



April 2019

## Central Bank of Ireland issues letter to Regulated Financial Service Providers regarding their obligations under the Fitness and Probity Regime

The Central Bank of Ireland (the “**Central Bank**”) has issued a “*Dear CEO*” letter to all Regulated Financial Service Providers (the “**Firms**”) regarding their obligations under the Central Bank’s Fitness and Probity Regime (the “**Letter**”). The Letter applies to a number of firms, including collective investment schemes and their service providers. The focus of the Letter is to remind Firms of the significant obligations placed on them under the Central Bank’s Fitness and Probity Regime introduced under the Central Bank Reform Act 2010 (the “**2010 Act**”), and to highlight some of the main areas of compliance which the Central Bank have found to be deficient.

### Existing Fitness and Probity Obligations

The Central Bank highlights in its Letter the shortcomings with regard to Firms ensuring that they do not allow persons to perform controlled function (“**CF**”) roles (including a pre-approved control function) unless they are “satisfied on reasonable grounds” that the person complies with Fitness and Probity Standards (the “**Standards**”). These shortcomings relate to:

- ▣ Failure to provide for the ongoing nature of the obligations; and
- ▣ Failure by Firms to report issues to the Central Bank.

The Central Bank notes that (i) Firms are required to conduct due diligence on an on-going basis to ensure employees performing CF roles comply with the Standards and (ii) where Firms have taken steps to address any fitness and probity concerns they have about

For further information on any of the issues discussed in this article please contact:



**Emmet Quish**

DD: + 353 (0)1 673 1724

[emmet.quish@dilloneustace.ie](mailto:emmet.quish@dilloneustace.ie)



**Hannah Fenlon**

DD: + 353 (0)1 674 1005

[hannah.fenlon@dilloneustace.ie](mailto:hannah.fenlon@dilloneustace.ie)

an individual, that they should report those concerns to the Central Bank. As the Central Bank is not involved in the on-going fitness and probity monitoring of the individuals once appointed, if steps are taken by the Firm to address fitness and probity concerns of an individual which are then not reported to the Central Bank, the Central Bank is unable to consider an individual's misconduct, in particular in respect of any future PCF application that an individual might submit.

The Central Bank also observed that there were individuals acting in senior roles known as pre-approved controlled functions (“PCFs”) without the Firm having first sought the Central Bank's approval. The Central Bank operates a “gatekeeper” regime under the 2010 Act which allows the Central Bank to assess if individuals being appointed to PCF roles are fit and proper.

The Letter reminds Firms that notwithstanding that the assessment process applies to the proposed appointee of the PCF role, the statutory obligation is on the appointing Firm to seek approval of the individual by the Central Bank in writing, prior to their appointment. In circumstances where a person is appointed to a PCF role without approval of the Central Bank, the Central Bank reiterates that it will hold the appointing Firm responsible for non-compliance.

## Due diligence for senior positions & the role of the nominations committee

The Central Bank has reminded Firms that when a PCF applicant is completing their individual questionnaire (“IQ”) they are to be candid, truthful and provide a full, fair and accurate response to all questions. Where applicants are uncertain of how to respond or uncertain as to the level of detail that are expected to provide, they should endeavour to provide as much information as possible noting that it is for the Central Bank to determine whether a fact is material to a PCF application. This is of importance to Firms as the IQ includes a declaration from the proposing Firm regarding the suitability of the proposed candidate confirming that all due diligence has been conducted.

Separately, the Central Bank noted that individuals applying for PCF roles in low and medium impact Firms, may, at the discretion of the Central Bank, be subject to interview in order for the Central Bank to assess their suitability for the role. While individuals applying for PCF roles in high and medium high impact Firms, will be subject to interview as a matter of course. The Central Bank further observes that there has been a marked increase year on year in the number of PCF applications being withdrawn by proposing Firms either during, or subsequent to, second round interviews by the Central Bank known as “specific interviews”. The Central Bank has not confirmed whether this increase in the withdrawal of PCF applications year on year is proportionate to the increase in interviews that the Central Bank are requesting.

## Next Steps

The Central Bank has reiterated that it is crucial that Firms not merely ask whether a candidate is competent for the CF and/or PCF role but also whether the individual acts with integrity at all times. As a result, the Central Bank recommended that Firms should:

- ▣ Require those persons performing CF roles to undertake to notify them of any changes in their circumstances which might be material to their fitness or probity;

- ▣ Properly assess if an individual still satisfies their obligations under the Standards;
- ▣ Request persons performing CF roles to certify, at least on an annual basis, that they are aware of the Standards and that they agree to abide by them (already required of PCF roles);
- ▣ Notify the Central Bank of any fitness and probity concerns regarding a person performing a CF role, and take action on foot of those concerns. The Central Bank noted in the Letter that while there is no exhaustive list of the types of action that must be notified to the Central Bank, they would include for example: (i) the issuing of a formal written warning, or (ii) suspending / dismissing a person, or (iii) reducing / recovering some of their remuneration as a result of issues relating to fitness and probity;
- ▣ Review the Firm's fitness and probity policies, procedures and practices and address any shortcomings; and
- ▣ Be in a position to demonstrate how the issues raised in the Letter have been considered, and to explain and evidence any remedial actions taken.

Information on the applicability of the Standards on Firms is set out in detail in the Standards. If you are a regulated firm or collective investment scheme and wish to discuss the Letter or the fitness and probity requirements applicable to you please let us know.

A link to the Letter is set out [here](#) and should be read in conjunction with the Central Bank's guidance on the Standards.

**Dillon Eustace**  
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## DILLON EUSTACE

### **Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### **Cayman Islands**

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### **New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### **Tokyo**

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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