



Fitness & probity

Central Bank of Ireland fine

December 2017

Central Bank of Ireland ("**CBI**") issues first fine, of €200,000, for breaches of requirements relating to process for ensuring compliance with F&P Standards on an on-going basis.

Introduction

The Central Bank Reform Act 2010 ("**2010 Act**") sets out detailed provisions relating to the fitness & probity of persons to perform specified influential and/or customer-facing functions. These functions are so-called 'controlled functions', or 'CFs'; the most significant of these functions are pre-approval controlled functions, or 'PCFs' in respect of which CBI approval is required prior to appointment to these functions.

Section 21(1) of the 2010 Act provides that a regulated financial service provider shall not permit a person to perform a CF unless it is "satisfied on reasonable grounds" that the person complies with any standard of fitness and probity in a code issued under section 50 of the 2010 Act. The relevant code, for this purpose, is the 2014 Fitness and Probity Standards ("**Standards**"). This code sets out the details of the minimum standards of fitness and probity that CFs are expected to meet on an on-going basis.

Furthermore, under section 21(1) of the 2010 Act, a regulated financial services provider must not permit a person to carry out a CF unless "the person has agreed to abide by any such standard" set out in the relevant Code.

On 12 December 2017, on the basis of a settlement agreement with the firm, the CBI fined Merrion Stockbrokers Limited ("**Merrion**") €200,000 for breaches of the requirements of section 21(1) of the 2010 Act.

The facts

The Central Bank found that, for a period of over 4 years, from 11 December 2011 (when the new fitness & probity regime under the 2010 Act came into force), Merrion failed to introduce adequate systems or controls to ensure that individuals holding CFs (including PCFs) complied with the Standards on an on-going basis.

In particular, the CBI found that Merrion:

- Failed to properly document its due diligence when hiring any individuals into CF roles, to assess whether they met the fitness & probity Standards;
- Did not maintain written records to demonstrate how it fulfilled its on-going obligation to ensure that individuals in CF roles continued to meet the fitness & probity Standards;
- Erred in the classification of a number of individuals performing CFs;
- Had no centralised fitness & probity records for each individual covered by the fitness & probity regime.

The issue of individual accountability is of particular importance to the CBI in ensuring higher standards of compliance with regulatory requirements and ethical norms. Regulated financial services firms play an important part in this, as there is an onus on them to ensure that they continuously monitor whether the persons they put in CF roles meet the Standards on a continuous basis.

The obligation is clearly an on-going one. For example, as noted in the CBI's Guidance on the fitness & probity Standards, "the regulated financial service provider should ask persons performing CFs to certify that they are aware of the F & P Standards and agree to continue to abide by those Standards at least on an annual basis". This applies to all persons performing a CF, including those who are performing a PCF (who will have received prior approval from the CBI to carry out the role). Also, as stated in this Guidance:

"Where a regulated financial service provider becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF, the Central Bank expects the regulated financial service provider to investigate such concerns and take action as appropriate without delay."

The regulated financial service provider is also expected to notify the CBI, without delay, of any action taken following the investigation of such concerns.

The CBI's public statement in relation to this case emphasises the importance of the role firms play:

"We expect all firms to take note of this case and understand that they play a crucial role in ensuring that the fitness and probity regime works effectively."

How Eversheds Sutherland can help

Eversheds Sutherland is a leading global law firm.

Our Financial Regulation, Governance and Compliance ("FRGC") team, which includes a former Deputy Head of the Enforcement Division of the CBI and another former senior official from the CBI Enforcement Division, can:

- Assist firms to ensure that they have in place effective and robust Fitness & Probity policies and procedures, to ensure compliance with the requirements of the CBI;
- Assist firms to deal with specific Fitness & Probity issues, whether in the context of a PCF application or otherwise.

Key contacts



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