

## Comments on Consultation Paper 51 – Proposed Changes to Fit and Proper Regime

We generally support and agree with the comments submitted by the IAİM. Particularly in relation to the remarks over evidencing the competence and capable test with regard to physical and mental health. This is an extremely sensitive and varied subject. The potential for accusations of discrimination would surely render this impossible.

Further comments submitted below.

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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?
  - PCF 9 – office of secretary – Is this necessary? We would like to better understand the perceived risk. i.e. generally this role does not have significant influence or responsibility for customer property/assets.
  - Could the CFs/PCFs be designated as required registrations or optional depending on the firm's activities? This question is also partly illustrated by the IAİM's comment regarding the lack of relevance to of the role of head of trading to the activity of an asset manager.
- 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 would welcome further clarity to Schedule 1 part 3 (b) and (c) (ii and iii above) with examples of the roles this is intended to capture.

• Can the CB to consider exemption from the requirement to register individuals where the regulated firm's activities are delegated to another firm which is supervised by another competent authority. We would expect the exemption to apply where the other authority has equivalent fit and proper and conduct of business regulation and the individual is registered with that authority.

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

- Page 13, section 13, refers to 'consumer protection'. Would some controlled functions only be required where the giving of advice or assistance is only to retail clients? As mentioned above we would welcome more detail on the types of roles the CB intend to capture for both CFs and PCFs.

(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)?

- Further guidance would be welcome.
- For administrative ease could the CB consider making all roles are pre-approval rather than have a two tier system.
- Pre Approval Process – Will an interview will be standard procedure or only when the CB has queries or concerns?

#### **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?

- Further guidance on appropriate exams/qualifications would be useful

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?

- Yes guidance would be appreciated and as stated above expectation as to the appropriate levels or types of due diligence would be useful.