

Brokers Ireland's submission on the Enhanced governance, performance and accountability in financial services Regulation and Guidance under the Central Bank (Individual Accountability Framework) Act 2023

CP 153



Brokers Ireland is Ireland's representative body for insurance and financial brokers, with a combined strength of over 1,225 firms. As the premier voice for insurance brokers and financial brokers, we advise members, liaise with regulators, government and other insurance industry stakeholders on key insurance issues, in order to raise and maintain industry standards.

As Brokers are not within scope of the Senior Executive Accountability Regime (SEAR), Brokers Ireland are responding only to the relevant questions to the intermediary sector which are posed in the consultation paper as outlined below:

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

It is difficult to ascertain to what extent all CF holders need to know the regulatory environment, the guidance does not make clear whether the CBI expects that both the Common and Additional conduct standards are notified verbatim to all CF/PCF role holders (as appropriate) or if regulated firms have the ability to paraphrase/summarise the standards into more easily understood language.

We are concerned that the application of the Common Conduct Standards will bring junior staff, many of which follow a script and are directly supervised within scope. The cost to businesses of this is not proportionate to the risk that these staff pose. The OECD's policy framework for effective and efficient financial regulation indicates that state authorities should only intervene where there is an identified market failure that can be addressed through regulation.¹ Where authorities do intervene, they must assess critical trade-offs and alternatives, in the public interest. They must ensure that the benefits of intervention outweigh the costs, with careful consideration of unintended consequences. We feel that the application of the common conduct standards to all CF's particularly CF 3 to CF11 is not in line with the OECD's policy in this regard.

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

We acknowledge the guidance in relation to reasonable steps as outlined in the guidance paper and that the Central Bank will look to the overall circumstances and environment, as they existed at the time rather than applying standards retrospectively or with the benefit of hindsight, but it is not clear who or what process the Central Bank will use to determine if reasonable steps were taken. Will the individual in the Central Bank have sector specific experience who is making determinations in this area?

¹ OECD, *Policy Framework for Effective and Efficient Financial Regulation*, 2010

The guidance does not make clear how sound judgement should be assessed and interpreted. The assessment of sound judgement could be completely subjective, it would be beneficial if the CBI guidance elaborated on the factors that would consider a judgement to be sound.

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

Given the nature, scale and risk profile of the vast majority of intermediaries, our view is that this is an onerous requirement to place on Brokers.

It will create additional layers of compliance which will have a direct effect on the cost of running their business. There is a cost for the completion of the judgement and regulatory searches; and additional resourcing costs to review the information and in providing employees with a certificate of compliance. The European Commission estimates that on average, where a big company spends one euro per employee to comply with a regulatory duty, a medium-sized enterprise might have to spend around four euro and a small business up to ten euro per employee.²

Additionally, there is concern around the over processing of data and the rationale around this. There is a risk that this extra layer of processing will turn lower-level employees away from the industry as they may have concerns that previous financial issues, e.g., they may have had in relation to debt forgiveness would be brought into the public domain.

The financial services industry in Ireland is very localised and these additional employee checks may cause some concerns for many. We believe that the current requirements of self-certification, particularly for CF 3 to CF 11 role holders, are sufficient. We would query what benefit the consumer/ industry gets from this extra layer of additional certification, particularly in the absence of any evidence of systemic issues in this area to date.

Currently the annual PCF confirmation is completed via the ONR, with the intention that this will be completed via the Central Bank Portal. Clarity is required as to how the CF confirmation will be completed, as the Firm is making the return the preferable option would be for firms to submit an excel register of all individuals holding a CF role which will then be recorded on the portal. Given that some firms could have 100's of individuals holding Controlled Function roles, Brokers Ireland would have concerns about a process which would involve individual CF role holders having to submit a confirmation return on an individual basis through the portal system as this would require each CF role to register for the Portal.

Other Feedback/Comments

The regulations require that firms must maintain all information and documentation relied upon in relation to the certification that a person complies with any standard of fitness and probity for a minimum of 6 years after that person has ceased to perform the controlled

² European Commission Enterprise and Industry Directorate-General, *Report of the Expert Group Models to Reduce the Disproportionate Regulatory Burden on SMEs*, May 2007

function. Can the Central Bank advise on how long they will retain information when it has been reported to them that a person has failed to meet the standards - will this be held in line with the Employment Code of Practice i.e., 12 months?

It is stated that these regulations apply from the 31st of December 2023- this timeframe is extremely short for firms to implement the requirements given that the finalised regulations are yet to be published. Sufficient time must be allowed to ensure that regulated entities implement updated processes and procedures that apply to them. Micro/small firms have fewer resources to comply with legislative and regulatory change and thus require more time and effort to understand, implement and comply. The burden of compliance with existing regulation is already significant. Inadequate time for implementation may lead to poor, ineffective implementation and increase the likelihood of mistakes.

The draft regulation states that within two months of the of the regulations coming into force, brokers are required to issue a certificate of compliance to their employees, if the regulations are to apply from the 31st of December, does this mean that intermediaries would be required to undertake and comply with this task before 29th February 2024? If so, advanced notice needs to be sent to brokers to enable them. Given the short timeframe proposed, we urge the CBI to have a transitional period of 12 months following the publication of the final regulations to enable firms to have adequate time to put resources and processes in place to ensure compliance with the significant proposed regulations.

