



Irish Association
of Investment
Managers
35 Fitzwilliam Place
Dublin 2
Tel: 353-1-676 1919
Fax: 353-1-676 1954
Email: info@iaim.ie

20 May 2011

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

Dear Sir/Madam,

Response to CP51; The Fit and Proper Regime

The Irish Association of Investment Managers is pleased to respond to this Consultation Paper. The Association represents institutional investors who manage approximately €250 billion of assets on behalf of domestic and international clients.

Members of the Association welcome the proposed introduction of a unitary code for Fitness and Probity across the financial services sector and sub-sectors.

The introduction of a unitary code presents particular challenges given the diversity of activity conducted by regulated financial services firms. Firms are concerned that “a proportionate and risk based approach” to the use of the Bank’s powers will require detailed guidance to individual industry sectors.

IAIM member firms, for example, deal virtually exclusively, with professional customers (as defined in MiFID). Our clients engage separate professional advisors to advise on investment strategy and mandate design and who also monitor investment manager performance. In such an environment the concept of ‘assisting’ a client differs significantly from an engagement with a retail client. This would suggest a narrower band of functions which might potentially be CFs than would apply in a more retail facing business model.

As the CP acknowledges many of the objectives of a regime for Fitness and Probity are qualitative and not capable of explicit definition. “Probity is broader than any attempted definition or list of qualities” (Section 5 – page 21). Firms engender a culture of ethics, integrity and honesty through a variety of means including ethical or behavioural guidelines but predominantly through the leadership culture in the organisation. Some aspects are addressed through regulation e.g. MiFID Conduct of Business requirements.



The acknowledged difficulty in defining probity will require considerable guidance from the Bank in determining what specific procedures, amongst the many different possible approaches, are expected to evidence the culture of probity within firms.

The CP also acknowledges that the competent and capable exercise of a function is also subject to qualitative factors. For example the Draft Standards at 3(f) acknowledges that continuing regard must be had to physical and mental health. In what way might firms be expected to evidence their application of this very sensitive requirement? We note that many other factors in the personal lives of persons subject to the Standards could impose stresses which could have an impact on performance. These could range from the health of a child or spouse to the care of an elderly parent. Many firms have a culture of support for staff facing such challenges. Such an attitude is not easily encompassed in written procedures. In fact it may be impossible.

Finally, the CP and the draft standards acknowledge that financial soundness is a relevant factor and that a person must be able to demonstrate that their performance is not adversely affected by their personal financial position. However, even if firms introduce very intrusive requirements for staff seeking details of their financial affairs there will be no guarantee that such information provides definitive indicators. If such approaches are required should they extend to spouses or partners and if so can that be enforced? International investment firms need to recruit highly skilled personnel from abroad and have multiple nationalities in their Irish operations. Many of these culturally regard enquiry into their personal financial affairs as an intrusion into their privacy. In addition, the ability of a MiFID firm to rely on financial soundness reports emanating from other jurisdictions must be subject to question. Clearly ICB reports would be fruitless in such cases.

We do not raise these points to suggest that standards are incapable of being implemented but to acknowledge the inherent difficulties, for both firms and the Bank, of evidencing compliance with, and supervision of, such qualitative concepts. Boards of regulated firms assume significant responsibilities on foot of the proposed standards and they will require a detailed understanding of the Bank's thinking on supervision.

A litmus test the Bank might apply in developing the guidance is 'Which effective procedures would be capable of being implemented and enforced within the Bank itself?'

1. Issues relating to proposed PCFs and CFs

Our responses to the sections addressing PCFs and CFs reflect the nature of activities conducted by IAİM members. In particular our members manage portfolios in accordance with specific mandates or prospectuses predominantly on behalf of professional (as defined in MiFID) clients. No IAİM member deals on own account or underwrites on a firm commitment basis.

Accordingly the following comments apply to the suggested PCFs identified (in section 4 of Part 2 to Schedule 2) for investment firms.

- Member firms do not have 'Heads of Trading' as they do not operate proprietary books. Firms who do not 'take on balance sheet risk' such as our members, regard the 'Chief Investment Officer' as the role best equating to the combination of 'Head of Trading' and 'Head of Investment'.



- Firms are required, under MiFID, to maintain a permanent and effective compliance function which operates independently and which is typically overseen by a 'Head of Compliance'. Achieving this independence may not necessarily involve a separate 'Compliance Committee'.
- In the case of investment firms who have outsourced PCFs we would like clarification that it is sufficient to rely on the outsourced provider to have met the fit and proper requirements and no direct vetting of the staff of such providers is required. Where the provider of outsourced services is subject to supervision by a competent authority in another jurisdiction and is in good standing we presume this will be sufficient to meet obligations in this jurisdiction.
- In many cases, particularly where firms are subsidiaries, the role of Secretary is not one which has significant influence over the conduct of a financial service providers affairs. It may be that the Company Secretary should not be a PCF in all cases.
- The CP notes (16 i(2)) that reduced vetting may be appropriate for call centre staff. In significant contrast Section 13 (page 13/14) highlights the importance of managers/ supervisors being within scope and not call centre staff. The CP itself notes the challenges and potential burdens associated with an overly wide interpretation of 'providing assistance' (Section 4. 16(i), page 16).

In the case of IAIM members whose clients are professional and who in turn typically have external investment advisers the provision of assistance is of a client service/ support nature. Business development personnel who market and promote the services of MiFID firms to professional clients similarly would not be 'giving advice or assistance' to a customer. In contrast where the client base is predominately retail the provision of assistance may encompass advice etc. Such individuals are subject to MCR compliance with which, we assume, will address fit and proper requirements.

We would welcome guidance on this point.

- Similarly investment managers with professional clients whose relationships are governed by specific mandates consider the Chief Investment Officer as the person 'dealing in or having control over property of a customer'. Individual portfolio managers merely execute specific elements of the mandate under the control of the CIO.
- We presume that in situations where PCF 16 reports to PCF 13 then only the Head of Compliance will be deemed a PCF.

In summary we strongly urge the provision of non statutory guidance to firms defining the appropriate staff levels in CF functions to which the fit and proper standards should apply.

2. On going monitoring of PCFs / CFs

All firms have processes of annual reviews of performance. We presume that the processes relating to these reviews will be sufficient to evidence confirmation, or otherwise, of on going competency.



3. Processing of Applications

We welcome the decision to introduce an automated process.

The process of recruitment in the asset management industry can be lengthy especially for those roles which fill PCFs. We are concerned that there is no indication from the Bank of the timescales within which approvals will be processed. While the Bank clearly must conduct proper review some commitment to timescales is essential to the reasonable customer experiences which Bank anticipates. We also note that pre-approval for persons temporarily holding a PCF is required (Regulation 11). In many cases such temporary assignments arise because of unexpected events, such as illness etc. Pre-approval may not be possible.

Sectoral guidance will be important in certain aspects including

- Likely PCFs where the Bank may decide to interview candidates.
- When Garda clearance might be required.

4. Implementation and Transitional Arrangements

Implementation of the Regulations and Standards by 1 September 2011 will, in our view, require publication of non-statutory guidance well in advance of this date.

We would be happy to convene a small group of senior industry professionals (including HR function heads) to discuss with you the particular challenges investment firms might face.

Yours faithfully,

Frank O'Dwyer
Chief Executive

Directors:

G. Keenan (*Chairman*), P. Wood (*Vice Chairman*), S. Hawkshaw, R. Richardson,
G. Alexander, J. Richards, K. Dempsey, F.O'Riordan, D. Warren,
P. Hinkson, B. Hall, A. Kerr, F. Pietribiasi

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