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Consultation Paper 120 on Corporate Governance Requirements for Investment Firms and Market Operators
Financial Risks and Governance Policy Division
Central Bank of Ireland
PO Box 559
Dublin 1

31 July 2018

Dear Sir/Madam,

Re: CP 120 – Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators

We welcome the opportunity to comment on the Second Consultation Paper regarding Corporate Governance Requirements for Investment Firms and Market Operators (the “Consultation Paper”).

Irish Funds is the representative body of the international investment funds community in Ireland, representing fund managers, depositaries, administrators, transfer agents, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland. Assets of €2.5 trillion are held in 6,963 Irish domiciled funds, making the industry a leading centre for investment funds globally. As Investment Firms provide services to Irish domiciled funds, the Consultation Paper is of relevance to Irish Funds.

By way of general comment, we agree that many of the changes proposed in the Consultation Paper will further contribute to the effective governance of Investment Firms. We also note that several of the comments in our previous response to “CP 94 Consultation on Corporate Governance Requirements for Investment Firms” (“CP 94”) have been considered/addressed. Therefore, we have focussed in this response on a small number of areas that would benefit from further clarification to assist with compliance.

Changes to the Fitness and Probity Regime

We note that CP 120 outlines that the requirements (“Requirements”) have been updated for MiFID II and the joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders published on 21 March 2018

(including the additional ESMA Guidelines on the management body of market operators and data reporting service providers (“the EBA and ESMA Guidelines”)¹. We note that the revised Requirements should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines.

We would ask the Central Bank to provide feedback on whether it intends to make any changes to its Fitness and Probity Regime for Investment Firms, particularly with regard to sections of the joint EBA and ESMA Guidelines where reference is made to providing documentation to regulators that is not currently required under the Fitness and Probity Regime, e.g. details of the position, letters of appointment, etc. as set out in Annex III – “Documentation requirements for initial appointments” of the EBA and ESMA Guidelines. In making any such update to the Fitness and Probity regime to take account of the EBA and ESMA Guidelines we would request the Central Bank to limit the additional documentation requirements solely to entities that are within the scope of those guidelines. Other types of fund/other service providers that are not subject to the Requirements and to the EBA and ESMA Guidelines should not be impacted by any such update to the Fitness and Probity regime.

Transition between PRISM categories and implications for compliance

We would request that transitional arrangements be included for compliance with a higher level of requirement as a result of a change in a Firm’s PRISM rating. We note that the Central Bank has indicated at point 2.1 of its Feedback Statement on CP 94 that “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”. Taking a proportionate, risk-based approach, we note and agree with the view that the level of compliance requirements should be tailored to a Firm’s PRISM category and evolve as a Firm moves into a higher PRISM category. However, a Firm will not be able to ascertain when exactly it might fall under a new PRISM rating – this is beyond its control and occurs as a result of a determination made by the Central Bank, taking into account a wide variety of factors. Consequently, a Firm cannot be expected to be in compliance with the additional requirements on Day 1 of its move to a new PRISM rating.

Furthermore, aspects of compliance with additional requirements applied to higher rated entities under PRISM will not be entirely within the Firm’s control, for example, the timeframe for the recruitment of an additional, suitably qualified independent non-executive director will to a certain extent be subject to recruitment market conditions and then to the appropriate regulatory approval under the Fitness and Probity regime. The creation of new committees with appropriate resourcing and support and terms of reference and reporting lines, etc. can also be time consuming, involving significant changes to the governance arrangements of a Firm. Therefore, we recommend that a six-month transitional period is applied, as a general rule, when Firms have moved to a higher PRISM rating and are required to comply with new requirements.

We recommend that a new Section 2.5 be inserted to state that:

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https://www.esma.europa.eu/sites/default/files/library/guidelines_on_assessment_of_suitability_of_members_of_mb_kfh_eba-gl-2017-12_en.zip .



“Where a Firm becomes subject to a higher PRISM rating and is consequently required to comply with new or additional requirements, a transition period of six months shall apply from the date of change in PRISM rating to enable the Firm to comply with the new or additional requirements. The six-month transitional period shall apply in the case of Sections 2.2, 6.2, 6.3, 6.4 and 6.21 of the Requirements.

Central Bank approval

Furthermore, in relation to point 6.3, in keeping with a proportionate approach, Irish Funds proposes that the Central Bank approval is only required for High and Medium High PRISM-rated Firms.

We look forward to your feedback and remain at your disposal to discuss any aspect of the above response.

Yours sincerely,

A handwritten signature in black ink that reads 'Patrick Rooney'. The signature is written in a cursive style with a large initial 'P'.

Patrick Rooney
Senior Regulatory Affairs Manager