



ADVISORY
Industry Information

Central Bank 'Dear CEO' Letter re Fitness & Probity

April 2019

Executive Summary

On 8 April 2019 the Central Bank of Ireland (the "Central Bank") published and circulated a letter addressed to Irish regulated financial service providers, including funds and fund service providers ("RFSPs") regarding industry-wide shortcomings in RFSPs' compliance with the Central Bank's Fitness and Probity ("F&P") regime (the "Letter").

The key focus of the Letter is to highlight the Central Bank's concerns over a lack of general awareness regarding the scope of the F&P regime and to highlight that RFSPs have significant compliance obligations (including ongoing obligations).

The Letter requires that:

- i. CEOs consider and discuss the Letter at board level (or nomination committee if relevant);
- ii. CEOs and boards review the RFSP's F&P policies and procedures and address any shortcomings; and
- iii. CEOs and boards be in a position to demonstrate how the issues raised in the Letter have been considered by the RFSP and to explain and evidence any remedial actions taken.

The Fitness and Probity Regime - Refresher

Regulations made under the Central Bank Reform Act 2010 (the "Act") prescribe certain roles within RFSPs as **control functions ("CFs")** and **pre-approval control functions ("PCFs")**.

Under the Act an RFSP is not permitted to employ an individual as a CF or PCF unless they are satisfied on reasonable grounds that that individual is compliant with the **Central Bank's Fitness and Probity Standards (the "Standards")**. An RFSP must also obtain written confirmation that an individual complies with and agrees to abide by the Standards.

In summary, the Standards require that CFs and PCFs in Irish RFSPs are:

- i. competent and capable;
- ii. honest and ethical; and
- iii. financially sound.

In order to satisfy itself of an individual's compliance with the Standards, an RFSP is required to obtain certain due diligence on that individual. The required due diligence differs for CFs and PCFs.



Under the Act RFSPs also require written authorisation from the Central Bank in advance of employing a PCF; which requires that PCF applicants submit an online individual questionnaire (“IQ”) for assessment.

Ongoing obligations under the F&P regime include:

- » maintaining a register of all CFs and PCFs;
- » undertaking ongoing F&P due diligence of CFs and PCFs, including obtaining annual confirmations of continuing compliance and agreement to comply with the Standards;
- » maintaining records of all CF and PCF due diligence materials;
- » submitting annual PCF returns to the Central Bank, whereby the board of the RFSP confirms each PCF’s ongoing compliance with the Standards; and
- » notifying the Central Bank of any concerns with CF or PCF’s F&P.

Note that certain entities and individuals will be within scope of the European Central Bank’s (“ECB”) F&P regime, which is outside the scope of this advisory.

The Central Bank’s ‘Dear CEO’ Letter

The Letter sets out the Central Bank’s concerns regarding RFSPs’ lack of general awareness of their obligations under the F&P regime, including:

- » RFSPs failing to carry out ongoing due diligence of CF and PCFs’ F&P, and notes that RFSPs should require such persons to notify them of any change in circumstances in relation to their F&P, following which the RFSP should assess whether that individual continues to comply with the Standards;
- » RFSPs should require all CFs and PCFs to confirm their ongoing compliance with the Standards on an ongoing basis;
- » RFSPs failing to notify the Central Bank of concerns with CF and PCFs’ F&P without delay;
- » Individuals performing [PCF roles](#) without Central Bank authorisation; and
- » Non-disclosure of material facts during the IQ process, noting that the determination of materiality rests with the Central Bank.

Specific actions required on foot of the Letter are set out in the Executive Summary section above.

Interviews

The Letter also provides additional details of the Central Bank’s interview process for PCF applicants, building on existing guidance. Specifically, the Letter notes that the Central Bank may require a second “specific interview” for certain PCF applicants, which seems to be along similar lines of the secondary specific interview undertaken by the ECB as set out in the [Guide to fit and proper assessments](#) for persons within the ECB’s remit. The Letter indicates that the second interview is more intrusive and an interviewee may have legal representation present.

Broader Context

The Central Bank has issued an increasing number of communications in relation to F&P and/or culture, including [details of proposals for a new Senior Executive Accountability Regime](#) (applicable to banks, insurers and certain investment firms and their third country branches), a [Dear CEO letter in relation to conduct supervision of wholesale financial markets](#), and the [Central Bank Report on Culture and Behaviour of the Irish Retail Banks](#) over the past year. This emphasises an increasing focus on the individual and on improving conduct through culture.

In the past 18 months, the Central Bank has issued three six-figure fines to RFSPs in cases that included breaches of the F&P regime (please see settlement agreements [here](#), [here](#) and [here](#)). The Letter encourages CEOs to review and consider these settlement agreements against their RFSP’s F&P controls.



Next Steps

Following the publication of the Letter, we expect that the Central Bank will pay close attention to RFSPs' F&P compliance.

To ensure compliance with the F&P regime on an initial and ongoing basis, Walkers advises that RFSPs take, at a minimum, the following steps:

- » Review and consider the Letter at board level, and ensure that such consideration and any gap analysis is properly minuted
- » Assess all individual and employee contracts and job specifications against applicable CF/PCF designations
- » Review records held of initial and ongoing due diligence for all CFs and PCFs to identify any gaps
- » Review record keeping practices to ensure compliance with F&P requirements
- » Review F&P policy and procedures
- » Document any remedial action taken and improved policies and procedures introduced
- » Consider obtaining board training

Walkers

The Walkers regulatory, funds and employment teams have extensive experience of advising RFSPs on the F&P regime; including in the context of policy and framework development, PCF applications and entry and exit interviews, and representing RFSPs in Central Bank enforcement actions in relation to F&P matters, and are currently advising clients in relation to the points raised in the Letter.

Contacts

If you would like to discuss compliance solutions to the Central Bank's F&P expectations, please get in touch with the below or with your regular Walkers contact.



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