

Central Bank Findings Regarding Compliance with the Fitness & Probity Regime

The Central Bank of Ireland issued a “Dear CEO” letter to all regulated financial service providers (RFSPs) on 8 April 2019. In its letter, the Central Bank highlights key concerns in relation to:

- Shortcomings regarding ongoing due diligence by RFSPs on persons carrying out controlled functions (CFs) and pre-approval control functions (PCFs)
- Failure by RFSPs to notify the Central Bank of fitness and probity concerns
- In certain instances, failure by RFSPs to obtain prior approval for PCF holders, and
- Shortcomings in the implementation of systems and controls to monitor compliance with fitness and probity standards

The letter applies to all RFSPs, which includes collective investment schemes, fund management companies and their service providers.

Ongoing due diligence obligations

The Central Bank’s letter reminds RFSPs of their ongoing obligation under section 21 of the Central Bank Reform Act 2010 not to permit a person to perform a CF unless the RFSP is “satisfied on reasonable grounds” that the person complies with the Fitness and Probity Standards. Despite recent enforcement action, the Central Bank noted significant shortcomings in compliance by some RFSPs with fitness and probity obligations, particularly relating to failures not to assess on an ongoing basis whether persons carrying out CF roles remain fit and proper.

RFSPs are reminded that they are required to conduct due diligence on an ongoing basis to ensure that persons carrying out CFs comply with the Standards. As part of this requirement, the Central Bank recommends that RFSPs should:

- Require persons performing CF roles to undertake to notify the RFSP of any changes in circumstances which might be material to that person’s fitness and probity, and



where appropriate the RFSP should assess whether the relevant person continues to comply with the Standards; and

- Require 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.

Reporting issues to the Central Bank

A RFSP that has concerns regarding the fitness and probity of a person performing a CF role and takes action on foot of those concerns is advised to notify the Central Bank of such concerns “without delay”. The requirement to notify the Central Bank applies where the RFSP takes steps to address fitness and probity concerns, including, for example, where a RFSP issues a formal written warning, suspends or dismisses a person or recovers part of their remuneration as a result of issues relating to fitness and probity.

Requirement for the prior approval of PCF holders

The Central Bank reminds RFSPs that it is not permitted to appoint a person to a PCF role unless the Central Bank has first approved the appointment in writing. The Central Bank has observed examples of persons acting in PCF roles that have not sought the prior approval of the Central Bank. RFSPs are reminded that the statutory obligation for prior approval of a PCF role lies with the RFSP and that where a person is appointed to a PCF role without the Central Bank’s approval, the Central Bank will hold the RFSP responsible for non-compliance.

Due diligence regarding PCF holders

Where PCF holders are proposed, the PCF applicant is required to complete an individual questionnaire (IQ), which the Central Bank will review before approval is granted or possibly refused. The Central Bank has identified cases where applicants failed to disclose material facts that were either known to the proposing RFSP or would have been known if proper due diligence

had been conducted. IQs must be signed off by both the applicant and a proposer on behalf of the RFSP, and care should be taken to ensure that the IQ is complete and accurate. In its letter, the Central Bank advises RFSPs in relation to the completion of IQs, explaining that it is for the Central Bank, and not the applicant, to decide whether a fact is material. The Central Bank notes that it will challenge applicants if they fail to make full and candid disclosure.

Systems and controls

In its letter, the Central Bank refers to settlement agreements regarding the enforcement action it has taken against certain RFSPs regarding compliance with the Standards. As detailed in the settlement agreements, the Central Bank expects RFSPs to implement appropriate systems, controls and processes to ensure compliance with the Standards.

Compliance

The Central Bank advises CEOs of RFSPs that it expects them:

- Together with the boards of RFSPs, to review their fitness and probity policies, procedures and practices
- To address any shortcomings that may be identified
- To be in a position to demonstrate how the issues raised in the Central Bank’s letter have been considered, and
- To be able to explain and evidence demonstrate any remedial steps taken to address any shortcomings

RFSPs are advised to include consideration of the Central Bank’s letter as an agenda item at their next board meeting. The Central Bank has advised that where RFSPs fall short of the Central Bank’s requirements it will take appropriate action.

This briefing focuses on the Central Bank's CEO letter, is for general guidance only and does not consider the broader application of the Standards or the Central Bank's guidance on the Standards.

If you require assistance in relation to compliance with the Fitness and Probity Regime, please contact a member of our Investment Funds team.

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