Compliance Institute
BETTER BUSINESS ETHICS

By Email: IAFconsultation@centralbank.ie

Subject: Consultation Paper on the Individual Accountability Framework

Date: 13th June 2023

Dear Sir/Madam,

The Compliance Institute (the 'Institute') is the professional body for compliance professionals. With over 3,500 members, it is the premier provider of education and professional development in compliance, providing an authoritative and balanced voice on matters relating to regulatory compliance and business ethics in industry in Ireland.

The Institute is supportive of the Individual Accountability Framework in its aim to achieve better outcomes for consumers and users of financial services, seeking to improve governance, performance, and accountability in firms providing financial services to individuals and businesses.

The Institute welcomes the publication by the Central Bank of Ireland (the 'Central Bank') of the Consultation Paper on the Individual Accountability Framework, and the opportunity to provide responses to the questions which are set out in Appendix 1.

The Institute is well placed to provide informed feedback given the key role that the profession will play in the implementation of the new regime and its diverse membership that includes compliance professionals from a broad range of sectors subject to different levels of regulation and supervision.

The views expressed in this letter reflect those of the Institute as a professional body for compliance professionals in consultation with a sub-section of its members representing a range of financial services industry sectors.

We hope you find our views constructive and, if helpful, we are available to discuss further.

Yours faithfully,

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CEO

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The Association of Compliance Officers in Ireland ("Compliance Institute"), a Company Limited by Guarantee. Registered No: 379249. Directors: D. Whyte, (President), S. Canning, R. Farrell, G. McGrath, M. Stewart, C. Whyte (South Africa), Áine Hickey, Mary Colhoun
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APPENDIX 1

General Observation on Timing

Members have some concerns that the proposed timeline as outlined in the consultation is too short. The consultation period concludes on 13 June 2023, with lead times to deadlines thereafter limited, having regard to the nature of the Regulation which will involve considerable individual employee consultation, engagement and training, and further allowing for both Summer and Christmas holiday seasons. It is important the timelines are both achievable and afford in scope regulated financial service providers sufficient time to adequately consult and support the Pre-Approval Controlled Function ('PCF') and Controlled Function ('CF') individuals through implementation.

There are specific concerns regarding the obligation to have issued certificates to in-scope individuals within two months of the Regulation becoming effective. We believe that to adequately certify individuals the enabling Regulation and Guidance should be in effect for at least 12 months to facilitate the incorporation of:

- Individual (and collective) employee concerns in relation to the impact of the conduct standards and fitness and probity enhancements on their roles to ensure these concerns can be addressed in a considered and meaningful manner; and
- the conduct standards, the additional systems and controls required within the performance management process and necessary changes to fitness and probity systems and controls within firms.

Q1. What are your views and comments on the draft SEAR Regulations and related draft guidance?

Deadlines and Sequence of Effective Dates

Members requested a revision of the existing applicable deadline for issuing certificates of 28 February 2024 to 31 December 2024 with the challenges, as set out below, being raised in connection therewith.

Members questioned the appropriateness of the current proposed sequence of effective dates of the draft Regulation. Members have indicated that prioritising the implementation of the Senior Executive Accountability Regime ('SEAR') in advance of the broader application of conduct standards and certification would be beneficial. This sequence would enable firms to first focus on design and implementation of robust and appropriate systems, processes and controls for relevant key roles and responsibilities, setting a stronger and structured foundation for the introduction and cascade of the conduct standards and certification process thereafter. Further, it is unclear how PCF role holders can be held to be taking 'reasonable steps' under the Additional Conduct Standards relating to responsibilities that may not be fully documented within their firm under SEAR.

Further, members are of the view that it is preferable that firms are required to complete certification 12 months after the effective date of the conduct standards, as upon this time the conduct standards would be more embedded, including within the performance management process, enabling more meaningful assessment by firms of individuals' compliance having regard to a 12-month individual past performance period.

As currently drafted, the timelines do not allow for conduct standards to be incorporated and rolled out within the annual performance management process in a structured, measured, and timely manner. Adjusting the timelines would allow for the outcome of the performance management process to feed into the certification process of firms and result in a more structured, supportive and more readily understandable roll out of the requirements to individuals.

Members requested the deadline for SEAR be extended from 1 July 2024 to 31 December 2024. Some members, particularly those who have individuals within the scope of the conduct standards who are based in other Member States which may have employment law implications and require additional input for socialisation, have requested this additional time to ensure that the standards are implemented and embedded appropriately.

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Future extension of SEAR

Emphasising the need to ensure adequate consumer protection and regulatory oversight, members would support the timely extension of the scope of SEAR to those customer facing firms currently out of scope of the regulation in a proportionate manner.

Q2. Do you agree with our proposed approach to the Inherent Responsibilities?

Members agreed with the proposed approach to the Inherent Responsibilities.

Specifically in relation to PCF 52 *Head of Anti-Money Laundering and Counter Terrorist Financing* (AML/CTF), we note that the draft Inherent Responsibility to be assigned is *"Overall responsibility for managing the operation of the firm's anti-money laundering/counter financing of terrorism functions"*. We request that greater clarity is provided to reflect the fact that management of the first line staff, who form part of the overall AML/CTF function in the everyday implementation of the firms AML/CTF policies, processes and procedures, will typically sit in the first line of defence. These staff would not directly sit within the management structure of the PCF 52 and can align more commonly to the PCF 42 *"Overall responsibility for managing the internal operations of the firm"*. It is suggested that the responsibility reflects the oversight and support from the second line of defence via the PCF 52 Head of AML/CTF.

With reference to the facilitation and oversight nature of the role of PCF 14 *Chief Risk Officer*, we request greater clarity is provided on this in the language used to describe the Inherent Responsibility assigned to PCF 14 as *"…setting and managing risk exposures…"*. Members viewed this as more aligned to a first line of defence activity as opposed to the CRO oversight role.

Q3. Do you agree with our proposed approach to the Prescribed and Other Responsibilities?

Members agreed with the proposed approach to the Prescribed and Other Responsibilities.

Members noted that certain Prescribed Responsibilities that do not readily map to other PCFs would likely be allocated to the CEO. Concerns were raised in relation thereto, including, the additional time pressures on individuals holding the CEO role, optimising output from CEOs, and ensuring specialist expertise was adequately leveraged for these Prescribed Responsibilities. There was a variety of possible solutions proposed across the membership, which included consideration of an additional new PCF role, or a potential role for CF1s in this context. Members asked that further consideration be given by the Central Bank to these concerns and guidance be provided around the recommended approach to address them.

Members noted that the description of PR22, which is assigned to the PCF 52 role, does not clearly call out that this is a second line responsibility.

Similarly, members note that PR26 could be read as either a first line or second line responsibility and would like more clarity in the description. In addition, PR3 relates to conduct and therefore the clarity on the differences between PR3 and PR26 would be useful.

Members further noted there is presently limited guidance as to what constitutes "*Other Responsibilities*" within firms generally, and at a sectoral level. Clarity in this area would assist firms in ensuring they were accurately and appropriately identifying and allocating "*Other Responsibilities*".

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Q4. Do you agree with our proposed approach to the sharing of roles and responsibilities including job sharing?

The Institute is a strong supporter of the concept of job-sharing having regard to its merits in enabling greater diversity, inclusion and flexibility in the workplace. However, members are concerned that the job-sharing arrangements as currently drafted would be challenging and potentially viewed as an impractical and/or an unattractive, administratively burdensome option as they relate to PCF roles. If the Central Bank proceeds with the proposed approach, we suggest that some guidance is provided on its expectations for how these roles will operate.

Q5. Do you agree with our proposed approach to the inclusion of INEDs/NEDs within scope of SEAR?

Members view the inclusion of INEDs/NEDs as appropriate. However, members have requested further consideration and guidance in relation to the impact on collective responsibility, in order to mitigate potential negative impact on decision-making within firms arising from the increased focus on personal responsibilities.

Q6. Do you agree with our proposed approach to the Statements of Responsibilities?

Members agree with the approach and welcome the introduction of Statements of Responsibilities.

We would request that further guidance around thresholds for conduct rule reporting, governance and approval requirements for items such as the Statements of Responsibility and Management Responsibility Maps is incorporated in the final guidance. Guidance in relation to how the Statement of Responsibilities will form part of the IQ in the PCF approval process would also be welcomed.

Q7. Do you agree with our proposed approach to the Management Responsibilities Map?

Members agree with the proposed approach to the Management Responsibilities Map. The enhancing of processes and controls in this way to help ensure against gaps in key responsibilities within regulated financial service providers is welcomed.

It is requested that consideration be given to likely overlap across the Management Responsibilities Map and other documents, such as Business Plans or Programmes of Operations, and how such duplication across these various artefacts may be reduced, particularly with respect to the authorisation process and obligations to keep documentation accurate and up to date.

Q8. Do you agree with our proposed approach to submission of documents?

Periodic reporting in the manner envisaged is viewed as reasonable and the preferred approach. Members welcome reducing the volume of mandatory periodic reporting and instead requiring firms take responsibility for relevant documentation and make it available on request.

Q9. Do you agree with our proposed approach to outsourcing in the context of SEAR?

Members agree with the proposed approach, however cautioned that oversight of an outsourced PCF by another PCF could result in role duplication and/or dilution of, and lack of clarity around, responsibilities. It is requested that consideration be given as to whether having appropriate management and oversight of the outsourcing arrangement would provide sufficient cover in and of itself.

Q10. Do you agree with our proposed approach to reasonable steps in respect of SEAR and the Conduct Standards?

Members overall are supportive of the concept of reasonable steps (and Duty of Responsibility). However, members noted that the reasonable steps obligation does create a "chilling effect" in relation to ensuring they are able to evidence that they are doing, and have done, the right thing.

It is requested that further guidance is provided as to what constitutes reasonable steps and what "good" looks like in the context of a reasonable steps framework, to ensure there is a consistency in design and implementation of reasonable steps across firms.

Members queried the proportionality and appropriateness of extending reasonable steps to the CF population rather than a reinforcement of the Fitness & Probity Standards. It was noted that this would represent a significant new obligation on such individuals with chilling effect potential and entail a considerable administrative burden.

Q11. Does the guidance assist you in understanding the Duty of Responsibility and the non-exhaustive list of factors to be considered with regard to reasonable steps?

Please see response to Question 10 above.

Q12. What are your views and comments regarding the guidance on the Common Conduct Standards and Additional Conduct Standards?

Members raised concerns for individual (P)CF role holders in the context of retrospective investigations and access to information. Where an incident comes to light that happened in the past, it is clear the firm has an obligation to investigate in line with their operational risk event, breaches and/or errors policy. However, if the incident is identified as being systemic or arising as a result of the employee misconduct and the employee(s) is (are) no longer with the firm, the Regulation and Guidance is unclear as to the obligation on the firm to provide the past employee(s) with access to data held within the firm that the employee would utilise to demonstrate that they took reasonable steps in relation to the specific incident.

Furthermore, the Regulation and Guidance are silent as to the consequences for firms that deem past employees responsible for incidents, for example with a view to avoiding performing conduct standard breach investigations into existing employees still at the firm. It is requested that additional clarity and guidance is provided to assist firms in dealing with such scenarios, to ensure they are achieving the letter and spirit of the Central Bank's requirements.

It is requested that consideration be given to adjusting *"Acting in the best interests of customers and treating them fairly and professionally"* to *"Acting in the best interests of customers and treating them in a professional manner that is fair, clear and not misleading".*

Members are unclear as to whether or not the IAF is applicable to Trust and Corporate Services Providers and clarity would be welcome on this point.

Q13. What are your views and comments on the guidance in relation to obligations on the firm in respect of Conduct Standards?

The Institute fully supports the view that an adequate training regime needs to be in place to ensure that relevant individuals have appropriate knowledge of the conduct standards and how they apply to an individual in the performance of their role. As the professional body for compliance professionals, we feel that it is vital that our members' knowledge, skills and competencies are kept up to date. In conjunction with our education providers, we offer a wide range of accredited graduate and post graduate education in the various fields of compliance and business ethics. The resultant designations have a mandatory CPD regime attached to them which ensures that designate members' knowledge is kept up to date.

In that context, the Institute is of the view that existing arrangements in place in relation to CPD and oversight of training should be sufficient. However, the Institute would welcome further guidance regarding what is expected of a training "*effectiveness review*" as mentioned in the document. In addition, whilst we understand that the PCF/CF1 role holder must ensure that suitable training is provided to staff to enable them to fully understand the business and regulatory environment, it is not clear to what degree reliance can be placed on external training. In particular, the Institute feel it would be useful if the Central Bank articulated which education programmes met the training requirements and obligations in relation to the Conduct Standards.

Q14. Do you agree with our proposed approach to temporary appointments within scope of SEAR and the Conduct Standards?

Membership was broadly comfortable with the proposed approach to temporary appointments within scope of SEAR and the Conduct Standards.

Q15. What are your views and comments on the draft Certification Regulations and related guidance?

Members challenged the requirement for transcripts as potentially excessive (as some entities/groups define transcripts to include results from all exams/projects undertaken during a course rather than the overall grade or qualification) both in terms of administrative burden, and personal data processing, adding limited value, where proof of education via degree parchments, certificates, memberships, designations and accreditations are available and should be considered sufficient.

We request that the obligation to obtain transcripts be made an optional requirement.

Q16. Do you agree with our proposed approach to roles prescribed as PCF roles for holding companies in the draft Holding Companies Regulations?

Members agreed with the expansion to holding companies where such entities are central to the RFSP's decision making and/or have capacity to influence the legal entity.

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Q17. Do you agree with our proposed approach to reporting of disciplinary actions?

Members felt there was insufficient information provided in respect of disciplinary action, for example in what ways will the Central Bank process the information, and what are the implications for taking up future roles for those the subject of a reported disciplinary action. It was felt that there is also insufficient information in terms of how such a process would interact with any assessment as to whether or not a breach of the Conduct Standards has occurred, and whether that in turn impacts on an individual's fitness and probity.

Members observed that a firm may report a breach in good faith that is subsequently deemed not to be a breach, leaving the firm exposed. Members noted that this could be a disincentive for firms to act based on potential breaches, and thereby diminish the effectiveness of the new approach. Members requested consideration be given to perhaps such reporting being completed by firms by setting out the circumstances of the potential breach(es) and potential impact, for consultation with the Central Bank with a view to making an appropriate determination.

Members feedback documented in response to Question 12 regarding breaches, retrospective investigations and access to information, is also applicable in this context.

Q18. Do you agree with our proposed approach to introducing the Head of Material Business Line role for insurance undertakings and investment firms

Members felt it would be helpful to receive some guidance in the final rules on how a Material Business Line should be defined. This guidance would ensure consistency of approach across those entities in scope and should consider similar requirements from other Regulations such as the Single Resolution Board's consideration of how this is approached in the Banking sector.

The guidance could include:

- Quantitative considerations including client numbers and revenue considerations;
- Market share; and/or
- Impact to market/clients were the service no longer be offered.

Members requested that unregulated services were to be deemed out of scope as an important factor if it is intended to be the case.

Further clarity would also be beneficial as to whether the Head of Material Business Line roles are limited to those individuals employed and occupying those roles in the regulated entity. Certain members highlighted concerns were the intention to capture individuals in other jurisdictions that oversee or manage business lines at a regional or global level. Members highlighted this may present a potential chilling effect in terms of disincentivising individuals from other jurisdictions from taking on such roles who may add significant value to regulated firms.