

Guideline NO. #/2022

## **CONSULTATION PAPER**

## **FITNESS AND PROPRIETY GUIDELINE**

**GUIDELINE NO. \_\_\_\_**

**GUIDELINE ON FITNESS & PROPRIETY**

**(This Guideline is issued pursuant to Section 53 of the Financial Services Commission Act, 2010 and comes into effect on \_\_\_\_\_, 2022)**

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## 1. **PURPOSE AND SCOPE**

- 1.1 This Guideline aims to establish the expectations of the Financial Services Commission (“the Commission”) as it relates to the fitness and propriety of all relevant persons in relation to the carrying out of any activity regulated by the Commission under the relevant governing legislation.
- 1.2 This Guideline applies to all relevant persons whether individuals or financial institutions (“FIs”) (within the context of the Financial Services Commission Act) regulated by the Commission.
- 1.3 This Guideline seeks to ensure that FIs understand the importance of fitness and propriety requirements imposed by the Commission, the specific criteria, requirements and considerations themselves, and the Commission’s approach to conducting fit and proper assessments.
- 1.4 As part of the overall governance of FIs, the Commission requires that FIs develop and implement clear policies, procedures and systems to guide the recruitment and appointment of Directors, officers and other key personnel statutorily required to be fit and proper. More detailed requirements for the recruitment and appointment of such persons can be found under **Guideline No. 2 – Corporate Governance** issued by the Commission.
- 1.5 The onus is on each relevant person to establish that the fit and proper person criteria is met, and not for the Commission to show otherwise. Where a relevant person or FI is required under the applicable legislation to ensure that another relevant persons are fit and proper, the onus is on the FI or the responsible person to establish to the satisfaction of the Commission that the fit and proper criteria is met in each instance.
- 1.6 The Commission will assess compliance with this Guideline in a manner and to the extent suitable to the circumstances, considering the size, complexity, structure, economic significance, business model and risk profile of the FI, as well as the nature of the responsibilities of the relevant person.
- 1.7 This Guideline is designed to provide general guidance and does not replace or override any legislative provisions. It should be read in conjunction with:
  - a) The Circular on Fitness and Propriety;
  - b) FAQs on Fitness and Propriety;
  - c) Guideline No. 2 – Corporate Governance;
  - d) Provisions of the relevant legislation;
  - e) Subsidiary legislation made under the relevant legislation; and
  - f) Written directions, notices, codes and other Guidelines that the Commission may issue from time to time.
- 1.8 The Commission will review this Guideline periodically, or upon the occurrence of an event it considers to be significant, in order to ensure continued relevance and adherence to international standards and best practices.

- 1.9 FIs are required to reflect the elements of this Guideline in their internal policies, procedures and controls and apply this guidance in their assessment of persons who manage, control, direct or perform key functions.
- 1.10 FIs and relevant persons carrying on or seeking to carry on regulated activity are required to comply with this Guideline. There are no transition arrangements.

## **2. DEFINITIONS**

### **2.1 Board of Directors**

A body of elected or appointed individuals ultimately responsible for the governance and oversight of a financial institution.

### **2.2 Board Member or Director**

(Interchangeable) A member of the Board of Directors of a financial institution.

### **2.3 Commission**

The Financial Services Commission of Barbados.

### **2.4 Controlling Shareholder**

An individual or corporate body who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company.

### **2.5 Financial Institution**

An institution or a business governed by any of the specified enactments set out in the Second Schedule of the Financial Services Commission Act, 2010, or a credit union.

### **2.6 Financial Services**

Services governed by the relevant legislation along with related subsidiary legislation made under those enactments.

### **2.7 Insurance Intermediary**

Any broker, salesman, agent, sub-agent, adjuster, loss assessor or insurance surveyor.

### **2.8 Securities Company**

As defined under the Securities Act, Cap 318A, including companies that trade in securities, brokers, dealers, underwriters, advisers.

### **2.9 Self-Regulating Organisation (SRO)**

As defined under the Securities Act, Cap318A, including an association of securities companies, a clearing agency, a central securities depository or a stock exchange and the Barbados Stock Exchange.

**2.10 Senior Officer/Employee**

A person who directs, control or manage critical functions within the organisation and or are responsible for key aspects of risk management.

**2.11 Senior Management**

The individuals or body responsible for managing a financial institution on a day-to-day basis in accordance with strategies, policies and procedures set out by the Board.

**2.12 Shareholder**

The collective owners of a financial institution (including the members of a credit union unless otherwise indicated).

**2.13 Significant Shareholder**

Individual or corporate body who has an interest (or interests) in the voting shares in the corporation of 10% or more.

**2.14 Relevant Legislation**

- a) Financial Services Commission Act, 2010
- b) Insurance Act, Cap 310
- c) Securities Act, Cap 318A
- d) Mutual Funds Act, Cap 320B
- e) The Co-operative Societies Act Cap 37A (insofar as it relates to Credit Unions)
- f) The Occupational Pension Benefits Act Cap350B

**2.15 Relevant Person**

A natural or legal person whose business activity is regulated by the Commission and who is required to be fit and proper.

**3. WHO MUST BE FIT AND PROPER?**

3.1 In determining those persons that must be subject to a Fit and Proper review, the Commission considers the person's function and duties, and not merely their position or level of seniority within the organisation. Emphasis is placed on whether the individual's conduct is most likely to have an impact on the sound and prudent management of the FI.

3.2 Below is a non-exhaustive list of relevant persons who are required to meet fit and proper requirements under this Guideline:

- a) Controlling and significant shareholders of a FI (10% or more), whether nominally or beneficially, who operate or seek to operate a financial services business or product regulated by the Commission (and the

Directors and officers of controlling and significant shareholders where the shareholder of ultimate beneficial owners are corporate bodies);

- b) Persons who apply to the Commission to be registered or licensed to operate a financial services business or participate in a market regulated by the Commission;
- c) Individuals who make up the Board of Directors of any FI regulated by the Commission;
- d) The Managing Director, Chief Executive Officer, Principal Representative or heads of any FI, (or similarly titled persons) or any other person holding a Senior Management position or equivalent persons, of any FI regulated by the Commission including those defined by the relevant legislation;
- e) Financial holding companies;
- f) Acquirers of FIs;
- g) Adjusters of FIs;
- h) Corporate trustees of FIs (including occupational pension plans);
- i) Associations of underwriters or a foreign FI conducting insurance business or financial services business
- j) The principal representative of an association of underwriters or of a foreign FI conducting insurance business or financial services business;
- k) Individuals who seek to register and/or operate as insurance intermediaries, and any person with whom they are associated, whether as a partner or otherwise in their business as an insurance intermediary. If the insurance intermediary is a company, each person managing or controlling the company, or each partner as the case may be;
- l) Members of the Supervisory Committee and Credit Committee of credit unions;
- m) Directors and senior officers of mutual fund administrators where the administrator is a company;
- n) Persons who seek to be registered as securities brokers, dealers, traders, underwriters or investment advisors;
- o) Directors, executives and officers of Self-Regulatory Organisations (SROs);
- p) Board members and senior management of corporate bodies offering custodian services to financial institutions or products and services regulated by the Commission; and
- q) Senior employees or persons who direct, control or manage critical functions within the organisation and or are responsible for key aspects of risk management

r) Auditors and actuaries of FIs.

3.3 Persons are encouraged to seek guidance from the Commission if they are unsure whether a particular person meets the definition of a relevant person for the purposes of this Guideline.

#### **4. FIT AND PROPER TEST**

4.1 The criteria for considering whether a relevant person is fit and proper include but are not limited to the following:

- a) honesty, integrity and reputation;
- b) competence and capability; and
- c) financial soundness.

4.2 In the case where the relevant person is a corporate body, to establish that it is fit and proper, a FI must satisfy the Commission that:

- a) all of its substantial shareholders meet the fit and proper criteria of this Guideline;
- b) each of its Directors and Chief Executive Officer, senior officers or equivalent persons, meet the fit and proper criteria of this Guideline;
- c) it has in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorises or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, meet the fit and proper criteria of this Guideline. This includes persons with senior management responsibilities and those responsible for key aspects of risk management; and
- d) has the financial capacity to adequately carry out its intended functions, and to underwrite the risk to which it is exposed.

4.3 In the case where the relevant person is a fund management company, to establish that it is fit and proper, it must satisfy the Commission that:

- a) All of its substantial shareholders or equivalent persons and persons who:
  - (i) control, directly or indirectly, not less than 10% of the voting power or such equivalent decision-making power in the fund management entity; or
  - (ii) acquire or hold, directly or indirectly, not less than 10% of the issued shares or such equivalent share of ownership of the fund management entity;

meet the fit and proper criteria of these Guidelines;

- b) each of its key officers meet the fit and proper criteria of these Guidelines; and
  - c) it has in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorises or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, meet the relevant fit and proper criteria of these Guidelines.
- 4.4 When assessing an application for the appointment of a relevant person to senior or critical functions, the Commission may, in addition to fit and proper criteria set out in this Guideline, consider other factors that may be relevant, such as whether the relevant person has a good standing in the profession in respect of which the application is made.
- 4.5 The following factors will be assessed on a holistic basis. One negative indicator may not alone determine a person's fitness or propriety. Consideration will also be given to lapses of time since a negative indicator took place, the duration or reputation of the negative indicator, as well as its severity, in relation to the activity for which the persons is seeking registration and what actions have been taken in response to the negative indicator.

### **Honesty, Integrity and Reputation**

- 4.6 Honesty, integrity and reputation are qualities that are demonstrated over time and demand a disciplined and ongoing commitment to high ethical standards.
- 4.7 Though these factors are not exhaustive, in assessing a relevant person's level of honesty, integrity and reputation, consideration shall be given to whether the person:
- a) has been refused the right or restricted in its or his right to carry on any trade, business or profession for which a specific license, registration or other authorisation is required by law in any jurisdiction;
  - b) has been issued a prohibition order under any Act administered by the Commission or has been prohibited from operating in any jurisdiction by any financial services regulatory authority;
  - c) has been censured, disciplined, suspended or refused membership or registration by the Commission, any other regulatory authority, an operator of a market, trade repository or clearing facility, any professional body or government agency, whether in Barbados or elsewhere;
  - d) has been the subject of any complaint made reasonably and in good faith, relating to activities that are regulated by the Commission or under any law in any jurisdiction;
  - e) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any



investigation which might lead to those proceedings, under any law in any jurisdiction;

- f) has been convicted of any offence, or is being subject to any pending proceedings (particularly those involving dishonesty, fraud, breach of trust, money laundering, theft or other financial crime) which may lead to such a conviction, under any law in any jurisdiction;
- g) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- h) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
- i) has had any civil penalty enforcement action taken against it or him by the Commission or any other regulatory authority under any law in any jurisdiction;
- j) has contravened or abetted another person in breach of any laws or regulations, business rules or codes of conduct, whether in Barbados or elsewhere;
- k) has been the subject of any investigations or disciplinary proceedings or been issued a warning or reprimand by the Commission, any other regulatory authority, an operator of a market, trade repository or clearing facility, any professional body or government agency, whether in Barbados or elsewhere;
- l) has been refused a fidelity or surety bond, whether in Barbados or elsewhere;
- m) has demonstrated an unwillingness to comply with any regulatory requirement or to uphold any professional and ethical standards, whether in Barbados or elsewhere;
- n) is showing, or has shown at any time, a strong objection or lack of willingness to maintain effective internal control systems and risk management practices;
- o) has been untruthful or provided false or misleading information to the Commission or been uncooperative in any dealings with the Commission or any other regulatory authority in any jurisdiction; and
- p) in addition to sub-paragraphs (a) to (n), where the relevant person is an individual:
  - (i) is or has been a Director, partner, substantial shareholder or concerned in the management of a business that has been censured, disciplined, prosecuted or convicted of a criminal offence, or been the subject of any disciplinary or criminal

investigation or proceeding, in Barbados or elsewhere, in relation to any matter that took place while the person was a Director, partner, substantial shareholder or concerned in the management of the business;

- (ii) is or has been a Director, partner, substantial shareholder or concerned in the management of a business that has been suspended or refused membership or registration by the Commission, any other regulatory authority, an operator of a market, trade repository or clearing facility, any professional body or government agency, whether in Barbados or elsewhere;
- (iii) has been a Director, partner, substantial shareholder or concerned in the management of a business that has gone into insolvency, liquidation or administration during the period when, or within a period of one year after, the relevant person was a Director, partner, substantial shareholder or concerned in the management of the business, whether in Barbados or elsewhere;
- (iv) has been dismissed or asked to resign from —
  - (A) office;
  - (B) employment;
  - (C) a position of trust; or;
  - (D) a fiduciary appointment or similar position, whether in Barbados or elsewhere;due to questions about honesty, integrity or financial impropriety.
- (v) is, or has ever been, involved in any business or other relationship which could materially pose a conflict of interest or interfere with the exercise of good judgment when exercising a regulated function which would be disadvantageous to the interests of the FI or conversely advantageous to the relevant person.
- (vi) is or has been subject to disciplinary proceedings by his current or former employer(s), whether in Barbados or elsewhere;
- (vii) has been disqualified from acting as a Director, or disqualified from acting in any managerial capacity, whether in Barbados or elsewhere; and
- (viii) has been an officer found liable for an offence committed by a body corporate as a result of the offence having proved to have been committed with the consent or connivance of, or neglect attributable to, the officer, whether in Barbados or elsewhere.

## Competence and Capability

- 4.8 Competency and capability are demonstrated when a relevant person possesses the relevant knowledge, experience and ability to understand the technical requirements of the business, objectivity in decision making as well as keen awareness of the inherent risks and the management processes required to effectively perform a regulated function.
- 4.9 Though these factors are not exhaustive, in assessing a relevant person's level of competence and capability, consideration shall be given to:
- a) whether the relevant person has satisfactory past performance or expertise, having regard to the nature of the relevant person's business or duties demonstrated by experience through years of employment and positions held, as the case may be, whether in Barbados or elsewhere;
  - b) whether the relevant person has a high level of understanding in his professional area of expertise and other areas that might affect the business of the FI including financial markets, the regulatory and legal environment, strategic and business planning, risk management practices, accounting and auditing, understanding financial statements and corporate governance.
  - c) where the relevant person is an individual who is assuming concurrent responsibilities, whether such responsibilities would give rise to a conflict of interest or otherwise impair his ability to discharge his duties in relation to any activity regulated by the Commission under the relevant legislation;
  - d) in relation to a relevant person whose activity is regulated by the Commission under the relevant legislation and where the relevant person is an institution, whether its Directors or equivalent persons, Chief Executive Officer or equivalent person, the persons that it employs, authorises or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, where applicable, have satisfactory educational qualifications, training, skills or practical experience, whether in Barbados or elsewhere;
  - e) in relation to a relevant person whose activity is regulated by the Commission, whether the representative of the relevant person has satisfactory educational qualification or experience, relevant skills and knowledge, whether in Barbados or elsewhere, having regard to the nature of the duties they are required to perform.
  - f) in relation to a relevant person whose activity is regulated by the Commission under the Insurance Act, Cap 310 whether the broking staff of the relevant person has satisfactory relevant qualification or experience, whether in Barbados or elsewhere, having regard to the nature of the duties he is to perform.

- 4.10 The above factors will be considered in light of:
- a) the main activity conducted by the FI;
  - b) the nature, complexity and volume of the business;
  - c) the jurisdictions in which products and services will be offered; and
  - d) the level of responsibility.
- 4.11 The FI's Board, either in whole or delegated to a Committee, must comprehensively assess candidates' competence and capability, ensuring they have the appropriate qualifications, training, skills and practical experience to effectively fulfil the roles and responsibilities of the proposed position.
- 4.12 In assessing the competence and capability of a corporate body (separate from the Board of Directors, significant shareholders and officers being assessed individually according to the criteria enumerated above), the Commission will seek to understand the company's corporate structure to ensure it has the right skills and resources in place to execute its responsibilities.
- 4.13 A relevant person that is a corporate body must provide:
- a) a diagram depicting the group structure (where relevant) showing shareholding percentages;
  - b) the applicant entity's organisational chart;
  - c) completed Corporate Fitness & Propriety Questionnaire; and
  - d) copies of approved statutory filings regarding ownership of the entity.
  - e) Copies of the HR recruitment and retention plan, and assessment of its compensation plan to ensure that there are no perverse incentives built into the framework.
  - f) A copy of the internal Fitness and Propriety Policy along with related procedures for all relevant persons

### **Financial Soundness**

- 4.14 The assessment of financial soundness is aimed at determining whether the relevant person can meet its/his personal liabilities when they become due and mitigate financial risks on a continuous basis. Financial integrity and soundness are demonstrated by a person who manages its/his own financial affairs properly and prudently, or those of an entity in which he had a controlling interest or was involved with at a managerial level. Financial means will not, in itself, be a determining factor in the measure of financial soundness.
- 4.15 Though these factors are not exhaustive, in assessing a relevant person's financial soundness, consideration will be given to whether the relevant person:
- a) is or has been unable to fulfil any of its or his financial obligations, whether in Barbados or elsewhere;

- b) has entered into a compromise or scheme of arrangement with its or his creditors or made an assignment for the benefit of its or his creditors, being a compromise or scheme of arrangement or assignment that is still in operation, whether in Barbados or elsewhere;
- c) is subject to a judgment debt which is unsatisfied, either in whole or in part, whether in Barbados or elsewhere;
- d) has met applicable capital and/or solvency requirements;
- e) in addition to sub-paragraphs (a) to (c), in the case where the relevant person is an individual:
  - (i) is or has been the subject of a bankruptcy petition, whether in Barbados or elsewhere;
  - (ii) has been adjudicated as bankrupt and the bankruptcy is undischarged, whether in Barbados or elsewhere; or
  - (iii) is or has been subject to any other process outside Barbados that is similar to those referred to in sub-paragraph (i) and (ii); and
- f) in addition to sub-paragraphs (a) to (c), in the case where the relevant person is a corporation:
  - (i) is or has been the subject of a winding up petition, whether in Barbados or elsewhere;
  - (ii) is in the course of being wound-up or otherwise dissolved, whether in Barbados or elsewhere;
  - (iii) is or has been a corporation where a receiver, receiver and manager, judicial manager, or such other person having the powers and duties of a receiver, receiver and manager, or judicial manager, has been appointed, in relation to, or in respect of any property of, the corporation, whether in Barbados or elsewhere; or
  - (iv) is or has been subject to any other process outside Barbados that is similar to those referred to in sub-paragraphs (i) to (iii).

### **Additional Factors to be Considered**

4.16 In addition to the factors enumerated above, the following areas will also be considered when assessing persons for appointment to the management body of an FI:

- a) Conflicts of interest: FIs must be guided by **Section 6.9 of Guideline No. 2 – Corporate Governance** issued by the Commission which sets out the responsibilities of the Board and management in relation to conflicts of interest. An existing conflict of interest does not itself deem a relevant

person unfit or improper for a particular role, but any actual or potential conflict must be effectively monitored, managed and/or mitigated as appropriate to the situation subject to the internal Conflicts of Interest Policy of the FI. Where a conflict cannot be appropriately managed or mitigated, the FI should reconsider the appointment. Information regarding conflicts of interest must be made available to the Commission upon request.

- b) Time commitment: FI Directors must be able to commit sufficient time to their duties. This is impacted by their current employment with its related level of responsibility and accountability, the number of Directorships or other employments being simultaneously undertaken, the location of these duties, as well as other professional commitments and circumstances. Additional learning and development should also form part of the relevant person's time commitment, as well as their ability to adequately respond to urgent circumstances.
- c) Collective suitability: FIs must be guided by **Section 5 of Guideline No. 2 – Corporate Governance** issued by the Commission which sets out the requirements for the structure and composition of the Board. The Board must have an appropriate mix of skills, knowledge and experience to effectively conduct the FI's business. Individuals are therefore required to complement the existing Board and fill any gaps that may exist in these areas.

## **5. OBLIGATIONS OF THE FI REGARDING FITNESS AND PROPRIETY**

- 5.1 When a FI seeks to appoint or engage a person to perform a regulated function, it is the responsibility of the FI to satisfy the Commission that the person is fit and proper to perform the function for which they are being appointed or engaged. FIs are therefore required to ensure that persons are not appointed to nor continue in positions of responsibility for which they are not fit and proper.
- 5.2 To this end, each FI's Board of Directors is required to establish and approve an appropriate internal Fitness and Propriety Policy along with related procedures for all relevant persons. This policy must be in line with the provisions of this Guideline.
- 5.3 The management of each FI must then implement this policy and related procedures as outlined by the Board in an effective and comprehensive manner, with oversight functions being exercised by the Board to ensure compliance.
- 5.4 This internal Fitness and Propriety Policy must provide for a detailed assessment of candidates for fitness and propriety at the recruitment stage, and on an ongoing basis at least annually. The policy must also require that the FI:
  - a) verifies qualifications, experience, references and professional memberships;

- b) conducts probity checks on criminal history, sanctions, legal proceedings, sanctions and similar matters; and
  - c) otherwise satisfies itself of the good character, integrity, competence and capability of the candidate for the particular function.
- 5.5 These assessments must be documented to provide evidence of what was done to determine the suitability of the candidate. Internal assessments must be made available to the Commission upon request.
- 5.6 Internal assessments will also assist in ensuring that material disclosures related to fitness and propriety are made to the FI, and thereafter to the Commission.
- 5.7 Once a FI determines that an individual is not fit and proper for the position, the FI must:
- a) Refuse to appoint that person, or if they are already appointed, terminate their appointment; or
  - b) Redefine the person's responsibilities or suspend appointment until the person receives the adequate training or experience, or resolves the relevant conflict as the case may be.
- 5.8 If a FI believes that a person has information that is likely to be material to a fit and proper assessment that it has not been able to obtain, the FI is required to discuss the matter with the Commission.

## **6. ASSESSMENT OF FITNESS AND PROPRIETY**

- 6.1 The onus is on each relevant person to establish that it or he is a fit and proper person. This is a continuing obligation, and relevant persons must demonstrate that they remain fit and proper for the duration of their appointment or operations.
- 6.2 Assessment of fitness and propriety takes place:
- a) at the initial stage of consideration for appointment or election, or upon application for registration or licensing of the individual or corporate body;
  - b) every three (3) years once relevant persons continue to operate or carry out regulated business; and
  - c) whenever there is a material change in circumstances of relevant persons previously deemed fit and proper that may negatively impact their fitness and propriety.
- 6.3 It must be noted that while there are some common criteria, the fit and proper test applied to legal persons such as corporate shareholders and other companies will differ in some respects from that applied to natural persons who perform regulated activity.

- 6.4 The factors set out above will be considered individually and on a cumulative basis according to their relative importance. Failure to meet one factor may not, on its own, constitute a failure to meet the fit and proper criteria.
- 6.5 The Commission's approach will be informed by all available information taken together, including new information as it becomes available.
- 6.6 If the relevant person fails to satisfy the Commission that it or he is fit and proper, the Commission may refuse the person's application, revoke the person's authorisation or exemption, or take other appropriate regulatory action, as may be applicable and necessary.

### **Assessment of Individuals**

- 6.7 This section is required to be complied with by:
- a) Controlling and significant shareholders of a FI (whether nominally or beneficially) who operate or seek to operate a financial services business or product regulated by the Commission (and the Directors and officers of controlling and significant shareholders if they are corporate bodies);
  - b) Persons who apply to the Commission to be registered or licensed to operate a financial services business or participate in the market regulated by the Commission;
  - c) Individuals who make up the Board of Directors of any FI regulated by the Commission;
  - d) The Managing Director, Chief Executive Officer, Principal Representative or heads of any FI, (or similarly titled persons) regulated by the Commission;
  - e) Officers of any FI regulated by the Commission as defined by the relevant legislation;
  - f) Board of Directors and senior officers of holding companies;
  - g) Acquirers of FIs;
  - h) Adjusters of FIs;
  - i) The principal representative of an association of underwriters or of a foreign FI conducting insurance business or financial services business;
  - j) Individuals who are registered and/operate or seek to register and/or operate as insurance intermediaries, and any person with whom they are associated, whether as a partner or otherwise in their business as an insurance intermediary. If the insurance intermediary is a company, each person managing or controlling the company, or each partner as the case may be;
  - k) Members of the Supervisory Committee and Credit Committee of credit unions;



- l) Directors and senior officers of mutual fund administrators where the administrator is a company;
  - m) Individuals who are registered or seek to be registered as securities brokers, dealers, traders, underwriters or investment advisors;
  - n) Directors, executives and officers of Self-Regulatory Organisations (SROs);
  - o) Board members and senior management of corporate bodies offering custodian services to financial institutions or products and services regulated by the Commission; and
  - p) Auditors and actuaries of FIs.
- 6.8 The following are required to be filed with the Commission upon prospective appointment or upon application for registration or licensing by the above-mentioned individuals:
- a) A completed Individual Fitness & Propriety Questionnaire;
  - b) An up-to-date résumé containing details of the professional background of the individual (not required for ultimate beneficial owners);
  - c) Certified copies of qualifications listed on résumé;
  - d) A certified copy of the individual's passport picture page; and
  - e) A valid original Police Certificate of Character (certificate) or an Affidavit where a certificate cannot be obtained from the country of residence (issued within the last three (3) months).
- 6.9 The Commission may request additional information on an individual basis as part of an enhanced Fitness and Propriety Assessment. This may involve requiring the individual to provide a credit report issued from jurisdictions in which it operated.
- 6.10 Documents submitted in support of the application should be submitted in English. Where the documents are in a foreign language, however, an independently authenticated translation must be provided, i.e., a translation by a professional translator with the full name, address, contact information and signature of the translator and the date of the translation.

### **Assessment of Corporate Bodies**

- 6.11 This section is required to be complied with by relevant persons which are corporate bodies, including:
- a) Controlling and significant shareholders of a FI (10% or more), whether nominally or beneficially, who operate or seek to operate a financial services business or product regulated by the Commission;

- b) Persons who apply to the Commission to be registered or licensed to operate a financial services business or participate in the market regulated by the Commission;
  - c) Financial holding companies;
  - d) Acquirers of FIs;
  - e) Adjusters of FIs;
  - f) Corporate trustees of FIs (including occupational pension plans);
  - g) Associations of underwriters or a foreign FI conducting insurance business or financial services business;
  - h) Any company operating or seeking to operate as an insurance intermediary;
  - i) Mutual fund administrators;
  - j) Persons who are registered or seek to be registered as securities brokers, dealers or underwriters or investment advisers; and
  - k) Auditors and actuaries of FIs.
- 6.12 The information gathered during assessment will aid in determining the current solvency position of the company, past performance and financial management, and overall, whether previous business dealings were conducted in a sound and prudent manner.
- 6.13 The following are required to be filed with the Commission upon application for registration or licensing of a corporate body:
- a) A completed Corporate Fitness and Propriety Questionnaire;
  - b) Copies of audited financial statements of the company for the three (3) consecutive years immediately preceding its application or for each year it has been in operation, if less than three years;
  - c) (For new/proposed relevant persons who are corporate bodies) proforma financial statements for the next three (3) years (Note: the Commission, at its discretion may require that the proposed proforma statements be reviewed by an auditor );
  - d) Copies of credit rating reports, business plans, feasibility studies and due diligence reports if applicable;
  - e) Copies of the Management Letters from the External Auditors for the past three fiscal periods;
  - f) Evidence of financial resources such as bank/financial institution statements or source of funds statements where the documents listed in (b) and (d) are not available;
  - g) Copies of the last two reports of examinations conducted by the relevant regulatory authority (if applicable);

- h) Any other information the Commission deems necessary.
- 6.14 The Commission may request additional information on an individual basis as part of an enhanced Fitness and Propriety Assessment. This may involve requiring the corporate body to provide a credit report issued from jurisdictions in which it operated.
- 6.15 Documents submitted in support of the application should be submitted in English. Where the documents are in a foreign language, however, an independently authenticated translation must be provided, i.e., a translation by a professional translator with the full name, address, contact information and signature of the translator and the date of the translation.

### **Assessment where there is a Material Change in Circumstances**

- 6.16 In the event that there is a material change in information that may negatively impact a relevant person's fitness and propriety, relevant persons (or the FI as the case may be) must immediately (within 24 hours of the change occurring or receipt of notice) disclose the change to the Commission in writing.
- 6.17 Where this material change concerns information filed on the Individual Fitness & Propriety Questionnaire or the Corporate Fitness & Propriety Questionnaire, an updated questionnaire must be submitted to the Commission.

### **Submission of Documentation**

- 6.18 The completed fit and proper documentation must be submitted to the Commission's Registration and Licensing Division. In the case of documentation submitted in respect of an application for registration or licensing, the entire application package, together with fit and proper documentation, should be submitted to the Registration and Licensing Division.
- 6.19 Where a third party is submitting the fit and proper documentation on behalf of a regulated entity or person (for e.g., in the case of a licensing application when an attorney or other representative is submitting the application), the third party shall obtain and submit all relevant information as required and ensure that only complete applications are submitted to the Commission.

### **Fitness and Propriety Interview**

- 6.20 If the Commission has a concern about the fitness and propriety of a particular candidate slated for appointment as a Director or officer of an FI, the Commission may request an interview with that individual.
- 6.21 Such an interview gives the Commission an opportunity to probe the candidate about his qualifications and practical experience, as well as the extent of his knowledge about the FI, relevant market development and his understanding of his role and responsibilities.

- 6.22 These interviews may also be used to explore any issues of integrity and propriety including conflicts of interest, and the Commission may query facts or seek to verify other information to gain more assurance about the specific elements of that person's fitness and propriety.
- 6.23 The Commission may also conduct interviews where it is concerned about a relevant person's ability to perform its or his regulated function, or where it becomes aware of new information that may impact that person's fit and proper assessment. An interview is also the likely next step where additional information requested from the FI was not satisfactory to allay the Commission's concerns.
- 6.24 If the Commission determines that an interview should be conducted, it will provide the relevant person and/or the FI with reasonable written notice, stating the date, time and location of the requested interview.
- 6.25 As part of the interview process, the Commission may issue the relevant person with a statement detailing the Commission's concerns or issues and providing a timeframe for the person to respond, either verbally or in writing, to the statement. This reply will be considered by the Commission before it makes a final determination as to the person's fitness and propriety.

### **Whistleblowing**

- 6.26 The FI must ensure that it does not prohibit any person, directly or indirectly from disclosing information or providing documents to the Commission on the fitness and propriety of a prospective relevant person or a person approved to perform a regulated function.

### **Confidentiality, Disclosure and Maintenance of Information**

- 6.27 All information submitted or otherwise obtained by the Commission, including documentation, will be maintained in a strictly confidential manner. Internal disclosure of information will be restricted accordingly.
- 6.28 Disclosure of information to external persons will only be undertaken as permitted by the law.
- 6.29 A central database containing details of the persons who have been assessed will be maintained by the Commission's Registration and Licensing Division. The database eliminates the need for individuals to re-submit documentation multiple times in respect of further applications or approvals. In the event that there has been a material change in the information initially disclosed, further disclosures, including completion of a revised questionnaire, may be required in order to update the database.

-END OF DOCUMENT-

**GUIDELINE NO. \_\_\_\_**

**FITNESS AND PROPRIETY**

**Issued [date]**



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