



# Regulatory Connection

Financial Regulator

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## Welcome From CEO

**W**elcome to the first issue of Regulatory Connection for 2006. Since I took over the role of Chief Executive earlier this month I have already met the consultative panels to the Financial Regulator and a number of industry representatives. I want to assure you that we will welcome your feedback as we work through the heavy workload from Europe this year and the initiatives we promised in the 2006 Strategic Plan.

Recently we responded to matters arising from our fitness and probity consultation. Having taken into consideration the feedback received on our initial consultation, certain proposals have been revised including the treatment of foreign directors, sectorial differences and the length of the individual questionnaire.

The requirement for directors to supply an annual tax clearance certificate has also been changed and instead institutions are expected to put in place a code of conduct which should include specific requirements on tax compliance. We will expect each board of an incorporated financial institution to require its own members, the directors and the employees to be in full compliance with their tax obligations.

Further information on this paper is contained within this issue and we welcome feedback to our latest proposals. The gatekeeper role of the fitness and probity test is paramount to protecting the industry's reputation from the beginning. We expect this new test to be in place from June 2006. In addition we

will also address corporate governance issues in a paper for consultation later this year.

We acknowledge that the industry is committed to higher standards and that good practice exists across the industry. Our codes and compliance requirements merely reflect that principle of high standards in place in most firms. In formulating regulatory policy and requirements we are striving to achieve a balance - that regulation will be neither light nor hard, but robust, internationally credible and competitive. Striking that balance will be our aim going forward as we look towards implementing our strategy for the years ahead.

Finally, I would like to express my thanks to my predecessor as Chief Executive, Liam O'Reilly who retired earlier this month. I also wish to congratulate Con Horan on his appointment as Prudential Director.



Patrick Neary

Patrick Neary  
Chief Executive

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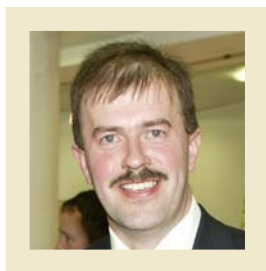


*Pictured at a recent appearance before the Joint Oireachtas Committee on Finance and Public Service are Financial Services Ombudsman, Joe Meade, former Chief Executive, Liam O'Reilly, and Consumer Director, Mary O'Dea.*

# Profile

## Consumer Information Department

*Since the establishment of the Financial Regulator, the Consumer Information Department has designed and implemented information initiatives to fulfil our statutory mandate to inform consumers of the costs, risks and benefits of financial products.*



*Bernard Sheridan  
Head of Consumer  
Information*

We provide independent information for consumers through our consumer guides on a range of financial products, booklets, fact sheets, cost surveys, media articles and our website. In producing all our consumer publications, we have consulted with groups representing all sectors of the industry. Comments we have received through the consultation process have been very valuable in helping us to provide consumers with accurate, useful and timely information. On our cost surveys, in particular, we are very grateful for the co-operation of the industry. Cost surveys continue to be very popular with consumers – over 67,000 were downloaded from our consumer website [www.itsyourmoney.ie](http://www.itsyourmoney.ie) in 2005. Over 12,000 more cost surveys were distributed through our consumer help-line and Information Centre.

Research we undertook two years ago showed that three out of four consumers find written information on financial products too complicated and difficult to understand. Since we started producing information, we have worked to ensure that we meet plain English standards. We welcome the significant efforts made to use plain English in marketing material and to adopt a consumer-friendly tone in written communications. Plain English is not just about written material it includes the way we talk to consumers and the language we use. People who are very familiar with financial services can sometimes assume that everyone understands what they are talking about. But the queries we receive from consumers show that this is not the case.

In 2005, we received over 16,000 calls to our consumer help-line. Of these calls, over 28% related to credit institutions, 16% were information requests and 14% concerned insurance. A sizeable proportion of these queries result from consumers not understanding how financial products work. While terms and conditions may set out every aspect of a product, consumers often do not understand exactly how a product works until a problem occurs. Their difficulties can be compounded when consumers seek clarification from an institution and do not understand the explanations they are given. Our experience of dealing with queries shows that when consumers fully understand the product they are buying, complaints are reduced and problems in the future can be prevented.

The queries we receive from consumers are important in helping us ensure that the information we provide is relevant, up-to-date and meets consumer's needs. Another source of information for the Department is the Financial Services Ombudsman and Pension Ombudsman schemes. A Memorandum of Understanding will come into effect from 1 April 2006, which will formalise arrangements for the sharing of information. At present, the Financial Services Ombudsman informs us when it appears that a particular issue has affected a number of consumers, or a number of complaints are received against one institution. This is an important part of the regulatory framework, ensuring that we are aware of any issues that could require further examination.

In addition to providing information and working on consumer education, the Department also has a role in fostering access to financial services. Last year, we announced a research project to examine issues affecting access to financial services in Ireland. The research is being undertaken by Combat Poverty and will seek to establish who is affected by issues surrounding access to financial services and why such people are affected.

A stakeholder forum was established to run parallel with the research. The aim of the forum is to facilitate dialogue between the Financial Regulator and the stakeholders in financial services so that issues arising in the research can be presented and discussed. It is envisaged that this process of dialogue will result in a more cohesive and effective response to the research findings, and that it will lead to the development of an effective strategy to address issues that arise in relation to financial access. The research findings will be published later this year.

### Contact

Ph: 01 410 4000  
Fax: 01 410 4920  
Email: [consumerinfo@financialregulator.ie](mailto:consumerinfo@financialregulator.ie)



*Pictured are Joni Conlon and Sylvia Brannigan from the Consumer Information Department meeting with people in Monaghan Shopping Centre during one of the Financial Regulator's recent regional visits.*

# What is?

## The Transparency Directive

The Transparency Directive 2004/109/EC must be transposed into national law by Member States, no later than 20 January 2007. As the competent authority for the purposes of the Prospectus Directive 2003/71/EC, the Financial Regulator is the central competent authority designate for the Directive. The EU Commission is currently drawing up the Level II implementing measures for the Directive and these will be published shortly. The Government department responsible for the transposition of the Directive into Irish law is the Department of Enterprise, Trade and Employment.

The Directive establishes minimum requirements in relation to the disclosure of periodic information by issuers with securities admitted to trading on a regulated market and on the disclosure of major shareholdings and voting rights in such securities. The Directive also outlines the mechanisms through which regulated information is disseminated and stored. Consistent with the Prospectus Directive issuers will be subject to home state supervision .

### *Periodic Information*

The Directive requires issuers to make public its annual financial report at the latest four months after the end of each financial year. Issuers of shares or debt securities must make public a half-yearly financial report covering the first six months of the financial year, at the latest two months after the end of the relevant period. Unless they already publish a quarterly financial report, issuers of shares must publish an interim management statement in the period between ten weeks after the beginning and six weeks before the end of the relevant six-month period.

The periodic information requirements shall not apply to an issuer exclusively of debt securities, the denomination per unit of which is at least €50,000.

### *Ongoing Information*

When a shareholder acquires or disposes of shares of an issuer, to which voting rights are attached, the shareholder must notify the issuer of the proportion of voting rights of the issue held by the shareholder as a result of the acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. Upon receipt of the notification the issuer must make public all the information contained in the notification.

When an issuer acquires or disposes of its own shares it must make public the proportion of its own shares which the issuer holds as a consequence, where the proportion reaches, exceeds or falls below the thresholds of 5% or 10% of its voting rights.

Issuers must make public without delay any change in the rights attaching to the various classes of shares, including changes in the rights attaching to derivatives securities issued by the issuer and giving access to the shares of that issuer. Issuers must ensure equal treatment for all holders of shares and also ensure that all holders of debt securities are given equal treatment in respect of all the rights attaching to those debt securities.

The Directive contains a number of provisions aimed at ensuring that shareholders, or holders of debt securities, receive adequate information about meetings, and how to exercise their rights as security holders, together with a proxy form (on paper or by electronic means).

### *Disclosure, Filing and Storage of Regulated Information*

Issuers are required to file with their competent authority all information, which they are obliged to disclose publicly under the above provisions. In addition they are obliged to provide the information to a storage mechanism, known as the officially appointed mechanism ("OAM"). An OAM must be established by each member state for the central storage of regulated information. The public must be able to access this mechanism.

Following concerns expressed regarding the transposition deadline of the Directive in relation to the storage of regulated information, the EU Commission have stated that Member States can make an interim appointment, pending the adoption of implementing measures on quality standards for the OAM. CESR will present advice on the quality standards to the Commission, in June 2006.

### *Third countries*

The Directive sets down transitional arrangements, which permit the exemption of third country issuers from certain provisions of the Directive.

*Further work at Level II on the transparency directive will be carried out through CESR see [www.cesr-eu.org](http://www.cesr-eu.org) for regular updates.*



# Re-Insurance Supervision

One of the major new tasks for the Financial Regulator in 2006, following the adoption of the EU Directive on Re-insurance will be the regulation of more than 150 re-insurance companies based in Ireland.

We have been in a process of consultation with the re-insurance industry in Ireland since our foundation in 2003, first as we participated in the negotiation of the Reinsurance Directive and more recently, as we prepare to implement the Directive. In our approach to this work we have been guided by two principles. The first is to devise a regulatory regime that is robust, credible and competitive, the second, to develop the regime transparently, with extensive consultation with the industry, to assist an orderly transition to full regulation.

Our implementation programme envisages three areas of work. The first concerns our contribution to the development by the Department of Finance of domestic legislation to implement the Directive. The implementing regulations have been the subject of intensive work, taking account of feedback from industry representatives and the Financial Regulator and are now close to finalisation.

The second area of work is the development of the building blocks of the supervisory regime. We have a number of initiatives underway to provide early guidance on these issues. We will shortly issue a formal consultation paper on corporate governance. This paper takes account of the comments we received as a response to the pre-consultation in October 2005. We will shortly issue two further consultation papers. One sets out our proposed approach to supervision of re-insurance companies during the transitional period up to the end of 2007, when the Directive will come fully into force. This paper also

takes account of views received as a result of the pre-consultation process held late last year. The other is a paper prepared after extensive consultation with the industry, which proposes an approach to reserving and solvency requirements for life re-insurance, consistent with the Directive. This should be seen as a pre-cursor to our proposals for supervision of life re-insurers during the transitional phase.

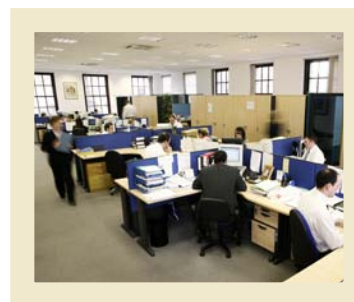
We are working on a number of other issues including financial reporting and risk based solvency indicators in non-life, including an augmented solvency model. We are also well advanced in relation to the special provisions that will apply to finite re-insurance and to re-insurance companies taking the form of Special Purpose Vehicles. We will consult on all of these issues in 2006.

The third area for attention is the development of the relationship between the re-insurance undertakings and the regulator. Together we face the challenge of bringing an existing market with established practices into compliance with the regulatory regime that will apply. The self-assessment to be undertaken by firms, envisaged as part of the transitional arrangements to apply, will be an important component of this effort. We will assist industry through our programme of visits, which will be designed to assist companies in planning full compliance with those standards within the transitional period.

We recognise that this is a programme of work that places significant demands not only on the regulator but also on the companies who for the first time will be subject to a full supervisory regime. We look forward to good co-operation and the development of a professional relationship between the regulator and the re-insurance industry in the coming years.

## Contact

Reinsurance Supervision  
Financial Regulator  
Phone: 01 410 4044  
Email: [reinsurance@financialregulator.ie](mailto:reinsurance@financialregulator.ie)



*Insurance Supervision  
Department of the  
Financial Regulator*

# News



## New Prudential Director Announced

Con Horan has been appointed to the position of Prudential Director at the Financial Regulator where he previously held the position of Head of Banking Supervision from 2003. He commenced his career in the Central Bank in 1979, working in various supervision and management positions and was Head of the Retail Investment and Insurance Department. From Dublin, he is a Chartered Accountant and he is a member of the Committee of European Banking Supervisors (CEBS) and is Joint Chairman of the Implementation Forum for the Capital Requirements Directive (CRD).



Con Horan

## Independent Industry Survey of Financial Regulator's Performance launched.

The Financial Services Consultative Industry Panel announced in the last issue of Regulatory Connection that it is undertaking a comprehensive industry-wide survey of the performance of the Financial Regulator. IMS Millward Brown were appointed in January to design and conduct the in-depth independent research survey of almost 3,500 regulated financial services providers.

The survey is the first of its kind since the establishment of the Financial Regulator in 2003. It is intended to provide an authoritative measure of how the Financial Regulator's current performance is perceived by the industry and to seek views on future priorities. The survey is directed primarily at principals, chief executives and heads of compliance of regulated entities. The results and findings of the survey, which will be published later this year, will enable the Industry Panel to:

- Provide valuable feedback to the Financial Regulator on ways in which its performance can be improved from an industry perspective
- Establish industry views on future priorities
- Create a benchmark against which regular comparisons can be made to track the Financial Regulator's future progress.

The survey will be divided into two key phases, qualitative and quantitative. The qualitative phase is already underway with a sample of Industry Panel members, senior Financial Regulator personnel, and senior executives representative of a cross section of regulated entities. This phase will assist primarily in developing the content for the quantitative phase, which will involve the distribution of questionnaires to almost 3,500 regulated entities, both large and small. It is expected that the survey will be concluded by the end of March and the findings will be incorporated into the Industry Panel's first annual report on its activities, to be published later this year.

James Deeny, Chairman of the Industry Panel said: "Since the establishment of the Industry Panel in November 2004, we have built a constructive working relationship with the Financial Regulator and are pleased to see a number of our proposals reflected in its recently published Strategic Plan for 2006. We see the survey as a key element in enabling the Industry Panel to effectively discharge its mandate and represent the interests of the sector, which contributes 50% of the annual funding for the Financial Regulator's budget. We encourage all regulated entities to fully participate. The feedback will be of great benefit to the Financial Regulator, the Industry Panel and the industry in general in helping to build a balanced and competitive regulatory regime in Ireland.



## Consultations Update

### Finalised Market Abuse Rules and Finalised Prospectus Rules

In March, the Financial Regulator will publish finalised Market Abuse and Prospectus rules, under section 34 and section 51 respectively of the Investment Funds, Companies

and Miscellaneous Provisions Act 2005. The Rules set out procedural and administrative requirements and guidance in respect of both Directives. The finalised rules reflect changes to the interim rules arising from submissions made to the Financial Regulator by interested parties and from the Financial Regulator's experience to date as competent authority under the Directives. These rules will replace the interim rules that have been in place since the transposition of the Market Abuse Directive and the Prospectus Directive into Irish Law in July 2005. Firms must be in compliance with the rules from 1 June 2006 at the latest; this lead-in time is to facilitate firms amending procedures and processes as necessary. Where firms avail of this lead-in time, the interim rules continue to apply.

The Financial Regulator may publish further guidance and, where it does so, notifications will be included in Regulatory Connection and published in the markets section of the Financial Regulator's website.

### FATF Report

In the November 2005 issue of Regulatory Connection, the Financial Regulator reported that the Financial Action Task Force ('FATF') had carried out an on-site evaluation of the effectiveness of Ireland's anti-money laundering and counter terrorist financing regime in June/July of 2005. Since the evaluation, the Financial Regulator and relevant government departments and agencies have been engaged in ongoing contacts with the FATF evaluation team with a view to finalising the FATF report on Ireland. The FATF held a plenary meeting in South Africa from 15-17 February 2006 at which the report on Ireland was considered and adopted. A summary of the report and the full final report are expected to be available on the FATF website shortly. For further details, please consult the FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org). More information will also be posted in the 'Anti-Money Laundering' section of the Financial Regulator's website [www.financialregulator.ie](http://www.financialregulator.ie) in due course.

### Consultation on Fit & Proper Test

Having analysed the responses to the consultation paper on proposals for a common fit and proper test for directors and managers (Approved Persons) of all financial services firms in 2005, the Financial Regulator has published a second short consultation on our amended proposals. Responses to this consultation are invited by 31 March 2006. The consultation paper, CP15 - Comprehensive Fit and Proper Test Policy is available in the Consultations Papers section of [www.financialregulator.ie](http://www.financialregulator.ie)

### Consumer Protection Code

In December 2005 we published our Public Response to CP10 and a Regulatory Impact Analysis on the draft Consumer Protection Code. The purpose of the Public Response document is to give some feedback on some of the decisions we have reached at this point. We did not want to wait until the Code is finalised before commenting, as the period from the date of the receipt of the submissions until the publication of the Code would then be too long. Both documents can be downloaded from the Consultation Papers section of our website at [www.financialregulator.ie](http://www.financialregulator.ie)

### Minimum Competency Requirements

A second consultation paper concerning the Financial Regulator's proposals in relation to minimum competency requirements was issued in January 2006. Although it is a limited consultation and only issued to industry representative bodies, educational institutes and all those who responded to our original consultation, this does not preclude interested parties from making a submission. The consultation paper C14, Consultation on Proposed Minimum Competency Requirements is available on our website and the closing date for submissions is 31 March 2006.



# EU News

## Cross-sector work programme for 2006

The '3 Level 3 Committees', consisting of the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), have published a common cross-sector work programme for 2006.

The work programme will make supervisory cooperation transparent across financial sectors and the Committees aim to enhance consistency so that work done in one sector is coherent with the work developed in the other financial sectors. The main objective of each of the '3 Level 3 Committees' work is to ensure a successful implementation and convergence in day-to-day application of EU legislation within its sector. However, in addition to supervisory convergence in Europe amongst the respective sectoral supervisors, there is also a need for convergence to take place across sectors wherever possible and appropriate, given the increasing importance of market integration and cross-sector business activities within the EU.

The 3L3 Work Programme therefore sets out in more detail the work that the 3 Level 3 committees intend to do together during 2006, in accordance with the Joint Protocol. In particular it divides the work into four work streams which reflects the type of work and outcome of the work that will be expected.

In summary, during 2006, the three committees will perform joint work on Financial Conglomerates. This will be carried out by CEBS and CEIOPS (CESR will participate as an observer). Regarding outsourcing and internal governance, joint work will be taken forward mainly by CESR and CEBS, with CEIOPS sharing experience from its work in the Solvency II project. The '3 Level 3 Committees' will also undertake an inventory of reporting requirements which will involve all three committees. Based on this inventory the Committees will then decide if further work should be undertaken. In addition, during the course of the year, the three committees will continue to share information on a regular basis, for example to maintain consistency in approaches to capital requirements developed under the 'Solvency II' and the 'Basel II' regimes. Further, the committees will work together on the development of a number of cross-sector reports to various European Institutions.

The objectives of the cooperation between the three committees are set out in the Joint Protocol and include (i) sharing information in order to ensure compatible sector approaches are developed; (ii) exchanging experiences which can facilitate supervisors' ability to cooperate; (iii) producing joint work or reports to relevant EU Institutions and Committees; (iv) reducing supervisory burdens and streamlining processes; and (v) ensuring the basic functioning of the three Committees develops along parallel lines.

### For further information please contact:

#### **CESR:**

**Ms Victoria Powell**

Tel: 33 1 58 36 43 21

Email: [vpowell@cesr-eu.org](mailto:vpowell@cesr-eu.org)

[www.cesr-eu.org](http://www.cesr-eu.org)

#### **CEBS:**

**Mr Jouko Marttila**

Tel: 44 20 7382 1780

Email: [jouko.martilla@c-eps.or](mailto:jouko.martilla@c-eps.or)

[www.c-eps.org](http://www.c-eps.org)

#### **CEIOPS:**

**Mr Alberto Corinti**

Tel: 49 69 951119 22

Email: [alberto.corinti@ceiops.org](mailto:alberto.corinti@ceiops.org)

[www.ceiops.org](http://www.ceiops.org)



## Directive of the European Parliament and of the Council on Credit Agreements for Consumers amending Council Directive 93/13/EC

In October 2005, the European Commission adopted its revised proposal for a new EU law on consumer credit. The Commission together with the 25 Member States are currently engaged in further discussion on the modified proposal. Following these discussions, the draft law will be debated in the Council of Ministers, with a common position expected in 2006.

### Objectives

The Commission has three main objectives in the area of consumer credit:

- Establishing the conditions for a genuine internal market;
- Ensuring a high level of consumer protection; and
- Improving the clarity of EC regulation by recasting the three existing Directives on consumer credit (87/102/CE, 90/88/CE and 98/8/CE). The Consumer Credit Directive 87/102/EC, based on minimum harmonisation, resulted in Member States going beyond the Directive's provisions to a different extent. In the opinion of the Commission, these differences in national legislation constitute obstacles to the internal market and dissuade businesses from offering pan-European products.

### Impact of the Directive

The Commission believes that the Directive will help:

- to develop the market for credit. Currently, only a small part of the market is cross-border;
- to improve efficiencies and economies of scale for banks and make available a cheaper and wider selection of products for consumers;
- to facilitate access to credit markets by stimulating competition in certain markets where at present a few players dominate;
- to enhance competition and opening national markets to foreign creditors which may lead to lower interest rates for consumers; and
- to harmonise certain key elements of consumer credits agreement which may improve consumer confidence and encourage consumers to buy credit across borders in the EU.



### CEBS Updates

## Guidelines on Supervisory Cooperation for Cross Border Banking and Investment Group Firms

CEBS has published guidelines on cooperation between supervisors of EU banking groups and investment firms. The guidelines are designed to promote an efficient supervisory framework for groups that operate in several EU jurisdictions, by enhancing the practical operational networking of national supervisors. <http://www.c-eps.org/press/25012006h.htm>



## Guidelines on Supervisory Review Process

CEBS has published guidelines on the Application of the Supervisory Review Process under Pillar 2. The supervisory review process is a central component of the new Capital Requirements Directive (CRD). <http://www.c-eps.org/press/25012006p.htm>

## Guidelines on the Recognition of External Credit Assessment Institutions

Final guidelines for a common approach to the recognition of External Credit Assessment Institutions (ECAIs) under the Capital Requirements Directive (CRD) have been published at <http://www.c-eps.org/press/20012006e.htm>

The guidelines represent a significant advance in the consistent implementation of this core component of the new EU banking legislation. This permits institutions to use external credit ratings to determine the risk weights of their credit exposures. ECAIs must be recognised as eligible for these purposes by supervisory authorities.

## New Chair of CEBS

Danièle Nouy, Secretary General of the French Banking Commission (Commission Bancaire), has been elected Chair of the Committee of European Banking Supervisors (CEBS). She replaces José María Roldán, Director General of Banking Regulation of the Bank of Spain, who has held the post since CEBS became operational in 2004, and whose two-year term as Chair has expired. Ms Nouy served as Vice Chair during Mr Roldán's chairmanship.

## *CESR Updates*



## CESR consults on options for the Storage and Easy Access of Regulated Information

CESR recently issued a consultation paper (Ref: CESR/06-025) which focuses on the provisions of the Transparency Directive relating to the storage and filing of regulated information by issuers admitted to trading on regulated markets (such information includes price sensitive information, regular financial reports and notifications for major holdings). More specifically, the Commission's Mandate (received July 2005) requires CESR to provide advice by June 2006 in relation to both the development of national storage mechanisms and the creation of an EU network of these national mechanisms. CESR is therefore inviting all interested parties to submit their comments by 31 March 2006. The paper is available in the consultations area on the CESR website ([www.cesr-eu.org](http://www.cesr-eu.org)). A hearing will also take place. As soon as a date is scheduled, this will be announced on CESR's website under the section 'hearings'.

## Recent Publications

- Motor Insurance Statistics 2002

## Consumer Publications

(also available on [www.itsyourmoney.ie](http://www.itsyourmoney.ie))

- Current Account Cost Survey 5
- Life Insurance Survey 3