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Central Bank of Ireland

Eurosystem

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**Fitness and Probity regime for
Credit Unions that are also
authorised as Retail Intermediaries**

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Section 1: Introduction

On 18 December 2012 the Central Bank published 'Consultation Paper 62: Fitness and Probity regime for credit unions' ("CP62") which set out the Central Bank's proposals on the introduction of a tailored Fitness and Probity regime for credit unions. CP62 also proposed that credit unions that are also authorised as retail intermediaries¹ would become subject to the Fitness and Probity regime that applies to all regulated financial service providers ("RFSPs"), with the exception of credit unions, from 1 July 2015² for the retail intermediary portion of their business.

The Feedback Statement on CP62, issued on 18 June 2013, indicated that credit unions that are also authorised as retail intermediaries would be subject to the same Fitness and Probity regime as other retail intermediaries in relation to the retail intermediary portion of the credit union business. This was to ensure a level playing field between credit unions that are also authorised as retail intermediaries and other authorised retail intermediaries.

The tailored Fitness and Probity regime for credit unions was implemented on 1 August 2013 and initially applies to credit unions with total assets greater than €10 million. From 1 August 2015 all remaining credit unions will come within the scope of the Fitness and Probity regime for credit unions.

Following the initial implementation of the Fitness and Probity regime for credit unions, the Central Bank has reviewed the proposed approach on applying fitness and probity requirements to credit unions that are also authorised as retail intermediaries and is now proposing a revised tailored approach.

This consultation paper sets out the Central Bank's proposals in relation to this revised approach and seeks feedback on these proposals.

¹ For the purpose of this consultation paper these are credit unions that also hold an authorisation pursuant to the Investment Intermediaries Act, 1995 and/or the European Communities (Insurance Mediation) Regulations 2005.

² Amended to 1 August 2015 following consultation.

Section 2: Background

2.1 The Fitness and Probity regime for all RFSPs with the exception of credit unions

On 1 December 2011, a Fitness and Probity regime was introduced for all RFSPs with the exception of credit unions (the “general Fitness and Probity regime”).

The general Fitness and Probity regime has 11 designated controlled functions (“CFs”) and 41 designated pre-approval controlled functions (“PCFs”) which are outlined in Appendix 1³.

2.2 The tailored Fitness and Probity regime for credit unions

The Fitness and Probity regime for credit unions commenced on 1 August 2013 for all credit unions with total assets greater than €10 million as determined by the credit union's latest audited balance sheet. From 1 August 2015, all credit unions will be within the scope of the Fitness and Probity regime for credit unions, with full implementation completed by August 2016.

The tailored Fitness and Probity regime for credit unions has two designated CF positions and two designated PCF positions which are a subset of the CF and PCF positions in the general Fitness and Probity regime and are detailed below⁴.

Credit Union Controlled Functions

The following functions are CF positions in credit unions:

- CUCF-1: A function in relation to the provision of a financial service which is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of a credit union; and
- CUCF-2: A function in relation to the provision of a financial service which is related to ensuring controlling or monitoring compliance by a credit union with its relevant obligations.

The two CUCF positions are equivalent to CF-1 and CF-2 of the general Fitness and Probity regime.

³ Designated by S.I.437 of 2011 Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 and S.I.615 of 2011 Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2011.

⁴ Designated by S.I.171 of 2013 Central Bank Reform Act 2010 (Sections 20 and 22–Credit Unions) Regulations 2013.

Credit Union Pre-approval Controlled Functions

The following functions are PCF positions in credit unions:

- CUPCF-1: the office of chair of the board of the credit union, and
- CUPCF-2: the office of manager of the credit union.

The two CUPCF positions are equivalent to PCF-3 (Chairman of the board) and PCF-8 (Chief executive) of the general Fitness and Probity regime.

2.3 Proposal in CP62 for the implementation of Fitness and Probity for credit unions that are also authorised as retail intermediaries

Credit unions, including credit unions holding dual authorisation as credit unions and retail intermediaries (218 credit unions as at 30 June 2014), were originally excluded from the general Fitness and Probity regime when this was established in December 2011.

From 1 August 2015, it was the intention of the Central Bank that the general Fitness and Probity regime would apply to credit unions that are also authorised as retail intermediaries in relation to the retail intermediary portion of the credit union business⁵. This would mean that additional CF and PCF positions would apply to credit unions that are also authorised as retail intermediaries in line with those designated for other retail intermediaries under the general Fitness and Probity regime.

CFs

The additional CF positions from the general Fitness and Probity regime that would apply to credit unions that are also authorised as retail intermediaries are CF-3 to CF-11 and are detailed in the table below. These functions include the giving of advice to a member and arranging a financial service for a member.

CF3	Giving of advice to a customer of the regulated financial service provider
CF4	Arranging a financial service for a customer of the regulated financial service provider
CF5	Assisting a customer in the making of a claim under a contract of insurance or reinsurance
CF6	Determining the outcome of a claim arising under a contract of insurance or reinsurance

⁵ Currently, if a credit union that is also authorised as a retail intermediary has assets over €10million, the Fitness and Probity regime for credit unions applies to that part of the credit union which operates as a credit union, but does not apply to the retail intermediary part of the business.

CF7	Management or supervision of those persons undertaking CF3 to CF6 roles
CF8	Adjudicating on any complaint communicated to a regulated financial service provider by a customer
CF9	Insurance and reinsurance intermediaries who direct and manage the undertaking or are directly involved in insurance or reinsurance mediation
CF10	Dealing in or having control over property of a customer of the regulated financial service provider
CF11	Dealing in or with property on behalf of the regulated financial service provider

PCFs

The additional PCF positions from the general Fitness and Probity regime that would apply to credit unions that are also authorised as retail intermediaries would include, at a minimum, all members of the board of directors, the chair of the nomination committee, the money laundering reporting officer, the risk management officer, the compliance officer and the internal audit function.

Where credit unions have an audit committee or a finance function, the Chair of the audit committee and Head of Finance would also be PCFs.

As these positions are PCFs, the pre-approval of the Central Bank would be required prior to the appointment of any individuals to these positions.

A list of the potential additional PCF positions is contained below.

PCF2	Non-executive director
PCF4	Chairman of the audit committee
PCF7	Chairman of the nomination committee
PCF11	Head of Finance
PCF12	Head of Compliance
PCF13	Head of Internal Audit
PCF14	Head of Risk
PCF15	Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation

Section 3: Overview of the revised approach

This paper proposes a revised tailored approach to the application of the fitness and probity requirements to credit unions that are also authorised as retail intermediaries. In summary, it is proposed that the approach as outlined in the Feedback Statement on CP62 and the Guidance on Fitness and Probity for Credit Unions in relation to CF positions will remain as described (CFs 3-11 will apply in relation to the retail intermediary portion of the credit union business). However no additional PCF positions will be required by the Central Bank for credit unions that are also authorised as retail intermediaries beyond the current CUPCF positions of chair of the board of directors and manager of the credit union.

3.1 Applicable controlled functions and pre-approval controlled functions

CFs

The proposal in relation to the number of CF positions for credit unions that are also authorised as retail intermediaries remains as outlined in the Feedback Statement on CP62 and the Guidance on Fitness and Probity for Credit Unions. Therefore the number of relevant CF positions for any credit union also authorised as a retail intermediary will increase from the two CUCF positions in the Fitness and Probity regime for credit unions to also include CFs 3-11 from the general Fitness and Probity regime.

This ensures that individuals in credit unions that are also authorised as retail intermediaries who give advice to a member and provide a financial service under the credit union's authorisation as a retail intermediary are subject to fitness and probity standards and the Minimum Competency Code.

PCFs

It is proposed that the current CUPCF positions (chair of the board of directors and manager of the credit union) will apply to credit unions that are authorised as retail intermediaries and that no additional PCF positions will be required.

While credit unions that are also authorised as retail intermediaries will not be required to seek the pre-approval of the Central Bank for additional roles, any individual that would be a PCF in the general Fitness and Probity regime (e.g. member of the board of directors) will fall within the definition of a CF. Therefore these individuals will be subject to fitness and probity requirements and prior to appointing the individuals to these positions the credit union will have to ensure that the individuals performing

these roles comply with fitness and probity standards in respect of both the credit union and retail intermediary business and that the individuals have agreed to comply with these standards.

3.2 Rationale for the revised approach

This revised approach for the application of fitness and probity requirements to credit unions that are also authorised as retail intermediaries is being proposed for the reasons set out below.

- (i) The retail intermediary business undertaken by credit unions is not significant when compared with the core business of savings and loans undertaken by credit unions. Total income generated from fees and commissions by credit unions that are also authorised as retail intermediaries is reported as being less than 3% of income in each of these credit unions⁶.
- (ii) If the general Fitness and Probity regime is applied to credit unions that are also authorised as retail intermediaries, this would result in these credit unions having a significantly greater number of PCFs than other similar retail intermediaries due to the difference in organisational structure between credit unions that are also authorised as retail intermediaries and other similar retail intermediaries. Based on an analysis of the PCF applications⁷ for similar retail intermediaries authorised in 2013, such retail intermediaries have, on average, less than three PCFs operating in their firms. If credit unions that are also authorised as retail intermediaries were required to seek the pre-approval of the Central Bank in relation to additional PCF positions (for example the board of directors), at least 14⁸ functions in these credit unions would require pre-approval. This would create a significant difference between the number of PCFs in credit unions that are also authorised as retail intermediaries and the number of PCFs in other similar retail intermediaries. This difference cannot necessarily be justified given the level of the retail intermediary business undertaken by credit unions that are also authorised as retail intermediaries as indicated in paragraph 3.2 (i) above.
- (iii) Individuals in functions that are PCF positions in the general Fitness and Probity regime, such as the board of directors, the money laundering reporting officer, the risk management officer, the compliance officer, the chair of the nomination

⁶ As reported by credit unions in their Annual Returns.

⁷ Applications for authorisation pursuant to the Investment Intermediaries Act, 1995 and/or the European Communities (Insurance Mediation) Regulations 2005.

⁸ 2 PCFs from the Fitness and Probity regime for credit unions and at least 12 additional PCFs.

committee and the internal audit function, will still fall within the scope of Fitness and Probity as they are CF positions. Therefore credit unions will have to ensure that individuals in these functions comply with the fitness and probity standards in respect of both the credit union and the retail intermediary business and the individual will have to confirm their agreement to same.

3.3 Review

As stated in Section 4 of CP62, following the implementation of the Fitness and Probity regime for credit unions by August 2016, the Central Bank will conduct a review of the tailored Fitness and Probity regime for credit unions. It is proposed that the implementation of the revised tailored Fitness and Probity approach for credit unions that are also authorised as retail intermediaries would be included as part of the review of the tailored Fitness and Probity regime for credit unions. This review is planned to be undertaken in 2017.

Comments are invited in response to the following question:

- (i) Do you agree with the revised approach proposed for the application of fitness and probity requirements to credit unions that are also authorised as retail intermediaries? If you have other suggestions, please provide them along with supporting rationale.**

Section 4 - Implementation of the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries

This section provides further detail on how it is proposed that the implementation of other elements of fitness and probity will apply to credit unions that are also authorised as retail intermediaries.

4.1 Fitness and Probity Standards

The 'Fitness and Probity Standards for Credit Unions' will apply to credit unions that are also authorised as retail intermediaries rather than the Fitness and Probity Standards that apply to all other RFSPs. The reason for this is that the 'Fitness and Probity Standards for Credit Unions' are based on the general Fitness and Probity Standards but also include reference to experience gained in a voluntary context and other specific credit union references (such as regulatory actions taken under the Credit Union Act, 1997) which would apply to credit unions that are also authorised as retail intermediaries.

4.2 Guidance on Fitness and Probity

Fitness and probity documentation and information for credit unions on the Central Bank website, including the 'Guidance on Fitness and Probity for Credit Unions' will be updated following this consultation to reflect the application of fitness and probity to credit unions that are also authorised as retail intermediaries.

4.3 Timelines and Transitional arrangements

As set out in CP62, fitness and probity requirements will apply to credit unions that are also authorised as retail intermediaries from 1 August 2015 and transitional arrangements, similar to those provided on the introduction of the general Fitness and Probity regime, will also be provided⁹. Therefore, the timelines set out below will apply for credit unions that are also authorised as retail intermediaries.

(i) **From 1 August 2015** - The 'Standards of Fitness and Probity for Credit Unions' will apply to all individuals performing PCF positions and credit unions will be required to apply for pre-approval for all new PCF positions in advance of appointment.

⁹ These timelines and transitional arrangements will also apply for credit unions with assets less than €10m.

(ii) **From 1 November 2015** - The 'Standards of Fitness and Probity for Credit Unions' shall apply to all persons performing CF positions for the first time (other than CFs which are also prescribed as PCFs). This is to include new offers of employment and internal transfers / promotions to a CF position after that date.

(iii) **From 1 August 2016** - The 'Standards of Fitness and Probity for Credit Unions' will apply to all persons occupying CF positions. Credit unions will be required to have conducted due diligence on all CF positions by this date.

Individuals holding a PCF position in a credit union that is also an authorised retail intermediary on 1 August 2015 will be deemed to be in-situ and will not have to apply for pre-approval from the Central Bank unless they are seeking re-election or are being re-appointed to the position and have not previously been approved for that PCF position in the credit union.

Comments are invited in response to the following question:

(ii) **Do you agree with the proposals regarding the Standards, Guidance, timelines and transitional arrangements for the implementation of fitness and probity requirements for credit unions that are also authorised as retail intermediaries? If you have other suggestions in relation to the proposals, please provide them along with supporting rationale.**

Section 5: Making Submissions

Please make your submissions in writing, if possible electronically as a word document or a .pdf document by email, on or before **30 September 2014**.

The Central Bank intends to make all submissions available on the Central Bank website. Information deemed to be potentially libellous or defamatory will not be published. The Central Bank will accept no liability in respect of any information provided which is subsequently released, or in respect of any consequential damage suffered as a result.

Submissions should be marked "Fitness and Probity regime for credit unions also authorised as retail intermediaries" and sent by email to rcuconsultation@centralbank.ie.

In the event that you are unable to send your response electronically, please forward it by post before 30 September 2014 to:

Registry of Credit Unions
Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

The date of 30 September 2014 is the final date for receipt of submission of responses.

Registry of Credit Unions
August 2014

**Consumer Protection: Retail Intermediaries
and Payment Institutions**

Appendix 1 – CFs and PCFs in the general Fitness and Probity regime

Outlined below are the CF and PCF positions which are designated under the general Fitness and Probity regime:

List of Controlled Functions

CF1	Ability to exercise a significant influence on the conduct of the affairs of a regulated financial service provider
CF2	Ensuring, controlling or monitoring compliance by a regulated financial service provider with its relevant obligations
CF3	Giving of advice to a customer of the regulated financial service provider
CF4	Arranging a financial service for a customer of the regulated financial service provider
CF5	Assisting a customer in the making of a claim under a contract of insurance or reinsurance
CF6	Determining the outcome of a claim arising under a contract of insurance or reinsurance
CF7	Management or supervision of those persons undertaking CF3 to CF6 roles
CF8	Adjudicating on any complaint communicated to a regulated financial service provider by a customer
CF9	Insurance and reinsurance intermediaries who direct and manage the undertaking or are directly involved in insurance or reinsurance mediation
CF10	Dealing in or having control over property of a customer of the regulated financial service provider
CF11	Dealing in or with property on behalf of the regulated financial service provider

List of Pre-Approval Controlled Functions

General	
PCF1	Executive director
PCF2	Non-executive director
PCF3	Chairman of the board
PCF4	Chairman of the audit committee
PCF5	Chairman of the risk committee
PCF6	Chairman of the remuneration committee
PCF7	Chairman of the nomination committee
PCF8	Chief executive
PCF9	Member of partnership
PCF10	Sole Trader
PCF11	Head of Finance
PCF12	Head of Compliance
PCF13	Head of Internal Audit
PCF14	Head of Risk
PCF15	Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation
PCF16	Branch Manager of branches in other EEA countries
PCF17	Head of Retail Sales
Insurance	
PCF18	Head of Underwriting
PCF19	Head of Investment
PCF20	Chief Actuary
Banking	
PCF21	Head of Treasury
PCF22	Head of Credit
PCF23	Head of Asset and Liability Management
Stock Exchange	
PCF24	Head of Traded Markets
PCF25	Head of International General Markets
PCF26	Head of Markets Supervision
PCF27	Head of Operations
Investment firms	
PCF28	Branch Managers in Ireland
PCF29	Head of Trading
PCF30	Chief Investment Officer
PCF31	Head of Investment
Investment Intermediaries / Collective Investment Schemes	
PCF32	Branch Managers in Ireland
PCF33	Head of Transfer Agency
PCF34	Head of Accounting (Valuations)
PCF35	Head of Trustee Services
PCF36	Head of Custody Services
UCITS Self-Managed Investment Company / Management Company	
PCF37	Head of Transfer Agency
PCF38	Head of Accounting Valuations
PCF39	Designated Person to whom a director of a UCITS Self-Managed Investment Company or Non UCITS Self-Managed Investment Company or Management Company may delegate the performance

	of the management functions
Payment Institutions	
PCF40	Branch Managers within the State
Financial Service Providers established outside Ireland	
PCF41	Manager of a branch in Ireland of a regulated financial service provider established in a country that is not an EEA country

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