the overall benefit being bestowed on both parties concerned, namely the Credit Union in question and the Central Bank.

With regards to additional areas to be covered in the guidance we suggest that guidance regarding the Online Reporting System ("ONR") be included. The rationale behind such is that the Online Reporting System will have an important role to play in ensuring the efficient and effective implementation of the proposed regime, as Individual Questionnaires for proposed PCFs must be submitted via this medium. Time is of the essence and simply providing guidance on ONR may prevent any potential time delays.

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In conclusion we welcome the introduction of tailored Fitness and Probity regime for the credit union sector. As noted throughout our submission we believe that process to be adopted should be sufficient to the risk. Furthermore, size and availability of resources should also be taken into account to ensure that all credit unions are able to meet all aspects of the regime. We believe that in order for the regime to be utilised effectively, firms should be provided with sufficient guidance to avoid interpretation issues and also minimise potential time delays for the implementation process. Clear guidance will undoubtedly enable firms to structure their approach and resources so as to enable them to be compliant with the regime.

We look forward to receiving your comments and responses to our submission in due course.

Yours faithfully,

Colm McDonnell
Partner