

Guidance on Fitness and Probity for Credit Unions

September 2024

Version History

Title of Document	Guidance on Fitness and Probity Standards
<p>This Version</p>	<p>September 2024</p> <p>Updated to include: deletion of Section 6.5¹, inclusion of Certification, inclusion of reference to the Central Bank (Supervision and Enforcement) Act 2013 (section 48(1)) (Minimum Competency) (Amendment) Regulations 2023, the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023 and the consequential revocation of the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015, removal of certain sections for inclusion in our FAQ document (to include: obligations on a person captured by the definition of a controlled function, obligations on a credit union with respect to persons captured by the definition of a controlled function and obligations on credit unions related to outsourcing, and how a credit union conducts due diligence), update to section 16 “<i>Persons prohibited from holding roles in a credit union under the Credit Unions Act 1997</i>” in line with section 40 of the Credit Union (Amendment) Act 2023, updated section 19 ‘<i>Minimum Competency Code and Minimum Competency Regulations</i>’ (previously section 12 in our 2018 Guidance) as this is now applicable to all credit union activities in scope of the Minimum Competency Code 2017, relevant updates to Appendix 1 and 2, removal of Appendix 3 and inclusion of lists of PCF and CF roles (see Appendix 3 and 4).</p>
<p>Previous Version</p>	<p>June 2018</p>

¹ The process to expedite an application for a role in the State, where a person is currently approved for a similar PCF role within the same sector/industry in another EEA/EU Member State, has not been operating in practice, therefore Section 6.5 of this guidance (in the 2018 version) has been deleted.

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Part A

The Application of the Fitness & Probity Regime



1. Background

- 1.1** The Report of the Commission on Credit Unions (the Report), published on 18 April 2012, recommended that Part 3 of the Central Bank Reform Act 2010 (the Act) be commenced for credit unions providing the Central Bank of Ireland (the Central Bank) with the powers to set out regulations pursuant to Section 20(1) and Section 22(2) of the Act (the Regulations²) and Standards of Fitness and Probity for credit unions pursuant to Section 50 of the Act. The Report also recommended that a phased approach should be adopted for the implementation of a Fitness and Probity regime for credit unions and made further recommendations regarding the Controlled Functions and Pre-approval Controlled Functions that should be introduced in the initial phase.
- 1.2** On 24 September 2012, the Minister for Finance commenced Part 3 of the Act for credit unions.
- 1.3** Part 3 of the Act provides that a person performing a Controlled Function (CF) must have a level of fitness and probity appropriate to the performance of that particular function.

The Central Bank also has the power to prescribe a sub-set of CFs as functions for which the prior approval of the Central Bank is required before a person can be appointed. These functions are called Pre-approval Controlled Functions (PCFs).³

² S.I. No. 171 of 2013 as amended by S.I. No.97 of 2015 (revoked as of 1 October 2024), S.I. No. 187 of 2018 and S.I. No. 454 of 2023.

³ Any reference in this document to requirements for CFs also relates to PCFs.

Following consultation⁴, the Central Bank published S.I. No. 171 of 2013⁵ on 18 June 2013 prescribing particular functions as CFs and PCFs for credit unions (the 2013 Regulations). The 2013 Regulations apply to all credit unions with total assets of greater than €10 million since 1 August 2013 and to all credit unions since 1 August 2015.

Following a second consultation⁶ in relation to fitness and probity for credit unions that are also authorised as retail intermediaries, the Central Bank published S.I. No. 97 of 2015⁷ (the 2015 Regulations).⁸ The 2015 Regulations applied to credit unions that are also authorised as retail intermediaries. The 2015 Regulations prescribed two PCFs in respect of credit unions that are also authorised as retail intermediaries. These are both the same as the PCFs prescribed in the 2013 Regulations in respect of credit unions. The 2015 also prescribed eleven CFs, two of which are prescribed in respect of credit unions in the 2013 Regulations.

Following a third consultation⁹, the Central Bank published S.I. No. 187 of 2018¹⁰ (the 2018 Regulations) prescribing three additional PCFs for credit unions with total assets of at least

⁴ Consultation Paper 62: Fitness and Probity Regime for Credit Unions, available at www.centralbank.ie.

⁵ Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) Regulations 2013.

⁶ [Consultation Paper 83: Fitness and Probity regime for Credit Unions that are also authorised as Retail Intermediaries](#) and [Feedback Statement on CP83](#).

⁷ Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions that are also authorised as Retail Intermediaries) Regulations 2015.

⁸ On 1 October 2024, the 2015 Regulations are revoked on foot of the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023. Credit unions also authorised as retail intermediaries continue to be in scope of the Fitness and Probity Regime for credit unions, as per Schedule 1 A and 2A of the 2023 CU Regulations.

⁹ [Consultation Paper 113: Consultation on Potential Amendments to the Fitness and Probity Regime for Credit Unions](#).

¹⁰ Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2018.

€100 million, as determined by the credit union's latest audited balance sheet.

Following a fourth consultation¹¹, in relation to the application of the Minimum Competency Code and the Minimum Competency Regulations (together the Minimum Competency Standards) to credit union core services, the Central Bank published two sets of Regulations S.I. No. 453 of 2023¹² (the 2023 Minimum Competency Regulations) and S.I. No. 454 of 2023¹³ (the 2023 CU Regulations). As such, from 1 October 2024 the Minimum Competency Standards apply to all credit unions. Prior to this date the Minimum Competency Standards applied to credit unions in limited circumstances only e.g. to credit unions when acting as retail intermediaries.

The 2023 CU Regulations amend the 2013 Regulations and prescribe eight CFs in respect of credit unions, two of which were first prescribed in the 2013 Regulations and six of which are newly introduced. By virtue of the 2023 Minimum Competency Regulations, the Minimum Competency Code 2017 applies to all credit union activities which are within scope of the 2017 Code. From 1 October 2024, a four year transition period applies where a person is undertaking one of the six new CFs, so that person may continue to perform the CF on a deemed qualified basis until 1 October 2028, subject to certain conditions.

¹¹ [Consultation Paper 147: Application of the Minimum Competency Code 2017 and the Minimum Competency Regulations 2017 to credit union core services and Feedback Statement on CP147.](#)

¹² Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Minimum Competency) (Amendment) Regulations 2023 S.I. No. 453 of 2023.

¹³ Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023.

On 1 October 2024 the 2023 CU Regulations revoke the 2015 Regulations and the same 11 CFs and 2 PCFs which were previously prescribed in respect of credit unions that are also authorised as retail intermediaries have been kept in the 2023 CU Regulations. Please refer to Section 19 of this guidance for further information on the Minimum Competency Standards.

- 1.4** Section 50 of the Act permits the Central Bank to issue a code setting out standards of fitness and probity for the purposes of Part 3 of the Act. On 18 June 2013, the Central Bank published a code setting out fitness and probity standards for credit unions (the F&P Standards for Credit Unions) pursuant to section 50 of the Act. The F&P Standards for Credit Unions have been subject to a number of updates since their initial publication in 2013. See Section 3 of this guidance for further information on who the F&P Standards for Credit Unions apply to, and the phased implementation of the F&P Standards for Credit Unions.
- 1.5** The Central Bank also published the Minimum Competency Code¹⁴ (MCC) and the Minimum Competency Regulations¹⁵ (MCR). The MCC is issued as a set of standards pursuant to Section 50 of the Act. The MCR are issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013.
- 1.6** In general, the F&P Standards for Credit Unions require that a person(s) must:
- (a) be competent and capable;
 - (b) act honestly, ethically and with integrity; and
 - (c) be financially sound.

¹⁴ Minimum Competency Code 2017.

¹⁵ Central Bank (Supervision and Enforcement) Act 2013 (Section 48 (1)) Minimum Competency Regulations 2017.

1.7 The F&P Standards for Credit Unions are available on the Central Bank website at www.centralbank.ie.

1.8 For all credit unions, all proposed appointments to CFs which are prescribed as PCFs, require the prior written approval of the Central Bank in accordance with section 23 of the Act.

Since 1 August 2015 where a credit union is also authorised as a retail intermediary, all appointments to PCFs are subject to the F&P Standards for Credit Unions for their business both as a credit union and as a retail intermediary.

Details regarding this approval process are set out in Section 6 of this guidance.

1.9 Section 21 of the Act provides that a regulated financial service provider shall not permit a person to perform a CF unless:

- (i) the regulated financial service provider is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to section 50 of the Act (i.e. the F&P Standards for Credit Unions);
- (ii) a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider (i.e. the credit union) in accordance with section 21, is in force in relation to the person; and
- (iii) the person has agreed in writing to comply with any such standard.

1.10 Failure to comply with section 21 of the Act is a prescribed contravention for the purposes of Part IIIC of the Central Bank Act, 1942.¹⁶

¹⁶ Part IIIC of the Central Bank Act, 1942 was commenced for credit unions on 1 August 2013.

1.11 The Central Bank has a range of powers available to it to investigate, suspend, or prohibit persons from performing CFs in the financial services industry where concerns arise about their fitness and probity. Those powers are set out in Part 3, Chapters 3 and 4 of the Act.

1.12 Following enactment of the Central Bank (Individual Accountability Framework) Act 2023 the Central Bank published Regulations and guidance on key aspects of the Individual Accountability Framework.¹⁷

¹⁷ www.centralbank.ie

2. Purpose and effect of this Guidance

- 2.1** The primary purpose of this guidance is to assist credit unions in complying with their obligations under section 21 of the Act in relation to the F&P Standards for Credit Unions, by setting out the steps which the Central Bank would expect a credit union to take in order to satisfy itself on reasonable grounds that persons performing CFs or PCFs are compliant with the F&P Standards for Credit Unions. Guidance has also been included on other issues including, for example, approval by the Central Bank of appointments to PCFs and operational considerations for credit unions.
- 2.2** It should be noted that where the Central Bank approves a proposed appointment to a PCF that, in itself, is not a certification of the person's compliance with the F&P Standards for Credit Unions. The credit union is obliged pursuant to section 21 of the Act to satisfy itself on reasonable grounds, and certify, that the person is compliant with the F&P Standards for Credit Unions. See Section 10 of this guidance for further information on the nature of the obligations imposed by section 21 of the Act.
- 2.3** Nothing in this guidance may be construed so as to constrain the Central Bank from taking action, where it deems it to be appropriate, in respect of any suspected prescribed contravention which comes to its attention.
- 2.4** This guidance is not intended to be comprehensive nor to replace or override any legislative provisions or binding Code. It should be read in conjunction with Part 3 of the Act and any Regulation, Code or other legal instrument as the Central Bank may issue from time to time.

- 2.5** This guidance has been updated since its initial publication to reflect amendments made to the 2013 Regulations in the various S.I.s.
- 2.6** The Central Bank may update or amend this guidance from time to time, as appropriate.

3. Implementation of the Regime

3.1 Phasing the Fitness and Probity regime

3.1.1 The Fitness and Probity regime was implemented in two phases for credit unions. The first phase commenced on 1 August 2013 and introduced fitness and probity requirements for those credit unions with total assets of greater than €10 million. The second phase commenced on 1 August 2015 when all remaining credit unions were brought within the scope of the regime. Transitional arrangements applied for the implementation of each phase of the regime.

3.1.2 Since 1 August 2015, credit unions also authorised as retail intermediaries¹⁸ are subject to additional fitness and probity requirements.

3.1.3 On 1 July 2018, three additional PCFs were introduced for credit unions with total assets of at least €100 million.

3.1.4 From 1 October 2024, linked to the application of the MCC to credit unions¹⁹, a further six CFs apply to credit unions.²⁰ A four-year transition period applies where a person is undertaking one of the six further CFs so that a person may continue to perform the CF on a deemed qualified basis until 1 October 2028.

¹⁸ 'Retail Intermediary' includes an insurance intermediary as described in the European Union (Insurance Distribution) Regulations 2018 and/or an investment business firm as described in the Investment Intermediaries Act 1995.

¹⁹ By virtue of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Minimum Competency) (Amendment) Regulations 2023 S.I. No. 453 of 2023 (the 2023 Minimum Competency Regulations).

²⁰ By virtue of the Central Bank Reform Act 2010 (Sections 20 and 22 – Credit Unions) (Amendment) Regulations 2023 S.I. No. 454 of 2023 (the 2023 CU Regulations).

3.2 The Regulations²¹

3.2.1 The Regulations prescribe CFs and PCFs for credit unions pursuant to Section 20 and 22 of the Act. The Central Bank has published and may from time to time publish subsequent Amending Regulations which add and/or amend the list of CFs and/or PCFs.

A full list of PCFs is contained in Appendix 3, while a full list of CFs is contained in Appendix 4.

3.3 The F&P Standards for Credit Unions

3.3.1 The F&P Standards for Credit Unions apply to all CFs and PCFs in credit unions.

3.3.2 The F&P Standards for Credit Unions do not apply to persons performing controlled functions with respect to a credit union under the following conditions:

- (a) there is in place a written agreement between the credit union and a separate financial service provider for the carrying on of that function by that other person on behalf of the credit union;
and
- (b) that other financial service provider (other than a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) is regulated for a similar business to that conducted by the credit union²² concerned either:
 - (i) by the Central Bank; or

²¹ For a list of the Regulations see footnote 2 of this guidance.

²² This includes credit unions that are also authorised as retail intermediaries.

- (ii) by an authority that performs functions in a European Economic Area (EEA)²³ country that are comparable to the functions performed by the Central Bank; or
- (iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

This exemption typically applies to outsourced functions. Please refer to Section 5 in this guidance for further information on outsourcing.

3.3.3 It is important to note that where a CF or a PCF benefits from the exemption to the application of the F&P Standards for Credit Unions, s/he will remain subject to Part 3 of the Act (i.e. may be the subject of an investigation, suspension or prohibition notice) and any Code or Order issued thereunder, including the MCC (as applicable).

3.4 Identifying persons in PCFs and CFs

PCFs

Following the introduction of new PCFs to credit unions credit unions are required to submit to the Central Bank the details of the persons who, as of the entry into force date of the Regulations, were performing those particular PCFs.²⁴

Persons in-situ as at these dates were allowed to continue in these roles without seeking approval from the Central Bank.

²³ The EEA comprises of the member states of the European Union ("EU") together with the following countries: Iceland, Liechtenstein and Norway.

²⁴ See Section 1.4 of the F&P Standards for Credit Unions.

The manager of a credit union must also confirm in writing to the Central Bank by respective dates, that a credit union has performed the due diligence set out herein in respect of persons performing PCFs in the credit union and that it is satisfied on reasonable grounds that those persons are compliant with the F&P Standards for Credit Unions, and that they have obtained those person's written agreement to comply with the F&P Standards for Credit Unions.

CFs

Under Section 21 of the 2010 Act, the Central Bank requires regulated financial service providers including credit unions to identify and maintain a record of persons who are performing CFs from the date of application of the F&P Standards (i.e. F&P Standards for Credit Unions) to those persons²⁵, together with a formal record of due diligence undertaken by the regulated financial service provider in respect of those persons, to satisfy itself that the person performing the relevant CF is fit and proper to perform that CF and certify same.

Regulated financial service providers are not required to submit the list to the Central Bank unless requested to do so. The list of persons performing CFs must be made available to Central Bank staff on request. Details of regulated financial service providers obligations under Section 21 of the Act, and the related certification process and the underlying requirements regarding record-keeping and submissions to the Central Bank are set out in greater detail in Section 10 of this guidance.

²⁵ See section 1.5 of the F&P Standards for Credit Unions.

4. How do I know if a person is performing a CF or a PCF?

- 4.1** The description of CFs and PCFs in credit unions is set out in the 2013 Regulations.²⁶
- 4.2** References in the 2013 Regulations to a title commonly used for a person who performs a function (e.g. Head of Finance etc.) shall be taken to refer to the functions commonly performed by a person of such title. If you are in doubt as to whether you or your employee is performing a CF or a PCF, please contact a member of the supervisory team within the Central Bank assigned to your credit unions for clarification.
- 4.3** In addition to the PCFs set out in the 2013 Regulations, Section 22(8) of the Act provides that the Central Bank may declare in writing to a regulated financial service provider (i.e. a credit union) that a function performed by, for or on behalf of the regulated financial service provider is a PCF if - (a) the person who performs the function is concerned in the management of the regulated financial service provider, (b) the function is not prescribed as a pre-approval controlled function in the 2013 Regulations, and (c) no other person in the regulated financial service provider performs a PCF.
- 4.4** The 2013 Regulations and Part 3 of the Act do not require a regulated financial service provider to have all the CF or PCFs.²⁷ For example, where a regulated financial service provider is not required under any other law to have a

²⁶ Central Bank Reform Act 2010 (Sections 20 and 22 - Credit Unions) Regulations 2013 [S.I. No. 171 of 2013].

²⁷ Under the Credit Union Act, 1997, a credit union is required to appoint a chair and manager. Therefore, it is expected that each credit union will hold both these PCF roles.

compliance committee, that regulated financial service provider will not be obliged to form a compliance committee because of anything stated in the Regulations.

5. Outsourcing

5.1 General

In this guidance, outsourcing means a written arrangement of any kind between a credit union and a service provider who is a natural or legal person (whether regulated or unregulated) whereby the service provider performs a CF or PCF which would otherwise be performed by the credit union itself.

It should be noted that not every provision of a function or service to a credit union by a service provider will fall within the definition of outsourcing. Hiring a specialist consultant, for example, to provide one-off technical advice or one-off support for compliance, internal audit, accounting, risk management or actuarial functions does not normally constitute outsourcing. However, it may become outsourcing if the credit union subsequently relies on that consultant to manage an internal function or service when it is installed or becomes fully operational.

5.2 Outsourcing to another regulated entity²⁸

5.2.1 Section 1.6 of the F&P Standards for Credit Unions provides that the F&P Standards for Credit Unions do not apply to a person performing a CF under the following conditions:

- (a) where there is in place a written agreement between the credit union and a separate financial service provider for the carrying on of that function by that other person on behalf of the credit union; and
- (b) that other financial service provider (other than a certified person within the meaning of section 55 of the Investment

²⁸ Other than a “certified person” within the meaning of section 55 of the Investment Intermediaries Act, 1995.

Intermediaries Act, 1995) is regulated for similar business to that conducted by the credit union²⁹ concerned either:

- (i) by the Central Bank; or
- (ii) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank; or
- (iii) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

5.2.2 It should be noted that a CF or PCF benefitting from this exemption from the F&P Standards for Credit Unions will remain subject to the provisions of Part 3 of the Act, and may be the subject of an investigation, suspension or prohibition notice.

5.3 Outsourcing to an unregulated entity

5.3.1 Where the CF(s) is outsourced to an “unregulated entity”, the unregulated entity performing the outsourced activities must be able to identify the persons who will perform the CFs, and assess whether those persons are compliant with the F&P Standards for Credit Unions. The entity must also obtain those persons’ written agreement to comply with the F&P Standards for Credit Unions.

5.3.2 Where the role relates to a PCF, the requirements of Section 21 of the Act, including those in relation to certification, are also applicable to persons performing PCFs under an outsourcing arrangement who must be compliant with the F&P Standards for Credit Unions and provide their written

²⁹ This includes credit unions that are also authorised as retail intermediaries.

agreement to comply with the F&P Standards for Credit Unions.

- 5.3.3** In the case of PCF roles also, the credit union is responsible for ensuring that it has obtained the Central Bank’s prior written approval for the appointment of that individual to the PCF.
- 5.3.4** The Central Bank expects that unregulated entities who propose themselves for the performance of outsourced activities, which are CFs and PCFs, on behalf of a credit union would include compliance with the F&P Standards for Credit Unions and Part 3 of the Act generally as a critical part of their Human Resources procedures.
- 5.3.5** Section 21 of the Act requires that a credit union must satisfy itself on “reasonable grounds”, and certify, that persons performing CFs comply with the F&P Standards for Credit Unions and those persons have agreed to comply with the F&P Standards for Credit Unions.
- 5.3.6** Notwithstanding that a credit union has entered into an outsourcing arrangement with an unregulated entity for the performance of a CF the credit union remains responsible for compliance with its obligations under section 21 of the Act, including in relation to certification.
- 5.3.7** The outsourced service provider should provide written confirmation to the credit union that those persons performing CFs are compliant with the F&P Standards for Credit Unions and have agreed in writing to comply with them. In addition to this written confirmation, the outsourced service provider should furnish the credit union

with sample documentation as to how compliance with the F&P Standards for Credit Unions is adhered to.

- 5.3.8** In this subsection “unregulated entity” means an entity (including a certified person within the meaning of section 55 of the Investment Intermediaries Act, 1995) that is not regulated either:
- (a) by the Central Bank; or
 - (b) by an authority that performs functions in an EEA country that are comparable to the functions performed by the Central Bank; or
 - (c) by an authority that performs functions in a non EEA country that are comparable to the functions performed by the Central Bank.

Part B

Pre-Approval Controlled Functions and the Related Process for Approval and Appointment



6. Approval Process for PCFs

6.1 Approval process for PCFs

- 6.1.1** Before a credit union can appoint a person to a PCF, the Central Bank must have approved the appointment in writing.
- 6.1.2** The Central Bank expects a credit union to have completed the certification process as set out in Section 10 of this guidance before proposing a person for appointment to a PCF. The Central Bank expects that, at a minimum, the credit union undertakes the due diligence set out in Section 10 of this guidance.
- 6.1.3** The approval process will require the submission of an Individual Questionnaire (IQ) which is available on the Central Bank's website. In the case of elected PCF roles, credit unions and PCF applicants should be mindful of the fact that approval should be sought and received from the Central Bank in advance of the Annual General Meeting (AGM)³⁰ being held as a PCF cannot be elected to the position of chair if they have not been preapproved by the Central Bank. Please refer to Section 18 of this guidance for further information on the due diligence process for Electing CFs / PCFs.
- 6.1.4** Credit unions will be provided with User Accounts, allowing them to log on to the online system. Individual accounts for PCF applicants can then be created by credit unions, enabling PCF applicants to complete their IQs online. The system includes:

³⁰ Or Special General Meeting (SGM) as appropriate. Any reference to AGMs in this document also relates to SGMs.

- (i) an online IQ form, to be completed by the proposed holder of the PCF (including pre-formatted curriculum vitae sections within the IQ form itself);
- (ii) ability to attach additional documentation to support an application where necessary;
- (iii) option/ability to export core data once completed online which can later be imported by the PCF applicant for a subsequent application;
- (iv) an online declaration by the proposed holder of the PCF as to the accuracy and veracity of the information provided;
- (v) an online declaration by an appropriate officer (chair of the board of directors, manager or chair of the nomination committee) from the proposing credit union confirming that the credit union is satisfied and has certified in line with the requirements of section 21 of the Act that the proposed holder of the PCF is fit and proper.

6.1.5 For the most part, the Central Bank expects that the approval process will be based on the IQ, reference checks, and in some cases requests for further information. Where the Central Bank considers it necessary, it may conduct an interview or interviews³¹ with proposed holders of PCFs before deciding on whether or not to approve an application.

6.1.6 Where a person wishes to apply for several PCFs in different credit unions, however, s/he must submit an application for each entity.

³¹ https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/fitness-and-probity-interview-guide.pdf?sfvrsn=8d8d8f1d_4

6.1.7 The PCF applicant is responsible for all information given to the credit union and/or the Central Bank.

6.1.8 Section 23(7) of the Act provides that a decision of the Central Bank to refuse to grant prior written approval for an appointment to a PCF may be appealed to the Irish Financial Services Appeals Tribunal (IFSAT) pursuant to Part VIIA of the Central Bank Act 1942.

Timing for submission of Individual Questionnaires

6.1.9 Where a person wishes to seek election to the role of chair, the person and the credit union need to allow sufficient time in advance of an AGM for the PCF applicant, the credit union and the Central Bank to process the person(s) application for the PCF role.

6.1.10 Credit unions should not however submit an IQ to the Central Bank where an AGM has not been scheduled. If the IQ is submitted to the Central Bank before an AGM has been scheduled by the credit union or more than two months before an AGM is scheduled to take place, the IQ will be returned to the credit union to ensure the assessment of Fitness and Probity is based on the most current information.

6.1.11 In considering the timing of submitting an application for a PCF role, the applicant and the credit union should also bear in mind the possibility that the applicant may be called for an interview as part of the application process. Please refer to Section 7 for further information on interviews for PCFs.

6.2 **PCFs subject to re-election or re-appointment (including in situ PCFs)**

- 6.2.1** Persons in situ in the relevant PCFs on the date that the Regulations, as applicable, come into force³² continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF.
- 6.2.2** Where an in situ PCF at the time of the introduction of fitness and probity requirements for their credit union is subject to re-election/re-appointment, then that person will be required to receive approval from the Central Bank through the submission of an IQ. This is because re-election/re-appointment of a person constitutes a “break in service”. This is in accordance with the law as set out in section 23 of the Act.
- 6.2.3** If an in situ PCF changes to a ‘new’ PCF role within the same credit union, or to the same PCF role in a different credit union or regulated financial service provider, s/he will be required to seek the Central Bank’s prior approval to that appointment in writing.
- 6.2.4** Once a person has been approved to a role that is subject to re-election/re-appointment provisions, the written approval given by the Central Bank pursuant to section 23 of the Act shall state that s/he shall not be required to undergo the approval process again as long as s/he remains in that role. The credit union however will be required to confirm to the Central Bank upon re-election/re-appointment that his/her circumstances have not changed since pre-approval was granted.

³² This may be either as per S.I. No. 187 of 2018 (in circumstances where a credit union’s minimum total asset size reaches €100 million according to the credit union’s latest audited balance sheet) or if a new PCF is introduced by new Regulations as of a particular date.

6.3 In situ PCFs who are subject to employment contract renewals

6.3.1 Persons who are in situ in PCF roles who are subject to employment contract renewals may also be subject to the approval process. There may be situations where contracts contain certain provisions which mean a contract renewal is not a re-appointment as such. Ultimately it will be for the credit union to determine, based on the terms of contracts, in conjunction with legal advice if appropriate, whether they need to comply with the obligations of section 23 of the Act in this regard or not. The credit union will be required to confirm to the Central Bank that the terms of a PCFs contract have not changed since the initial submission of the IQ and the Central Bank's initial approval.

7. Interviewing PCFs

- 7.1** A risk based approach will be adopted in deciding whether persons in PCF roles are called for interview by the Central Bank. The Central Bank has developed the Probability Risk and Impact System (PRISM) to assess both the impact and probability risk of a credit union. The Central Bank will use a credit union's impact ratings derived from PRISM to inform its decisions as to who should be called for interview.
- 7.2** The "impact" of credit unions refers to the impact of failure on the Irish financial system. Credit unions can currently be categorised as medium high, medium low or low impact. The measurement of impact is based on impact metrics.
- 7.3** Risk probability defines the risk or likelihood that a particular credit union will fail.
- 7.4** The Central Bank may decide, at its discretion, to call any PCF applicant for interview irrespective of the impact rating of the credit union.
- 7.5** It is likely that the Central Bank will wish to interview a higher proportion of PCF applicants from a credit union which it assesses as having a higher risk profile than it would were a credit union to be assessed as having a lower risk profile.
- 7.6** The Central Bank's Regulatory & Business Services Division will liaise with the Registry of Credit Unions in coming to a decision as to who should be called to interview.

7.7 The interview panel is likely to be comprised of members of the Registry of Credit Unions, supplemented as appropriate with representatives from other divisions of the Central Bank.

8. Offers of appointment to a PCF

- 8.1** Section 23 of the Act requires that a credit union shall not appoint a person to perform a PCF unless the Central Bank has approved in writing the appointment of the person to perform that function.
- 8.2** The Central Bank is satisfied that a credit union can inform a person of an intention to offer the person a position which is a PCF, if it is made clear that the actual offer is subject to receiving the Central Bank's prior approval in writing of the appointment of the person to perform the function. The statement of intention made by the credit union should include the following paragraph:

"This shall not be taken to be an offer for the purposes of section 23 of the Central Bank Reform Act 2010 unless and until approval is granted by the Central Bank of Ireland".

As a practical matter, the inclusion of a statement of intention could have the same operational implications as making an offer subject to obtaining satisfactory references or a medical report, for example.

9. Persons performing PCFs on a temporary basis

- 9.1** Regulation 10 of the 2013 Regulations provides that: *“A person (the “temporary officer”) shall not be taken to be responsible for the performance of a pre-approval controlled function solely as a result of the temporary officer being responsible for the performance of such function on a temporary basis pending the credit union appointing a person to perform such pre-approval controlled function, provided such temporary officer performs such function under an arrangement agreed in writing with the Central Bank in advance of the person in question assuming such responsibility as a temporary officer”.*
- 9.2** If the function enables the person to exercise a significant influence on the conduct of the affairs of the credit union, even for a relatively short period, it is likely that the Central Bank will require the credit union to progress with the full PCF application process.
- 9.3** Where a credit union wishes to extend for a further period an appointment to exercise a PCF in a temporary capacity, the credit union must obtain the prior agreement in writing of the Central Bank. The credit union should contact a member of the supervisory team assigned to that credit union for that purpose in the first instance.
- 9.4** If the Central Bank agrees in writing that a person may perform a PCF in a temporary capacity pursuant to Regulation 10 of the 2013 Regulations, the credit union must be satisfied on reasonable grounds, and have certified, that the person complies with the F&P Standards for Credit Unions, and has agreed to comply with these F&P Standards.

9.5 The Central Bank expects that Regulation 10 of the 2013 Regulations will only be used in the most exceptional of circumstances, e.g. in the event of the death of a person performing a PCF. The Central Bank does not envisage that this Regulation could be invoked for circumstances which can, in the normal course, be planned for, e.g. maternity cover, cover for career breaks, etc.

Part C

Controlled Functions (including Pre-Approval Controlled Functions), the Related Certification Process and the Underlying Due Diligence Requirements



10. Certification

Section A: The Certification Process

10.1 Section 21 of the Act provides that a credit union shall not permit a person to perform a CF unless:

- (i) The credit union is satisfied on reasonable grounds that the person complies with any standard of fitness and probity issued pursuant to section 50 of the Act;
- (ii) A certificate of compliance with standards of fitness and probity, given by the credit union in accordance with section 21, is in force in relation to the person; and
- (iii) The person has agreed in writing to comply with any such standard.

10.2 Therefore, a credit union cannot appoint an individual to a CF, or allow them to continue in such a role, if it is not satisfied that the individual meets the above standards (or indeed any of the relevant codes, as applicable). The same prohibition applies to the credit union if the individual in the CF role has not agreed in writing to comply with the above standards (or any of the codes that may be applicable to them).

10.3 Accordingly, a credit union is required to document the following in respect of each individual in a CF role as part of the certification process:

- a) Confirmation that the credit union is satisfied that the individual meets any standards of fitness and probity applicable to the CF role(s);
- b) Confirmation that the individual has agreed to comply with the standards;
- c) Identification of the CF role(s) held;

- d) An outline of the aspects of the affairs of the credit union in which the individual will be involved in performing the CF role(s);
- e) Details of the steps taken by the credit union in forming the view that the individual meets any standards of fitness and probity applicable to the CF role(s); and
- f) Whether the role is outsourced to an unregulated entity.

10.4 Where a person performing a CF does not comply, or continue to comply, with the F&P Standards for Credit Unions and therefore cannot be certified, the credit union cannot permit that person to perform, or continue to perform, the CF.

Section B: Identification of CFs

10.5 Section 21 of the Act applies to all regulated financial service providers (which includes credit unions) and holding companies subject to the F&P Regime. Accordingly, the certification requirements apply to all credit unions and are relevant to all individuals in CF roles within them, with the exception of those individuals in CF roles to whom the exemptions from the F&P Standards for Credit Unions apply.

10.6 Credit unions are required to maintain a register of individuals in CF roles and the specific CF role performed by them as defined in the 2013 Regulations. The Central Bank has previously noted³³ that good practices identified include a requirement to review the job description when a vacancy arises to determine if the role is CF or PCF in nature, and

³³ <https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/news/dear-ceo-letter---thematic-inspections-of-compliance-with-obligations-under-the-fitness-and-probity-regime.pdf>

guidelines setting out the key principles and rationale for the general interpretation of the CFs in credit unions. The Central Bank encourages the use of such practices in respect of all CF or PCF roles performed within credit unions or outsourced to an unregulated Outsourced Service Provider.

- 10.7** As set out in Section 5 of this guidance, where a CF role is outsourced to an ‘unregulated entity’, the credit union remains responsible for its obligations under Section 21 of the Act, including the certification process in respect of each individual in the CF role.
- 10.8** Credit unions are required to maintain an accurate and up-to-date register of individuals in CF roles, which is reflective of the Certification process as outlined in this section.
- 10.9** Credit unions are not required to submit the register to the Central Bank unless requested to do so. However, the list of individuals performing CF roles must be made available to the Central Bank on request. Details in respect of the information to be submitted to the Central Bank with regard to Section 21 of the Act are set out in Section F below.

Section C: Forming the view that the person meets the standards

- 10.10** A credit union must undertake appropriate due diligence to satisfy itself that each person performing a CF is fit and proper to perform that CF and to be in a position to certify same.
- 10.11** Guidance on the specific due diligence to be undertaken and on how credit unions should determine the standard of fitness and probity to a particular CF is provided in Section I below.

Section D: Frequency of completion of the certification process

10.12 Section 21 of the Act is a continuing obligation on credit unions.

It is not a one-off obligation discharged once due diligence has been undertaken upon commencement of the regime, or in relation to an initial appointment to a CF or a PCF. Accordingly, credit unions are required to carry out the certification process in respect of all CFs:

- prior to appointment (or in the case of a PCF, prior to the submission of an IQ to the Central Bank);
- on an annual basis; and/or
- in respect of any new CF(s) assumed, in advance of appointment to same.

10.13 In respect of individuals holding more than one CF role concurrently, the Central Bank envisages one single certification process that is reflective of all CF roles held, completed prior to appointment, on an annual basis and/or in respect of any new CF(s) assumed in advance of appointment to same.

10.14 An entity which becomes a credit union must certify individuals in CF roles within 5 days of becoming a credit union or as otherwise agreed with the Central Bank. In this regard, it should be noted that the steps required to certify individuals in CF roles will be completed as part of the authorisation process.

Section E: Confirmation of agreement to comply with the F&P Standards

- 10.15** Section 21 of the Act provides that a credit union shall not permit a person to perform a CF³⁴ unless the person has agreed to comply with the F&P Standards for Credit Unions.
- 10.16** Credit unions must bring the F&P Standards for Credit Unions to the attention of every person performing a CF on its behalf, and obtain a signed copy of the template agreement at Appendix 2 for each such person.
- 10.17** As part of the certification process, the credit union is required to ask persons performing CFs to confirm that they are aware of the F&P Standards for Credit Unions and agree to continue to comply with those F&P Standards for Credit Unions at least on an annual basis.

Section F: Submission of data in relation to certification to the Central Bank

- 10.18** It is not the Central Bank's expectation that credit unions provide individual certificates to each CF, nor is it intended that an individual confirmation of the completion of the certification process in respect of each CF is submitted to the Central Bank. Further details regarding the retention and submission of data in relation to certification are set out below.
- 10.19** As part of the Annual PCF Confirmation process credit unions are required to:
- (i) submit confirmation of the completion of the certification process for each PCF role holder to the

³⁴ Please note a PCF is a subset of CF.

Central Bank on an annual basis via the Annual PCF Confirmation Return; and

- (ii) confirm the completion of the overall certification process in respect of all other CF role holders on an annual basis via the Annual Overall Certification Process Return.

10.20 While it is expected that the majority of credit unions should be in a position to confirm the completion of the overall certification process annually, the Central Bank notes that there may be circumstances whereby a credit union cannot confirm same (for example, where an individual in a CF role has yet to complete the continuing professional development (CPD) hours but is scheduled to do so within a reasonable timeframe). In such circumstances, credit unions should assess the materiality of the situation, and where it is determined that it will not impact on the certification of the individual, credit unions are required to record any such instance and the reason for same, as well as an appropriate timeframe within which it will be remedied, and to confirm that the overall certification process has otherwise been completed. Information regarding such instances must be made available to Central Bank on request. Where a circumstance is considered material, credit unions should adhere to Section 17 of this guidance as appropriate.

Section G: Retention of data in relation to certification

10.21 Credit unions are required to maintain all information collected in compliance with its obligations under section 21 of the Act for the duration during which the person performs the CF role. This includes the documentation of, and records in relation to, the certification of each CF, and the due diligence

and the agreements to comply with the F&P Standards for Credit Unions.

10.22 Credit unions are required to maintain the information collected in compliance with Section 21 of the Act for a minimum of 6 years after that individual has ceased to perform the CF on behalf of the firm.

10.23 The Central Bank may require to see any such records or due diligence either in the context of an investigation of a credit union compliance with section 21 of the Act, or an investigation in relation to an individual's fitness and probity to perform a CF role.

10.24 Credit unions should have regard to their obligations under General Data Protection Regulation³⁵ in holding the information referred to in this Section including ensuring that the information is held securely and in an appropriate manner.

Section H: Responsibility for and compliance with the certification process

10.25 Credit unions should implement procedures to manage the credit union's compliance obligations with Section 21 of the Act.

10.26 In this regard, the Central Bank recognises that credit unions may wish to incorporate the certification process within existing processes and, as such, the Central Bank has not prescribed a format for certification. For example, some credit

³⁵ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

unions may wish to incorporate the certification process as part of their ongoing performance monitoring.

10.27 The Central Bank will engage in periodic follow-up with credit unions regarding the appropriateness of and compliance with the certification process, through ongoing supervisory engagement and/or thematic inspections.

10.28 The Central Bank considers the Manager of the credit union to be responsible and accountable for certification.

Section I: Due diligence underlying the certification process: What standard of fitness and probity is appropriate to the particular CF?

10.29 In complying with section 21 of the Act, the Central Bank expects credit unions to consider the responsibilities of the specific function and to determine the specific competencies and level of probity that should be expected of a person performing that specific CF in the credit union.

10.30 All due diligence is applicable to the CF population to which the certification requirement applies. All due diligence must be performed prior to appointment and on an ongoing basis, with limited exceptions relevant prior to appointment only (e.g. reference checks, interview or application, or record of previous experience) or which are applicable only in certain circumstances. While this guidance sets out the Central Bank's expectations in relation to due diligence, it does not purport to address every possible check and, as such, firms should apply an approach consistent with the nature, scale and complexity of the firm and the roles therein.

10.31 When considering compliance with Section 21 of the Act, the Central Bank will assess both the credit union's analysis of what specific competencies and level of probity are required for the performance of a relevant function or functions, and the steps that the credit union has taken to satisfy itself and certify that the person performing the relevant CF is so competent, and has the requisite level of probity to be fit and proper to perform that CF.

10.32 Matters such as scale, complexity, risk profile, organisation structure, target market and so on are unlikely to be exactly the same within any two credit unions. Different functions will entail different responsibilities and different levels of knowledge and expertise. For this reason, this guidance cannot point to conclusive knowledge or expertise that is required for a particular function. The credit union, using its own unique knowledge of the CF, and taking into account all relevant matters (including those listed above) can make the assessment as to what makes a person fit and proper to perform the specific CF in that credit union. This guidance sets out due diligence that the Central Bank expects would be undertaken by credit unions in particular cases when assessing compliance with the F&P Standard for Credit Unions. In all cases, it is for the credit union itself to assess the information and exercise judgement to determine whether a person is fit and proper to carry out a particular CF.

10.33 Irrespective of the title of the function, the credit union should consider the activities constituting the function in order to assess the type of CF, and the specific competencies and level of probity that should apply to that CF.

10.34 Where a person performs more than one CF, and more than one set of specific competencies and level of probity applies in respect of the exercise of those multiple CFs, the higher standard is the relevant standard for the purposes of due diligence.

10.35 If a credit union has insufficient information available to enable it to conclude on reasonable grounds that the F&P Standards for Credit Unions are being complied with, particularly if due to lack of co-operation by the person, the F&P Standards for Credit Unions may not be met. The credit union should bring this to the attention of the person and allow them an opportunity to provide the required information.

11. Fitness – determining the standard of fitness that is appropriate to the particular CF

- 11.1** The credit union should be well placed to determine the particular demands of a CF, i.e. what qualifications, experience, knowledge and other relevant factors will make a person fit for the performance of that function.
- 11.2** The requirements of the CF may also be dictated by the roles undertaken by persons in other CFs in the credit union. For example, where a credit union employs both a money laundering reporting officer and a compliance officer, while the compliance officer will be expected to have a general understanding of anti-money laundering legislation, s/he may not be required to have the in-depth knowledge required of a specific money laundering reporting officer.
- 11.3** It is recognised that a person considered fit for a particular CF within a credit union may not be considered fit for another CF with different responsibilities or for a similar CF within another institution, and conversely, a person considered unfit for a particular CF in a particular credit union may be considered fit in different circumstances, e.g. in a different CF.

12. Fitness – due diligence to be undertaken by a credit union to assess a person’s fitness to perform a CF(s)

- 12.1** Section 3 of the F&P Standards for Credit Unions requires a person to be competent and capable. Section 3.1 provides that a person shall have the qualifications, experience, competence and capacity appropriate to the relevant function.
- 12.2** In relation to F&P Standard 3.2(c) of the F&P Standards for Credit Unions, competency and proficiency shown in the performance of previous functions may relate to functions that either:
- (a) would now be subject to fitness and probity requirements (in a credit union or another regulated financial services provider); or
 - (b) are similar to those roles covered by fitness and probity requirements.
- 12.3** The Central Bank expects credit unions to undertake the following due diligence when assessing a person’s competence and capability:
- (i) **Evidence of compliance with the MCC (where relevant):** where a person is performing or proposes to perform a CF(s), the performance of which is subject to the MCC, that person can be taken to have the appropriate qualifications or competence to conduct that CF where compliant with the MCC. The credit union should satisfy itself that the person has the recognised qualification(s) by obtaining a copy of the certificate/transcript/records

evidencing the qualification. The records to be retained in relation to grandfathered persons are set out in the MCC. The MCC also contains requirements concerning the monitoring of compliance with ongoing continuing professional development (CPD) requirements.

- (ii) **Evidence of professional qualification(s):** where the CF requires a specific professional qualification, the credit union should satisfy itself that the person has that specific qualification(s) (e.g. qualification as an accountant) by obtaining a copy of the certificate / transcript / record evidencing the qualification.

Where the person is required to be registered with a professional body, the credit union should require and maintain a copy of the person's licence or certificate to practice (howsoever described) and where that licence / certificate is renewed on an annual (or more or less frequent) basis should require a copy of the most recent renewal.

The Central Bank expects credit unions to obtain copies of qualifications only where the credit union has determined that those qualifications are relevant to the exercise of the CF, e.g. where a job specification requires that a person has five years post-qualification experience as an accountant, the Central Bank expects the credit union to obtain evidence of the professional accountancy qualification.

- (iii) **Evidence of CPD (where relevant):** where maintenance of a qualification is dependent on completing CPD, the

credit union should satisfy itself that the person is compliant with the particular CPD requirements.

Where a person must maintain up-to-date CPD in order to renew his/her practising certificate, evidence of the renewal of that practising certification will be regarded as sufficient to evidence CPD for the purposes of these F&P Standards for Credit Unions.

- (iv) **Record of interview/application:** where the credit union uses the interview process to assess competence and capability (such as skills and experience) it should maintain written notes of the interview to evidence this. Similarly where a written application was submitted for the particular CF this should be maintained on file.
- (v) **References:** the Central Bank expects credit unions to make all reasonable efforts to obtain references from former employers or other relevant persons. The Central Bank expects credit unions to maintain evidence of this correspondence.

Where the credit union is unable to obtain a reference(s) for whatever reason, it must record the steps which it has taken to obtain the reference(s). The credit union must also record how, in the absence of the reference, it has satisfied itself that the person is competent to perform the CF.

- (vi) **Record of previous experience:** where a person demonstrates skills and experience gained through a current or previous role (for example, through the applicant's CV, or the credit union's interview process),

the credit union should assess and document how the person's performance in that role equips that person with the expertise and experience necessary for the performance of the current function.

(vii) **Record of experience gained outside the State:** where some or all of the experience gained is outside of the State, the credit union should consider the extent to which the person can demonstrate competency that relates specifically to the function within the State, i.e. does the person have a clear full understanding of the regulatory and legal environment appropriate to the relevant function? The credit union should maintain a record of this consideration.

(viii) **Concurrent Responsibilities:**

- (a) **Directors:** Section 53(5) of the Credit Union Act, 1997 requires that each director of a credit union shall ensure that s/he has sufficient time to devote to the role of director and the responsibilities associated with that role.
- (b) **Other:** The credit union should ensure that the person performing the CF does not have other employment which interferes with, or create conflicts in relation to, the exercise of the CF. The credit union should require the person to self-certify in writing that the person is capable of conducting the relevant function, including that the person has adequate time to perform those functions having regard to those other potential concurrent responsibilities, prior to appointment and as part of the certification process.

12.4 Roles required by legislation:

Where the functions of a CF are set out in legislation, then the individual's competence to perform these functions should be included in the assessment of competence. For example, the functions of the board of directors are set out in section 55 of the Credit Union Act, 1997.

Competencies that are relevant for a member of a board of directors include the following at a minimum:

- (i) knowledge in relation to the credit union business model and operating environment;

- (ii) understanding of the legislative and regulatory framework and requirements for credit unions;

- (iii) interpreting the financial statements of the credit union, including identifying key issues based on this information and appropriate controls and measures;

In addition, the following competencies would be relevant for some members of the board, including the chair:

- (iv) strategic planning and understanding of the credit union's business strategy;

- (v) risk management, including identifying, assessing, monitoring, controlling and mitigating the main types of risks for the credit union;

- (vi) effective governance, oversight and control of the credit union.

12.5 It should be noted that the above is not an exhaustive list of the required competencies for the role of member of the board of

directors, but rather is a high level overview of the minimum areas that should be considered when assessing competence.

- 12.6** In assessing competence, the credit union should consider what previous experience, training, qualifications, knowledge and skills the person has that demonstrate their competence to perform the role.
- 12.7** Any qualifications a person has undertaken should be assessed to determine the extent to which the qualification supports the competencies required to undertake the role. For example, the extent to which the qualification assists the director in understanding the credit union business model, the legal and regulatory environment or interpreting the financial statements of the credit union.

13. Probity – determining the standard of probity

- 13.1** Persons proposed for CFs or PCFs must be honest, diligent and independent-minded and must act ethically and with integrity.

- 13.2** Probity is a matter of character illuminated by a person's past behaviour. In general, where a person is found not to be a person of probity due to a lack of honesty, integrity or ethical judgement, that person may not be suitable for any CF or PCF.

- 13.3** Probity may also include persons ensuring that they act without conflicts of interest.

14. Probity – due diligence to be undertaken by a credit union to assess a person’s probity to perform a CF(s)

- 14.1** Sections 4.1 and 5.2 of the F&P Standards for Credit Unions relate to the assessment of probity. Much of an assessment of a person’s character, in terms of their probity, can only be undertaken in the case of exceptions, i.e. it is only when evidence is available to suggest that a person might not comply with the standard of probity required of him/her that a credit union must investigate thoroughly. Prior to there being any indication of a failure to meet the F&P Standards for Credit Unions, there is a limit to the due diligence that an employer, or a prospective employer, can reasonably carry out.
- 14.2** In accordance with section 21 of the Act, credit unions are required to undertake appropriate due diligence when assessing a person’s probity as follows:
- (i) seek and obtain signed written confirmation from the person performing or proposing to perform a CF as to whether or not any of the circumstances set out in Section 4.1 and Section 5.2 inclusive of the F&P Standards for Credit Unions, apply to that person.
 - (ii) in relation to Section 4.1(c) of the F&P Standards for Credit Unions, refer to the Central Bank’s website and those of other regulatory authorities (where available) to confirm for their own records that the person has not been the subject of sanction, or other regulatory action;

- (iii) in relation to 4(1)(f) of the F&P Standards for Credit Unions, should check the Companies Registration Office records for restrictions or disqualifications from acting as a Company Director;
- (iv) in relation to Section 4.1(j) of the F&P Standards for Credit Unions, seek confirmation from those performing CFs as to whether, to the best of their knowledge, the circumstances set out in Section 4.1(j) have arisen in relation to matters which may have occurred during the time in which that person held that position of responsibility or influence;
- (v) in relation to Section 5.2(b) of the F&P Standards for Credit Unions, check against publicly available sources whether a judgment debt has been registered against a person. Publically available resources may include, for example, Experian All Ireland Gazette or Stubbs Gazette. Where the person has lived outside the State for more than six months in the previous five years, the credit union should request that the person provide a check from a publicly available source in relation to judgment debts from that other jurisdiction(s).

14.3 Where it is confirmed that one or more of the circumstances set out in section 4.1 or section 5.2 of the F&P Standards for Credit Unions apply:

- (i) The person must be in a position to demonstrate that his or her ability to perform the CF(s) is not adversely affected to a material degree by that matter(s).
- (ii) The credit union should require that the person concerned submit to the credit union underlying documents relevant

to the matter (for example, a final decision or report and/or key correspondence). The credit union should inform the person concerned that failure to provide information requested by the credit union and which is relevant to the matter may result in the credit union being unable to satisfy itself, and therefore certify, that the person complies with, or continues to comply with, the F&P Standards for Credit Unions.

- (iii) The credit union should make an assessment based on all of the information received as to whether the matter is material to the performance of the CF. Where it is decided that it is not material, and the credit union has satisfied itself that the person complies with, or continues to comply with, the F&P Standards for Credit Unions, the matter rests here. The credit union should document this assessment.
- (iv) If it is considered that the matter is material, the credit union should make all reasonable enquiries arising on foot of the information provided by the person, such as, where relevant, contacting third parties for further information, e.g. former employers, regulatory authorities, etc.
- (v) A credit union is not required to remove or suspend a person from acting in a CF solely on the basis that one or more of the matters listed in Section 4.1 or Section 5.2 of the F&P Standards for Credit Unions may have occurred.
- (vi) For example, in 4.1(c) of the F&P Standards for Credit Unions, the fact that a person has been the subject of disciplinary proceedings will not automatically mean that the person fails to meet the level of probity required for the (continued) performance of the CF. In assessing the

impact of the proceedings on that person's probity, issues for consideration include the subject matter of the proceedings, the circumstances surrounding the disciplinary proceedings, the length of time passed since the proceedings, the explanation offered by the person and the relevance of the proceedings to the proposed role. The Central Bank publishes details of sanctions imposed on regulated financial service providers (RFSPs) and/or individuals concerned in the management of those RFSPs under the Administrative Sanctions Procedure.

- (vii) It is for the person who is subject to Sections 4.1 and 5.2 of the F&P Standards for Credit Unions to demonstrate that his or her ability to perform, or continue to perform, the relevant function is not adversely affected to a material degree by any of the factors in Section 4.1 or Section 5.2.

- (viii) The question of what is material to a particular CF, however, is a matter for the credit union. Where a matter may be relevant (for example, where the disciplinary proceedings are in respect of a serious matter), the credit union may consider it in conjunction with other relevant matters in assessing whether the person is fit and proper to perform the current or proposed function including:
 - (a) the seriousness of, and surrounding circumstances of the particular set of facts;
 - (b) the relevance of those to the duties that are, or are to be, performed and the responsibilities that are, or are to be, assumed by that person;
 - (c) repetition and duration of the behaviour;
 - (d) the passage of time since the matter under consideration; and
 - (e) evidence of rehabilitation.

- (ix) When assessing a person's fitness and probity, a credit union need not make enquiries about a matter that is unlikely to be material. The credit union should document why s/he considers that the issue is not likely to be material.
- (x) A series of matters used to assess fitness and probity may be significant when taken together, even if each matter in isolation might not be significant. The cumulative effect of such matters might determine whether the regulated person or approved person is fit and proper to perform, or continue to perform, the CF.
- (xi) Where the credit union has made reasonable efforts to contact third parties and has received no response or a response which is insufficiently detailed to allow the credit union to make a decision, the credit union should revert to the person concerned in an effort to identify other possible avenues of inquiry.
- (xii) If the credit union is unable to obtain information which is sufficiently detailed to allow the credit union to make a decision, the credit union may therefore, be unable to satisfy itself, and therefore certify, that the person complies with the F&P Standards for Credit Unions.
- (xiii) For illustration purposes, there is a table at Appendix 1 which set out examples of due diligence required.

15. Due diligence for criminal offences

- 15.1** Pursuant to Section 4.1(g) of the F&P Standards for Credit Unions, a conviction for a criminal offence will not automatically mean that the person fails to meet the standard of probity. The credit union must ensure that it is satisfied, and therefore can certify, that a person is fit and proper having regard to any conviction for an offence, “... *which could be relevant to that person’s ability to perform the relevant function*”.
- 15.2** Convictions which could be considered relevant in this regard include, but are not limited to, offences involving dishonesty, fraud, financial crime or offences under legislation relating to companies, building societies, industrial and provident societies, credit unions, friendly societies, banking or any other financial service, insolvency, consumer credit, insurance, consumer protection, market manipulation, insider dealing or revenue law. The offences may be relevant whether the person was convicted in the State or in some other jurisdiction. See Section 16 below which refers to persons prohibited from holding roles in a credit union under the Credit Union Act, 1997.
- 15.3** Convictions which may not be relevant in particular circumstances might be road traffic offences where a custodial sentence was not imposed, or minor public order offences.
- 15.4** In assessing the impact of a conviction on a person’s probity, issues for consideration include the circumstances surrounding the conviction, the length of time since the conviction, the explanation offered by the convicted person,

the relevance of the offence to the proposed role and any evidence of the individual's rehabilitation.

16. Persons prohibited from holding roles in a credit union under the Credit Union Act, 1997

16.1 Section 72 of the Credit Union Act, 1997 states that:

(1) A person who has been adjudicated bankrupt and whose bankruptcy still subsists or who, in the previous 10 years, has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty shall not–

- (a) sign an application form for the registration of a society as a credit union,*
- (b) be qualified to be appointed or to act as an officer, auditor, receiver or liquidator of a credit union,*
- (c) directly or indirectly take part in or be concerned in the management or operation of a credit union, or*
- (d) permit his or her name to be put forward for election or appointment to any of the positions referred to in paragraph (b).*

(2) If a person who is a member of–

- (a) the board of directors,*
- (b) the board oversight committee, or*
- (c) a principal Committee,*

of a credit union is adjudicated bankrupt or convicted of such an offence as is referred to in subsection (1), then such person shall forthwith cease to hold office and the vacancy thereby created shall be deemed to be a casual vacancy and be filled accordingly.

(3) A decision of the board of directors of a credit union shall not be affected by the presence at a meeting of the board of a

person who, by virtue of this section, is disqualified from being a director; but any vote which such a person purports to cast shall be disregarded.

(4) Any person who, in relation to a credit union, purports to act in a manner or capacity which, by virtue of his being disqualified under this section, he is prohibited from doing shall be guilty of an offence.

16.2 Therefore, in accordance with section 72 of the Credit Union Act, 1997, any person who has been declared bankrupt and whose bankruptcy still subsists, or who, in the previous 10 years, has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty-may not hold a CF within a credit union.

17. Material changes or concerns regarding fitness and/or probity

- 17.1** In addition to the requirement for credit unions to obtain confirmation that a CF has agreed to comply with the F&P Standards for Credit Unions under section 21 of the Act, credit unions should require individuals performing CF roles to notify the credit union of any material changes in respect of initial due diligence carried out. Suggested wording in this regard is included in the agreement to comply with the F&P Standards for Credit Unions at **Appendix 2**.
- 17.2** Further, the Central Bank expects that credit unions carry out an audit of persons performing CFs and PCFs on an annual basis by asking persons in CFs and PCFs to confirm whether they are aware of any material developments in relation to their compliance with the F&P Standards for Credit Unions of which the credit union ought to be aware.
- 17.3** Where a credit union becomes aware that there may be concerns regarding the fitness and probity of a person performing a CF, the Central Bank expects the credit unions to investigate such concerns and take action as appropriate without delay.
- 17.4** The credit union should notify the Central Bank of any action referred to in Section 17.3 without delay.
- 17.5** While there is no exhaustive list of the types of action that must be notified to the Central Bank these would include, for example, the issuing of a formal written warning, suspending/dismissing a person or reducing/recovering some

of their remuneration as a result of issues relating to fitness and/or probity.

- 17.6** Such action may necessitate the removal (where such an instance occurs mid-way through the certification cycle) or non-renewal of the person's status as certified (at the time of annual review).

18. Process for electing CFs/PCFs)

18.1 Who in the credit union is responsible for conducting due diligence?

18.1.1 The Board of Directors: Under section 56B of the Credit Union Act, 1997, the nomination committee is responsible for assisting the credit union in performing any obligations of the credit union under section 23 of the Act in relation to any candidates proposed to perform CFs or PCFs.

Specifically, section 56B (4) (e) and (f) of the Credit Union Act, 1997 state that the nomination committee is responsible for:

- (4)(e) *assisting the credit union in performing any obligations of the credit union under section 23 of the Central Bank Reform Act 2010 in relation to any candidates proposed to perform pre-approval controlled functions (as construed in accordance with section 22 of that Act);*
- (4)(f) *assisting the credit union in carrying out any checks which the credit union is undertaking to enable it to comply with its obligations under section 21 of the Central Bank Reform Act 2010;*

and section 56B (6) states that:

“The nomination committee shall ensure it receives nominations for appointment of persons as members of the board of directors of a credit union in time prior to any annual general meeting, or special general meeting at which an election is held for such members, so as to enable any requirements by or under Part 3 of

the Central Bank Reform Act 2010 to be met in advance of those persons being nominated for appointment.”

18.1.2 In addition section 56B (5) states that:

“Every candidate to be nominated for appointment as a member of the board of directors of a credit union shall be proposed through the nomination committee of the credit union. No person shall otherwise be put forward for election or seek election at an annual general meeting or special general meeting of the credit union at which an election is held for members of the board of directors.”

The nomination committee should therefore have responsibility for conducting due diligence on members of the board of directors.

18.1.3 The Board Oversight Committee: The nomination committee and the board oversight committee should have joint responsibility for conducting due diligence on the members of the board oversight committee.

18.1.4 The Manager: Section 63A (5) states that:

“In appointing a person as manager of a credit union, its board of directors shall ensure that the person complies with all legal requirements (including requirements which the Bank may prescribe) to be appointed.”

It would therefore be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the manager.

18.1.5 Risk Management Officer: Section 76C (1) states that:

“The board of directors of a credit union shall appoint a person (in this Act referred to as a ‘risk management officer’) with the necessary authority and resources to manage the risk management function within the credit union.”

While the credit union management team is likely to provide input into the process of selecting a suitable risk management officer, it would be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the risk management officer.

18.1.6 Head of Internal Audit: Section 76K (1) states that:

“The board of a credit union shall appoint a person (in this Act referred to as the ‘internal audit function’) -
(a) to provide for independent internal oversight, and
(b) to evaluate and improve the effectiveness, of the credit union’s risk management, internal controls and governance processes.”

Furthermore, Section 76K (4) states that:

“The internal audit function shall be separate from other functions and activities of the credit union, and be capable of operating independently of management and without undue influence over its activities.”

It would therefore be expected that the board of directors or a sub-committee of the board of directors, such as the nomination committee, would have responsibility for conducting due diligence on the head of internal audit.

18.1.7 Other Controlled Functions: It is a matter for the credit union to determine who should conduct due diligence for other CF and PCF roles, while ensuring that any potential conflicts of interest are managed.

18.2 CF elected roles

18.2.1 Where a CF is subject to an election process, credit unions need to allow sufficient time in advance of the election at AGM for the credit union to conduct due diligence on a person that is proposed to hold that CF.

18.2.2 For a CF, the credit union should take the following steps in advance of the AGM:

- (i) The credit union identifies potential candidates to stand for election for a specific CF(s) at the AGM;
- (ii) The credit union conducts a due diligence assessment on each person, to assess the fitness and probity of the person relative to the CF(s) and to ensure that the person would comply with the F&P Standards for Credit Unions should they be elected;
- (iii) The Central Bank expects a credit union to have completed the certification process as set out in Section 10 of this guidance before proposing a person for appointment;
- (iv) The person will then be required to confirm in writing to the credit union in advance of the election that s/he agrees to comply with the F&P Standards for Credit Unions;
- (v) The credit union notifies the person whether they are satisfied the person is fit and proper and therefore eligible to stand for election at the AGM;

- (vi) If a credit union does not deem the person to be fit and proper they must inform the person that they are not eligible to stand for election at the AGM.

Persons ineligible to become a director or member of the board oversight committee

18.2.3 Section 53(10) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a director (a role that would fall within CUCF-1) of a credit union. Section 76N(4) of the Credit Union Act, 1997 sets out the categories of persons who are not eligible to become a member of the board oversight committee (a role that would fall within CUCF-2) of a credit union. The categories of persons not eligible to become a director of a credit union or a member of the board oversight committee of a credit union include:

- 1) An employee of any credit union;
- 2) A voluntary assistant or member of the board oversight committee (director restriction) of the credit union;
- 3) A director of any other credit union;
- 4) The auditor of the credit union or a person employed or engaged by that auditor;
- 5) A solicitor or other professional adviser who has been engaged by or on behalf of the credit union within the previous 3 years;
- 6) A person who is a spouse or civil partner, parent or child of a director, board oversight committee member or employee of that credit union³⁶.

³⁶ Siblings are also included in the persons not eligible to become a director in section 53(10)(m).

This list is not exhaustive and credit unions should refer to sections 53(10) and 76N(4) of the Credit Union Act, 1997 for the full list of persons ineligible to become a director or member of the board oversight committee.

When carrying out due diligence for proposed directors (CUCF-1), including proposed chairs, or proposed members of the board oversight committee (CUCF-2), credit unions should ensure that the proposed candidate does not fall within the list of ineligible persons.

18.3 PCF elected roles – the chair of the board of directors

18.3.1 Under section 63 of the Credit Union Act, 1997, the chair of the board of directors is elected at a meeting of the board of directors which is held immediately after an AGM that was held to elect the board of directors.

18.3.2 Any person, other than an existing chair that has previously been pre-approved, that must stand for election to the position of chair of the board of directors should be pre-approved by the Central Bank before they can be elected to the role of chair.

Persons ineligible for the role of chair

18.3.3 Since 11 October 2013 the following requirements apply in relation to persons not eligible to seek election to the position of chair:

- a) Under section 55A(4) of the Credit Union Act, 1997, any person that has served as an employee or acted in a management capacity in the credit union in the previous five years is not eligible for election to the position of chair. For the avoidance of doubt, acting in a

management capacity does not include being a member of the board of directors or the board oversight committee.

- b) Under section 55A(6) of the Credit Union Act, 1997, any person that has served four consecutive terms as chair is not eligible to be chair.

When carrying out due diligence for the proposed chair (CUPCF-1), credit unions should ensure that the proposed candidate is eligible to seek election for the role of chair.

The time referred to in sections 55A(4) and 55A(6) includes time served before 11 October 2013. Credit unions should ensure that an applicant is not ineligible to be chair under these requirements, or any other legal requirements, prior to submitting an IQ to the Central Bank.

- 18.3.4** The PCF applicant(s) and the credit union should take the following steps in advance of the election for the role of chair:
- (i) The nomination committee identifies potential candidate(s) to stand for election for the position of chair;
 - (ii) The credit union conducts a due diligence assessment on the person(s) to assess the fitness and probity of the person(s) relative to the PCF role to ensure that the person would comply with the F&P Standards for Credit Unions should they be elected;
 - (iii) The Central Bank expects a credit union to have completed the certification process as set out in Section 10 of this guidance before proposing a person for appointment.

- (iv) The credit union notifies the person(s) whether they are satisfied the person is fit and proper and whether the person may seek pre-approval from the Central Bank;
- (v) If the credit union does not deem the person(s) to be fit and proper, they may not seek pre-approval from the Central Bank or stand for election for the role of chair at the meeting of the board which is held immediately after the AGM;
- (vi) If the credit union deems the person(s) to be fit and proper, pre-approval must be sought from the Central Bank prior to the person(s) standing for election;
- (vii) The person(s) completes an IQ for submission to the Central Bank for pre-approval;
- (viii) The credit union reviews the IQ. The proposer within the credit union should then complete the declaration in Section 11 of the IQ proposing the persons(s) PCF application and submit it to the Central Bank on behalf of the person;
- (ix) The Central Bank receives the IQ and processes the application.
- (x) As part of its review of the application, the Central Bank may request further information from the person through the credit union or may request the person to attend an interview;
- (xi) The Central Bank will then notify the credit union of the decision regarding pre-approval and the credit union should then notify the individual applicant(s);
- (xii) If approved by the Central Bank, the applicant(s) may be considered for election for the PCF role(s) for which they have been pre-approved, at a meeting of the board which is held immediately after the AGM. The person(s) may not be considered for election to any other PCF role

other than the PCF role for which they have been pre-approved.

18.3.5 It should be noted that a person is pre-approved for a particular PCF role in a credit union. If the person is not elected at the AGM then they are no longer pre-approved and will have to re-apply for pre-approval for any future PCF roles.

18.3.6 A person who has not been pre-approved by the Central Bank is not eligible to be elected to the role of chair by the board, until such time as they have received pre-approval from the Central Bank.

Part D

Minimum Competency Code and Minimum Competency Regulations



19. Minimum Competency Code and Minimum Competency Regulations

- 19.1** The MCC sets out statutory minimum professional standards for staff of financial service providers including credit unions when they are dealing with consumers in relation to certain retail financial products.
- 19.2** The MCC (imposing standards on persons) is issued as a set of standards pursuant to Section 50 of the Act. The MCR (imposing obligations on regulated firms) are issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013.
- 19.3** The MCC and the MCR are closely linked with the F&P Standards, in that the MCC specifies certain minimum competencies that persons falling within its scope must comply with when performing certain controlled functions. Accordingly, where a person is non-compliant with their obligations under the MCC and the MCR s/he is also likely to be non-compliant with the F&P Standards for Credit Unions.

Part E

Administrative Sanctions under Part IIIC of the Central Bank Act 1942



20. Administrative Sanctions under Part IIIC of the Central Bank Act 1942

- 20.1** Breach of Section 21 of the Act, may result in the imposition of sanctions on the credit union pursuant to Part IIIC of the Central Bank Act 1942.
- 20.2** A decision by the Central Bank to impose sanctions under Part IIIC of the Central Bank Act 1942 for breach of section 21 of the Act may be appealed to the IFSAT.

Appendices



Appendix 1

Examples of due diligence to be undertaken by credit unions for assessing a person’s compliance with the F&P Standards for Credit Unions:

F&P Standard	Supporting documents obtained from a third party	Frequency	PCF	CUCF-1 & CUCF-2 and CURICF-1 & CURICF-2	CUCF-3 to CUCF-8 and CURICF-3 to CURICF-11
Competent and Capable	Provision of a copy of the relevant transcripts	Initial (and ongoing if applicable)	Y	Y	Y
	Professional Body Check	Initial (and ongoing if subject to renewal)	Y	Y	Y
	Employer’s References	Initial	Y	Y	Y
	Minimum Competency Code 2017 and Minimum Competency Regulations 2017	Initial and ongoing	I/A	I/A	SC/Y
	Conflicts	Initial and ongoing	SC	SC	SC
Honest, ethical and acts with integrity	Garda Check/Convictions	Initial and ongoing	SC	SC	SC
	Regulator Check	Initial and ongoing	Y	Y	SC
Financial Soundness	Judgments Search	Initial and ongoing	Y	Y	SC

Y = Checks undertaken by the credit union

SC = Self Certify

I/A = If Applicable

Appendix 2

Agreement pursuant to section 21 of the Central Bank Reform Act 2010 (the Act).

Section 21 of the Act provides as follows:

- “(1) *A regulated financial service provider shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider in accordance with this section, is in force in relation to the person.*
- (2) *A holding company shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the holding company in accordance with this section, is in force in relation to the person.*
- (3) *A certificate may be given for the purposes of subsection (1) or (2) only if—*
- (a) the regulated financial service provider or holding company giving the certificate is satisfied on reasonable grounds that the person concerned complies with any standard of fitness and probity in a code issued under section 50, and*
- (b) the person has agreed in writing to comply with any such standard.”*

I confirm that I have read the code setting out Standards of Fitness and Probity for credit unions and the Guidance for credit unions issued by the Central Bank of Ireland pursuant to Section 50 of the Act (the “Standards”) and I confirm that I comply with those Standards.

I agree to comply with the Standards.

I agree to notify the credit union without delay if for any reason I no longer comply with the Standards.

Signature

Date

Appendix 3

Pre-Approval Controlled functions (PCFs) for all credit unions	
CUPCF-1	Chair of the board
CUPCF-2	Manager

Pre-Approval Controlled functions (PCFs) for credit unions also authorised as Retail Intermediaries	
CURIPCF-1	Chair of the board
CURIPCF-2	Manager

Additional PCFs (PCFs) for credit unions with total assets of at least €100 million	
CUPCF-3	Risk Management Officer
CUPCF-4	Head of Internal Audit
CUPCF-5	Head of Finance

Appendix 4

Controlled functions (CFs) for all 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
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
CUCF-3	Giving of advice to a member, in the course of providing, or in relation to the provision of, the financial service.
CUCF-4	Arranging, or offering to arrange, a financial service for a member of the credit union that is also authorised as a retail intermediary.
CUCF-5	Assisting a member in the making of a claim under a contract of insurance or reinsurance.
CUCF-6	Determining the outcome of a claim arising under a contract of insurance or reinsurance.
CUCF-7	Acting in the direct management or supervision of those persons who act for a credit union that is also authorised as a retail intermediary in providing the services referred to in CUCF-3 to CUCF-6.
CUCF-8	Adjudicating on any complaint communicated to a credit union that is also authorised as a retail intermediary by a member in relation to the provision of a financial service.

Additional CFs for Credit Unions also authorised as Retail Intermediaries	
CURICF-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 that is also authorised as a retail intermediary.

CURICF-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 that is also authorised as a retail intermediary with its relevant obligations.
CURICF-3	Giving of advice to a member, in the course of providing, or in relation to the provision of, the financial service.
CURICF-4	Arranging, or offering to arrange, a financial service for a member of the credit union that is also authorised as a retail intermediary.
CURICF-5	Assisting a member in the making of a claim under a contract of insurance or reinsurance.
CURICF-6	Determining the outcome of a claim arising under a contract of insurance or reinsurance.
CURICF-7	Acting in the direct management or supervision of those persons who act for a credit union that is also authorised as a retail intermediary in providing the services referred to in CURICF-3 to CURICF-6.
CURICF-8	Adjudicating on any complaint communicated to a credit union that is also authorised as a retail intermediary by a member in relation to the provision of a financial service.
CURICF-9	In respect of a person involved in insurance or reinsurance distribution as defined in the European Union (Insurance Distribution) Regulations 2018, the function of being involved in insurance or reinsurance distribution activities.
CURICF-10	Dealing in or having control over property of a member of the credit union that is also authorised as a retail intermediary to whom a financial service is provided or to be provided, whether that property is held in the name of the member or some other person.
CURICF11	Dealing in or with property on behalf of the credit union that is also authorised as a retail intermediary, or providing instructions or directions in relation to such dealing.

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