

Appendix 1 – Recommendations

Recommendation 1 – Fostering industry role in gatekeeping

The Central Bank should, as part of an overall enhancement on process guidance, provide greater clarity and guidance to industry on the important role of regulated entities in the gatekeeper phase. This guidance should clearly outline the key, proportionate expectations of the Central Bank as regards the process that a regulated entity engages in prior to submitting an application for a PCF approval to the Bank.³⁶ Such guidance should include the following key steps:

- a) Due Diligence/Screening: regulated entities conduct initial assessments of individuals to determine their suitability for a specific role. This will include reviewing CVs, conducting interviews and verifying qualifications.
- b) Background checks: regulated entities perform comprehensive background checks, which may include criminal record checks, credit checks and reference checks. The depth and scope of these checks depend on the seniority of the roles and the nature scale and complexity of the regulated entity.
- c) Documentation and record keeping: regulated entities maintain detailed records of their due diligence processes, including the information collected, assessments conducted and decisions made.
- d) On-going monitoring: regulated entities establish mechanisms for monitoring individuals' ongoing fitness and probity, such as regular performance reviews, mandatory training and self-declaration of any changes in personal circumstances that may impact their suitability for the role.

Recommendation 2 – Clear fitness and probity standards

On the above basis, and in light of the importance of transparent and clear F&P standards, the following recommendations are made to further enhance the effectiveness of the fitness and probity standards (and wider guidance issued by the Central Bank).

- a) Accessibility of the F&P standards – it is recommended that the Central Bank consolidate standards in a single location which would enable regulated entities, individuals and the staff of the Central Bank to access and understand the expectations more easily, promoting consistency in their application. This

³⁶ It is important to reiterate that any such process adopted should be proportionate. This means that regulated entities should tailor their processes according to their size, complexity and the specific roles being assessed. For example, a smaller, less complex entity is not expected to establish a Nomination Committee for the selection of PCF candidates.

should seek to identify in a comprehensive way the various pieces of guidance and requirements that the Central Bank has issued from a corporate governance perspective or otherwise. The benefits of such consolidation is as follows:

- i) **Ease of access and comprehension:** A centralised source of information would simplify the process of finding relevant standards, reducing confusion and improving overall understanding.
 - ii) **Encouraging a more robust and effective assessment process:** collating standards in one place would support the development of a more robust and effective F&P assessment process, promoting public confidence in the financial services industry.
- b) **Enhance the F&P Standards:** whilst the F&P standards (and wider guidance) issued by the Central Bank are not significantly out of step with peer regulators there are some weaknesses in the regime that should be rectified. In this respect it is recommended that international good practices in other jurisdictions are considered to enhance the clarity of the standards, in particular to:
- i) **Incorporate objective measures:** enhance the standards by including more objective measures, such as specific qualifications, certifications or experience requirements to reduce subjectivity in the assessment process. The Central Bank should also outline clear expectations in terms of the number of mandates that an individual can hold. Such expectations should not operate to preclude the possibility of holding a mandate above the Bank's expressed expectations, instead in such instances a more detailed level of information, assessment and consideration will be expected of the proposing regulated entity and the application will receive a heightened level of scrutiny by the Central Bank.³⁷
 - ii) **Develop specific enhanced guidance on the role of an executive, non-executive and on the specific expectations for independent directors.**
 - iii) **Address conflicts of interest:** strengthen the standards by including specific provisions on identifying, managing and mitigating conflicts of interest, which can undermine fitness and probity within the industry.

³⁷ In this context, the concept of mandates should not serve as an absolute barrier, but rather as a trigger for the Bank to engage in a more thorough examination of the individual's time commitments. This approach ensures that any potential conflicts or constraints related to an individual's various mandates are adequately assessed.

- iv) Clarify the way in which collective suitability and diversity within boards and management teams will be assessed.
- v) Clarify the approach to be adopted in relation to considering past events.
- c) Regularly review and update standards: establish a process for regularly reviewing and updating F&P standards to ensure that they remain relevant and reflective of industry developments and emerging risks and engage stakeholders in all such reviews. This can help ensure that the standards are practical, effective and reflective of industry best practices. All enhancements or clarifications of the F&P standards (or wider guidance) should follow consistent governance within the Central Bank.
- d) Holistic consideration of complementary powers – the issue of corporate governance, fitness and probity and the Individual Accountability Framework are most effective when utilised and considered in an interconnected and mutually supportive way. The Central Bank should review all such materials to ensure that they operate in this integrated manner.

Recommendation 3 - Governance

- a) Establishment of an F&P gatekeeping unit with responsibility for the entire gatekeeping process.
- b) Enhanced implementation of a risk-based approach for F&P gatekeeping, with a reconsideration of the overall number of PCF roles and a possible adjustment in the approach to different sectors including to the funds sector, which is the largest contributor in terms of applications. Whilst recognising the reduced role of fund directors in risk management decisions, which are generally the responsibility of the asset manager, in light of the increased size and systemic footprint of the sector in Ireland and the widespread practice of multiple directorship it could be appropriate to increase the number of interviews held in the sector with a view to ensuring some form of F&P scrutiny, also on time commitment, on individuals cumulating a larger number of roles and to de-stigmatise the fact of being called for interviews. The interviews would be subject to the enhanced self-discipline on timelines (see Recommendation 9), which are particularly relevant for a timely launch of funds. In considering the number of PCF roles, the F&P regime can better differentiate the expectations of the roles and responsibilities for different PCF roles, recognising the different relevance from a prudential perspective.

Recommendation 4 - Decision making

- a) Where legal advice is required on any PCF Gatekeeper application this advice should be provided by the in-house Legal Division.
- b) Where the F&P process progresses and significant concerns persist, a Minded to Refuse Letter would be issued by the F&P team. This Minded to Refuse Letter would include a draft decision, as well as providing a clear outline of the circumstances, the concerns arising under the relevant underlying law and guidance and would address all relevant issues raised to date, including written responses to any arguments raised by the applicant. The regulated entity would be provided a reasonable time (e.g., 10 working days) to provide submissions.
- c) A significant decisions committee would be established within the Central Bank. The committee would be responsible for decision making in significant decisions (i.e., when the assessment is potentially leading to a refusal decision), but can also appoint a single decision maker to decide a given case. When this is the case, the single decision maker should not be below the grade of Director. The Chair of the committee should be a senior official not routinely involved in the

assessment stage of such cases and be of requisite seniority to provide independent challenge.

- d) The Chair of the committee should have authority to decide upon composition based on the features of the underlying case. However, the Committee should include at least one additional member who brings a wider perspective on independence. This could be third party risk adviser appointed by the Central Bank. The Chair will be accountable to the Central Bank Commission in respect of the decision-making process.
- e) Where legal advice is required at the decision making stage, it will be provided by the General Counsel to the Central Bank.

Recommendation 5 – Communication and IT platform

- a) The Central Bank should organise an annual information session open to both firms and potential candidates to assist with their understanding of the practicalities of the F&P process.
- b) Ad hoc workshops should be organised to obtain feedback from firms on the functioning of the Online Portal for applications and other possible improvements of the practical aspects of the application process, including the IQ, with the aim to reducing the administrative burden on firms and improve the efficiency in the process.

Recommendation 6 – Interview stage

On the basis of the above considerations, the following recommendations are made:

- a) Interview Notifications: the Central Bank should provide a minimum of 5 working days' notice of an interview to the relevant individual. The Interview Notification should identify the staff members attending from the Central Bank and the roles of such staff. The number of Central Bank staff should be limited to three.
- b) Duration of the Interview – the Central bank should commit to keep interviews within a certain time limit (e.g., 90 minutes, as it is good practice at other authorities).
- c) Setting of interviews and comments on minutes – The setting for the interviews should remain conversational, rather than adversarial, and the minutes of the interview should be shared with the individual within one week, allowing one week for providing comments. The individual may decide to bring a note keeper or a lawyer as observers.

- d) The Central Bank should adopt as a principle that it will provide feedback in all cases where an interview has been conducted (whether an assessment interview or a specific interview) and that such feedback should be provided to both the individual and the regulated entity.

Recommendation 7 – Efficiency of interview process

Interviews

Two recommendations arise under this heading.

- a) The primary purpose of an F&P gatekeeping interview is to assess an individual’s fitness and probity. In this respect it is recommended that “meet and greet” type interviews should not form part of the F&P gatekeeping process.
- b) The Central Bank should aim to conduct a single comprehensive interview. This approach reduces the potential for unnecessary duplication, such as conducting an initial assessment interview followed by a specific interview, particularly when a specific issue is known in advance.

Recommendation 8 – Withdrawals/feedback

- a) As noted above, under Interviews, the Central Bank should adopt as a principle that it will always provide feedback to both the regulated entity and the individual after an interview. It is further recommended that such feedback be provided also in cases where a withdrawal occurs.
- b) The Central Bank will not engage in off-record discussion with regulated entities regarding specific F&P applications that the Bank has received. This practice aims at maintaining the integrity and impartiality of the process, ensuring that all relevant information is documented and available for review.

Recommendation 9 – Management information

- a) *Clear and Comprehensive Service Standards*: to promote transparency and avoid confusion, service standards should be clear, comprehensive and cover all relevant aspects of the process. All F&P gatekeeping applications should be captured and subject to the same overarching timeframe for completion, there should be no exclusions from the service standards, for example, the service standards should cover instances in which interviews are held and cases where an F&P gatekeeping application accompanies an application for authorisation.

- b) *Time limits*: although voluntary, the Central Bank should commit to a set timeframe within which it will have processed to conclusion all F&P applications. Based on a comparison of other peer regulators it is recommended that the timeframe be 90 days, with limited opportunities to stop the clock. Aggregated management information on all F&P gatekeeping applications should be provided to a senior management committee on a regular basis.
- c) *Reporting*: The Central Bank should enhance transparency by publishing standardised information, with appropriate breakdowns, on at least an annual basis. This would allow stakeholders to assess the efficiency and consistency of the regulatory process over time and encourage the maintenance of high standards of performance. It also facilitates benchmarking with peer regulators.
- d) *Reporting - Data Points*: The report referred to in point (c) above, should contain at a minimum the following key information:
 - i) *Applications received*: This figure will help all parties gauge the volume of regulatory activity and understand trends in demand for regulatory services.
 - ii) *Interviews conducted*: this data point provides insight into the level of scrutiny and diligence applied in the decision making process.
 - iii) *Approval and refusals granted*: these numbers enable parties to assess the regulator's approach to balancing public protection with the needs of industry.
 - iv) *Withdrawals from the F&P process prior to a decision by the Central Bank*.
 - v) *Incomplete applications received*: this will assist to potentially indicate issues within the application process, such as unclear requirements, complex forms or a lack of support for applicant.
 - vi) *Timeframe* – the date from the application being received by the Central Bank to the date that the application is closed either by way of decision or withdrawal.
 - vii) *Approvals with recommendations* – to include the number of approvals that have been accompanied by recommendations to address knowledge gaps or other issues that emerged in the assessment.
- e) *Reporting - Qualitative points*: In providing the above information the Central Bank should have regard to the following qualitative points.

- i) The proposed report should cover all applications for F&P assessment which the Central Bank receives. There should be no exclusion (for example, it should capture F&P applications attached to an authorisation).
- ii) The report should provide all of the above information by reference to all regulated entity types, by individual regulated type, by sector and provide average times for applications received during that year.

Recommendation 10 – Quality assurance

A robust quality assurance mechanisms should be set in place. The output from this process should be conveyed on at least an annual basis to a senior committee. This work should be conducted by staff of the Central Bank with the oversight of an externally appointed risk advisor to the Central Bank.

Recommendation 11 – Complaints procedure

A complaints process should be established specifically for the F&P gatekeeping process. This procedure should be led by an externally appointed risk advisor.

Recommendation 12 - Training

Develop a comprehensive training programme for the F&P gatekeeping process, including the nature of the gatekeeping role and its significance, the process to be adopted including any risk framework overlay, conduct of interviews and provision of feedback.