



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement on CP 120

Corporate Governance
Requirements for Investment
Firms and Market Operators

1 Introduction

Background

1. On 5 May 2015, the Central Bank of Ireland (the Central Bank) published the first Consultation Paper 94 (CP 94) on the proposed Corporate Governance Requirements for Investment Firms. At the time, it was noted that the imposition would be subject to the transposition and coming into effect of Directive 2014/65/EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR). Subsequent to the publication of CP 94, the European Commission elected to delay the implementation of MiFID II and MiFIR by 12 months until 3 January 2018. Following the imposition of MiFID II and MiFIR the Central Bank published, on 10 May 2018, the Second Consultation Paper 120 (CP 120) on the revised Corporate Governance Requirements for Investment Firms and Market Operators (the Requirements).
2. Following CP 94 and CP 120, the Requirements are being published with this feedback statement in order to provide clarity to the industry and promote high standards of corporate governance within investment firms and market operators. In addition to the legislation referred to above, the responses received in relation to both CP 94 and CP 120 have been taken into consideration and the Central Bank now publishes the Requirements together with this feedback statement on CP 120.
3. The Requirements should be read in conjunction with the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) as amended (the MiFID II Regulations), the delegated acts issued under MiFID II (the Delegated Acts) and the joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders dated 26 September 2017, including the ESMA Guidelines on the management body of market operators and data reporting service providers dated 28 September 2017 (both jointly referred to as the EBA and ESMA Guidelines).

Legal Basis and Effective Date

4. The Requirements are intended to apply to firms authorised by the Central Bank that are designated as High, Medium High or Medium Low Impact (relevant firms) under the Central Bank's Probability Risk Impact System (PRISM)¹ and will not apply to firms designated as Low Impact. However, Low Impact firms are encouraged to adopt these Requirements consistent with best practice.
5. The Requirements will be conditions to which relevant firms are subject pursuant to Regulation 8 of the MiFID II Regulations or section 10(13) of the Investment Intermediaries Act 1995 as applicable.
6. On that basis, the Requirements will be issued to all relevant firms so as to give such firms an opportunity to provide any submissions relevant to their individual firm prior to the Requirements taking effect with any relevant amendments from **1 July 2019**.

¹ For further information on PRISM, please refer to the Central Bank publication entitled 'PRISM Explained' which can be found on the Central Bank's website.

Responses

7. The consultation period for CP 120 closed on 31 July 2018 and 10 responses were received. These responses can be categorised as follows:
 - Industry bodies 5
 - Firms 4
 - Consultancy firms 1
8. The Central Bank would like to thank all parties who provided a response to CP 120 for their contributions. All of the responses are available on our website. A copy of CP 120 is also available for download.
9. This feedback statement is being published in order to promote understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.

Overview of Feedback and Amendments

10. Key themes within the responses were on the application of proportionality, queries relating to the composition of the board and committees and requests for clarifications or guidance in some areas. Section 2 of this document summarises the responses received to CP 120 and outlines the Central Bank's decisions in relation to the themes arising from these comments.
11. The Central Bank has considered all responses to CP 120 and amended the Requirements where it is deemed appropriate. The Requirements supplement and support the MiFID regime and promote the highest standards of corporate governance within the firms.

2 Overview of the Feedback

Section of the Requirements	Summary of Comments Received	Central Bank's Response
Introduction	One respondent requested feedback on whether it is intended to make any changes to the Fitness and Probity Regime for investment firms, particularly with regard to aspects of the joint EBA and ESMA Guidelines.	The Guidance on Fitness and Probity Standards and related Frequently Asked Questions were updated in June 2018 to reflect the EBA and ESMA Guidelines. This Guidance will be kept under review and updated as necessary.
1 Definitions	Two respondents requested clarification as to whether the 'Group Director' could include an executive within a firm.	The executive of a firm cannot qualify as a group director for the same firm. The group director must be an executive, an executive director, a non-executive director or an independent non-executive director of another entity within the group.
1 Definitions	One respondent requested guidance on how aspects of the criteria of 'Director Independence' should be assessed, while another respondent requested a time limit for one of the criteria of 'Director Independence'.	The Central Bank is of the opinion that the criteria are clearly defined in the definition of 'Director Independence', thus no change is proposed.
2.1 Scope and Effective Date	One respondent suggested that the provisions of Regulation 17(2) and 17 (3) of MiFID II are sufficient and that the Requirements should specifically reference the principle of proportionality in the context of governance arrangements and as set out in Section 4 of the EBA and ESMA Guidelines.	The Central Bank gave due consideration to the scope of the Requirements in terms of application and proportionality. The Requirements should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines, thus no change is proposed.
2.1 Scope and Effective Date	A small number of respondents requested that transitional periods for changes in PRISM impact ratings (particularly from Low impact to Medium-Low impact or above) be clarified.	Generally, firms will move towards higher impact designation gradually and therefore the Central Bank will expect firms to tailor their position to the nature, scale, complexity and risk profile of their business. The Central Bank will engage with firms, including in respect of the timelines for implementation.
2.2, 2.3 Scope and Effective Date	A number of respondents requested guidance on how Low Impact firms may be able to adopt these Requirements, with one of these stating that the market capitalisation should not limit its approach to corporate governance. Similarly, there was a request to provide guidance for foreign incorporated subsidiaries of a firm.	In cases where these Requirements have not been imposed on firms given the nature, scale and complexity of their business, they may at their own discretion adopt the Requirements as consistent with best practice. In respect of the foreign incorporated subsidiaries of an Irish firm, the Central Bank encourages firms to adopt equivalent good corporate governance practices.

FEEDBACK STATEMENT ON CONSULTATION PAPER 120: CORPORATE GOVERNANCE REQUIREMENTS FOR INVESTMENT FIRMS AND MARKET OPERATORS

2.4 Scope and Effective Date	One respondent suggested that the Requirements allow for an 18 month transition period for boards.	Following the second consultation period, it is proposed that the Requirements will apply with effect from 1 July 2019 subject to any individual submissions received from firms upon receipt by them of the notice of condition of authorisation. This will allow for a transition period of approximately 8 months.
4.1 Composition of the Board	Two respondents suggested more specification regarding the size of the board.	MiFID II Regulations do not require minimum board size nor is it prescribed under the EBA and ESMA Guidelines. The Central Bank takes the view that firms should ensure that the board is of sufficient size and expertise to oversee adequately the operations of the firm, taking into consideration the nature, scale and complexity of such firm.
4.2 Composition of the Board	One respondent recommended that guidance be provided on re-election eligibility criteria.	The EBA and ESMA Guidelines specify provisions on re-assessment of individual and collective suitability of the members of the management body and provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity, and independence of mind. The Requirements should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines, thus no change is proposed.
4.2 Composition of the Board	While some respondents welcomed the requirement, a number of respondents considered this requirement too onerous, and suggested that it apply to firms designated as Medium High and High Impact or to High Impact rated firms only. In addition, owner managed businesses considered this requirement too onerous and requested a 'Comply or Explain' option whereby firms could explain why they do not comply with this requirement.	Imposing the Requirements as a condition of authorisation is consistent with the approach taken with regard to the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings. The Central Bank is of the view that imposing statutory Requirements is required due to the Central Bank continuously identifying weaknesses in governance structures in firms, thus no change is proposed.
4.3 Composition of the Board	Two respondents queried whether the group entities must be regulated in order for the exception to apply.	The Requirements are intended to apply to all firms authorised by the Central Bank that are designated as High, Medium High or Medium Low Impact. Firms are defined in Section 1 of the Requirements. The applicability of the Requirements is to depend on whether a firm has any of the relevant authorisations. If the firm is a subsidiary of an entity, be it a regulated or an unregulated entity, it is part of a group. Thus Section 4.3 is to apply where the parent of the group is an unregulated entity.
4.4 Composition of the Board	One respondent suggested that there should be specific reference to regular board evaluation to serve as a robust method of monitoring this draft requirement.	The Requirements should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines. The EBA and ESMA Guidelines specify provisions on re-assessment of individual and collective suitability of the members of the management body and provide criteria to assess the independence of mind, thus no change is proposed.

FEEDBACK STATEMENT ON CONSULTATION PAPER 120: CORPORATE GOVERNANCE REQUIREMENTS FOR INVESTMENT FIRMS AND MARKET OPERATORS

5.2, 5.3 Chairperson	One respondent queried whether the Chairperson must hold specific qualifications, while the other respondent suggested specifying more detailed requirements with regard to the Chairperson's familiarity with the business philosophy, culture and strategic direction of the parent company.	The Central Bank's Fitness and Probity Regime addresses the fitness of the Chairperson. As outlined in Section 5.2 of the Requirements the Chairperson shall have the necessary knowledge, skills and experience and/or training required to comprehend the nature of the firm's business, activities and related risks. In addition, MiFID II Regulations, Delegated Acts and the EBA and ESMA Guidelines contain requirements with regard to the knowledge, skills and experience required of board members, thus no change is proposed.
6.1 Committees of the Board	One respondent expressed concerns with regard to the added value of the requirement for all firms to form both an audit and risk committee, while another respondent requested greater flexibility by allowing for the combination of the audit and risk committees, when an investment firm has a smaller board.	The requirement for all firms in scope to establish at a minimum, both an audit and a risk committee, is in line with best practice and is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings. The Central Bank is of the opinion that Section 6.3 of the Requirements provides sufficient level of flexibility in certain circumstances.
6.3 Committees of the Board	One respondent suggested that this requirement is extended to specifically preclude the Chairperson from chairing both audit and risk committees when a board comprises fewer than five members, to ensure that one person does not exert undue influence over the firm.	The requirements that no single individual will hold the position of Chairperson of the audit committee and Chairperson of the risk committee simultaneously is applicable to High Impact firms and is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.
6.3 Committees of the Board	One respondent requested clarification on Section 6.3 as to whether there is a need to constitute a separate risk committee with separate terms of reference, separate agenda and separate papers.	Section 6.3 addresses the composition of the audit and/or risk committees by allowing the full board, including the Chairperson and the Chief Executive Officer, to act as the audit committee and/or the risk committee in certain circumstances. The requirement to establish a formal audit and/or risk committee and all relevant Sections, including, but not restricting to Sections 6.13 and 6.19, continue to apply. Written terms of reference should be established and reviewed in line with Sections 6.11 and 6.12. Separate agenda, separate papers and separate minutes are required.
6.3 Committees of the Board	One respondent requested removal of the cap of five directors on a board where the board wishes to exercise the functions of the audit committee and/or the risk committee.	This requirement is aligned with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.
6.3 Committees of the Board	Several respondents maintained that should the full board wish to act as the audit committee and/or the risk committee, the firm would only have to advise the Central Bank, rather than seek approval, and one requested to clarify the grounds on which such approval will be granted or refused.	In line with Section 6.3, firms must obtain the Central Bank's prior approval in writing for the full board to act as the audit committee and/or the risk committee. This requirement is in line with best practice and consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.

FEEDBACK STATEMENT ON CONSULTATION PAPER 120: CORPORATE GOVERNANCE REQUIREMENTS FOR INVESTMENT FIRMS AND MARKET OPERATORS

6.8 Committees of the Board	One respondent suggested that in respect of the board appointing committee members, in addition to candidates having the relevant expertise and skills, the requirement should include relevant experience and knowledge as conditions of appointment.	The Central Bank's Fitness and Probity Regime and Section 6.8 address the fitness of the member of the committee, which includes relevant experience and knowledge, thus no change is proposed.
6.14 Committees of the Board	One respondent suggested that it should be clarified that at least the majority of the members of the audit committee should be independent. Furthermore, the respondent suggested that the main board committees (that is, the audit, remuneration and nomination committees) should be exclusively comprised of independent directors.	The Central Bank has considered the feedback received from industry, best practice and aligned Section 6.14 with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings to require Medium High and High Impact firms to ensure that the majority of the audit committee is composed of independent directors.
6.16 Committees of the Board	One respondent requested removal of this exclusion, while the other respondent requested to review this requirement, at least for those firms with two or less independent non-executive directors.	This requirement is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.
6.14, 6.22 Committees of the Board	One respondent requested more clarity around the number of independent non-executive directors who should sit on remuneration and audit committees in line with the proposals for the revised 2018 UK Corporate Governance Code.	The Central Bank gave due consideration to the scope of the Requirements in terms of application and proportionality, including provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines, thus no changes are proposed.
6.21 Committees of the Board	One respondent requested removal of the exclusion outlined in Section 6.21 and one respondent suggested including respective requirements as outlined in Sections 6.16 and 6.17 with regard to remuneration committee.	These requirements are in line with best practice and consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.



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