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Róisín Shortall TD

Dáil Éireann

Leinster House

Kildare Street

Dublin 2

Dear Deputy Shortall,

I refer to your email dated 28 April in which you address a number of follow up queries to the Governor in respect of Davy Stockbrokers. The query has been passed to me for response and I have outlined answers to your questions below.

1. Could the Governor confirm whether the Central Bank has the power to remove approval for an individual in a PCF role irrespective of what the company may decide?

Pursuant to the Fitness and Probity regime, the Central Bank does have powers to seek the removal of persons in pre-approval controlled functions (PCF) and controlled function (CF) roles if the evidential bar is reached that the requisite fitness and probity is lacking and that a prohibition is merited. This can only occur after a full investigation is conducted pursuant to the Fitness and Probity regime and an independent decision maker forms the view, based on evidence, that the subject of the investigation lacks the requisite competence and/or integrity to remain in the role, and that a prohibition for a definite or indefinite period is merited. Such investigations are forensic and intrusive and carried out pursuant to s.25 of the Central Bank Reform Act 2010.

As of 25 May 2021, we have issued nine prohibition notices, each prohibiting an individual from performing one or more controlled functions at one or more regulated firms for a specified period or indefinitely.

Where any individual is seeking appointment to a PCF role at any time, i.e. appointment to senior roles in financial services, pursuant to the Fitness and Probity regime the Central Bank has a key gatekeeper function. The Central Bank can assess the fitness and probity of proposed applicants for these roles and will not approve appointment to roles where the Central Bank is not satisfied that the proposed applicant for the role is fit and proper. This applies equally to new entrants to financial services, those moving roles within a firm, or from one firm to another. This assessment can include an assessment of the actions of individuals in prior roles in financial services.



To illustrate the operation of the gatekeeping function, which typically sees the withdrawal of applications where significant fitness and probity concerns are raised as part of this process, there were 4,486 PCF applications assessed in 2020. 36 of these PCF applications were referred to the Enforcement Division for assistance and consideration. Arising from this, the Enforcement Division conducted 26 Specific Interviews of proposed applicants for PCF positions and 20 applications were withdrawn by firms following referral to the Enforcement Division.

2. If this is not the case, does the Governor believe it is a power the Central Bank should have?

As noted above, the Central Bank does have the power to investigate a person performing a PCF role if there is reason to suspect their fitness and/or probity to perform the role.

3. If it is the case, could the Governor explain why he decided not to remove approval from the individuals?

In relation to the Davy case, having learnt of high-level facts about the relevant transaction in 2015, the Central Bank commenced its investigation of Davy, the regulated firm, for breaches of the MiFiD Regulations pursuant to the Administrative Sanctions Procedure. The investigation was detailed and forensic, seeking to establish the nature of the transaction, who participated, and the extent to which the transaction exposed failures in the firm's control framework. With such a complex and contentious investigation, it took time and tenacity to obtain the evidence which grounded the firm's failures and led to the significant sanction imposed. There were no findings made against Davy until the conclusion of the Administrative Sanctions Procedure and the admissions made by Davy on 1 March 2021. Certain individuals, who participated in the transaction the subject of the Central Bank's investigation, no longer occupy PCF or CF roles within Davy.

The Central Bank has an important gatekeeper function in relation to individuals applying for PCF roles to assess their fitness and probity for those roles. Firms may not appoint individuals to PCF roles without our prior approval in writing. This applies equally to new entrants, those moving roles within a firm, or from one firm to another.

As part of our gatekeeper function, where we have concerns about an individual's fitness and probity for a PCF role, they can expect a robust challenge by the Central Bank – by way of interview, in particular.

This sets out the information that can be provided subject to the Central Bank's legal obligations of confidentiality under the Central Bank Act, 1942 with regard to our enforcement activity as well as our ongoing intrusive supervision of Davy and other regulated firms.

I trust that the above addresses your queries.

Yours sincerely,

A handwritten signature in blue ink that reads "Derville Rowland".

Derville Rowland
Director General, Financial Conduct