



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement on Consultation Paper 94: Corporate Governance Requirements for Investment Firms

1 Introduction

Background

1. On 5 May 2015, the Central Bank of Ireland (the Central Bank) published Consultation Paper 94 (CP 94) on the proposed Corporate Governance Requirements for Investment Firms (the Requirements). At the time, it was noted that the imposition of the Requirements 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. The delay in implementing MiFID II and MiFIR resulted in delay in national transposition and in finalising the Requirements.
2. Given the recent implementation of MiFID II the Central Bank now wishes to finalise the Requirements in order to provide clarity to the industry and promote the highest standards of corporate governance within investment firms and market operators (the Firms).
3. The Requirements have been updated (the revised Requirements) to take into consideration the final provisions of European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) (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 additional ESMA Guidelines on the management body of market operators and data reporting service providers dated 28 September 2017) (the EBA and ESMA Guidelines). The revised Requirements therefore should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines. In addition, responses received in relation to CP 94 and subsequent changes in the sector since CP 94 have been taken into consideration.

General application and implementation

4. Given the interval since CP 94 it has been decided that the revised Requirements will be subject to a second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators (CP 120) in order to allow interested stakeholders to consider the revised Requirements in the context of the final position with regard to MiFID II and the EBA and ESMA Guidelines and provide relevant feedback to the Central Bank for consideration.
5. This feedback statement is being published at the same time as the second Consultation Paper CP 120 in order to promote understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements. Following the second consultation process, it is proposed that the revised Requirements will apply to all Relevant Firms as defined in the revised Requirements with effect from 1 July 2019.

Legal Basis

6. The revised Requirements are proposed to be conditions to which Relevant Firms as defined in the revised Requirements are subject pursuant to Regulation 8 of the MiFID II Regulations or section 10(13) of the Investment Intermediaries Act 1995 as applicable.

Responses

7. The consultation period for CP 94 closed on 5 August 2015 and 10 responses were received. These responses can be categorised as follows:
 - Industry bodies 4
 - MiFID Investment Firms 5
 - Consultancy Firms 1
8. The Central Bank would like to thank all parties who provided a response to CP 94 for their contributions. All of the responses are available on our website. A copy of CP 94 is also available for download.

Overview of Feedback and Amendments

9. Key themes within the responses were on the application of proportionality, the proposed scope of the Requirements, requests for clarifications in some areas and several queries relating to the composition of boards. Section 2 of this document summarises the responses received to CP 94 and outlines the Central Bank's decisions in relation to the themes arising from these comments.
10. The Requirements have been updated to take into consideration the final provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines in order to avoid duplication of requirements. In addition, the Central Bank has considered all responses to CP 94 and amended the Requirements where it is deemed appropriate. The revised Requirements supplement and support the MiFID regime.
11. The proportionality approach has remained as per CP 94, therefore the revised Requirements will apply to Firms authorised by the Central Bank that are designated as High, Medium High or Medium Low Impact 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 revised Requirements consistent with best practice.

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.

2 Overview of the Feedback Received on the Sections Corresponding to the Revised Requirements

The Revised Requirements Section	CP 94 Section	Summary of Comments Received	Central Bank's Response
2.1 Scope and Effective Date	1.1 Scope	<p>(a) A small number of respondents called for greater consideration of proportionality in the application of the Requirements; particularly the nature, scale and complexity of investment firms in terms of the general requirements and the application of the additional requirements in Appendix 1 to High and Medium-High institutions.</p> <p>(b) Subsequent to the consultation, a query was raised as to the appropriateness of the proposed Requirements for market operators.</p>	<p>(a) The Central Bank has considered feedback received from industry, final provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines and gave due consideration to the scope of the Requirements in terms of application and proportionality and revised the Requirements accordingly.</p> <p>(b) The Central Bank has considered the query and amended the title of the revised Requirements and the definition of the Firm explicitly to include market operators given that market operators are within the scope of MiFID II.</p>
2.1 Scope and Effective Date	1.1 Scope	<p>(a) A small number of respondents requested that transitional periods for compliance with the Requirements be outlined to industry.</p> <p>(b) One respondent requested that transitional periods for changes in PRISM impact ratings (particularly from Low impact to Medium-Low impact or above) be clarified.</p>	<p>(a) A Section 2.4 has been added to the revised Requirements and outlines the Effective Date. Following the second consultation period, it is proposed that the revised Requirements apply with effect from 1 July 2019.</p> <p>(b) 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.</p>
2.2	1.2 Scope	A small number of respondents welcomed greater direction for Low Impact firms, with one of these stating that consideration should be	Taking into consideration the nature, scale and complexity of Low Impact firms, the Central Bank is satisfied that the revised

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Scope and Effective Date		given to formally including all firms in the scope of the Requirements so that each firm can demonstrate a minimum level of corporate governance.	Requirements will not apply to these firms but encourages these firms to adopt them to ensure that corporate governance best practices are observed and maintained.
1 Definitions	2 Definitions	<p>(a) Two respondents stated that the definition of group director should be aligned with the definition contained in the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013.</p> <p>(b) One respondent propounded that this definition should include a reference to group committees; having regard to the operational reporting structures between a firm and its ultimate parent.</p>	<p>(a) The Central Bank has considered feedback received from industry and has amended the definition of 'Group Director' to be consistent with the definition used in the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings.</p> <p>(b) This comment related to the previous definition of 'Group Director'. The updated definition does not require this clarification.</p>
1 Definitions	2 Definitions	Two respondents requested greater flexibility in the definition of director independence; with one asserting that, an individual representing a 'significant shareholder' should not be included in the criteria.	The Central Bank is satisfied that this definition is appropriate and is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no changes have been made.
1 Definitions	2 Definitions	One respondent argued that Section 10 of the Investment Intermediaries Act 1995 generally provides for the authorisation of investment intermediaries (a 'Section 10 Firm') and does not provide for the bifurcation of such firms into retail and non-retail intermediaries. A suggestion was that the definition of 'firm' is amended to ensure it is clear that the Requirements do not apply to Section 10 firms authorised to provide services to retail clients.	The definition of the term 'Firm' has been amended to clarify this.
3.1 Legal Basis	3.1 Legal Basis	One respondent requested that the precise legal basis upon which the Requirements are to be issued be specified.	The Central Bank has considered feedback received from industry and has amended the Section 3.1 to outline that the revised Requirements are to be imposed as a condition of authorisation.
4.1 Composition of the Board	6.1 Composition of the Board	<p>One respondent asserted that permitting Medium Low Impact firms to have boards consisting of three directors may incentivise firms to reduce their board size in order to avail of the exemptions for three-member boards in Section 17.1 and Section 20.5.</p> <p>A second respondent opined that a requirement for a five-member board may be more appropriate in order to achieve the high level of governance outlined in the Requirements.</p>	The Central Bank has considered feedback received from industry, final provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines and gave due consideration to the scope of the revised Requirements in terms of application and proportionality. The Central Bank has revised the Requirements to require that the boards be of sufficient size and expertise to oversee adequately the operations of the Firm.

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4.2, 4.3 Composition of the Board	6.2 Composition of the Board	<p>(a) A small number of respondents expressed that this requirement is disproportionate; with one conveying particular concern for owner-managed businesses and another noting that group companies, who benefit from the experience and input of group directors, had not been considered.</p> <p>(b) One respondent welcomed this requirement provided it contained a transitional period of 18 months.</p>	<p>(a) The Central Bank has considered the proportionality of imposing this requirement on Firms and takes the view that, as drafted, it will result in effective board composition, is in line with best practice and is broadly consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings. The minimum number of INEDs required for a High Impact Firm has changed from 2 to 3, consistent with the requirement for a High Impact Credit Institution.</p> <p>(b) Following the second consultation period, it is proposed that the revised Requirements will apply with effect from 1 July 2019.</p>
5.3 Chairman	7.7 Chairman	<p>(a) One respondent requested guidance on the reference to the Chairman being 'temporarily unavailable'.</p> <p>(b) Two respondents requested that the requirement be amended to allow a group director undertake the role in these instances.</p>	<p>(a) The Central Bank is of the view that this is for individual firms to determine and as such, no change is proposed.</p> <p>(b) The Central Bank has considered the feedback received and amended the latter half of this requirement so that it is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings and allows a group director to take the role of deputy Chairman in the case of a subsidiary if a deputy Chairman is required.</p>
6.1 Committees of the Board	17.1 Committees of the Board	<p>(a) A small number of respondents considered the requirement for all firms to form both an audit and risk committee disproportionate.</p> <p>(b) One respondent suggested that this requirement is extended to specifically preclude the Chairman from chairing both audit and a risk committee, where a board is comprised of only 3 members; to ensure that one person does not hold undue influence over the firm.</p>	<p>(a) The Central Bank has considered feedback received from industry, final provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines and gave due consideration to the scope of the revised Requirements in terms of application and proportionality. The Central Bank has retained the requirement for all firms in scope to establish at a minimum, both an audit and a risk committee, which is in line with best practice and is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings.</p> <p>(b) This requirement is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings, thus no change is proposed.</p>

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		(c) One respondent questioned whether board committees must be comprised of only directors of the firm or whether they can also be made up of other employees of the firm or group.	(c) Committees of the board are to be composed of board members only.
6.2 Committees of the Board	17.6 Committees of the Board	One respondent noted the mandatory establishment of a remuneration and/or nomination committee, where the firms deems it appropriate having had regard for the firm's corporate governance arrangements. The respondent suggested that discretion be accorded to firms to decide on establishing such committees.	The Central Bank has considered feedback received from industry, final provisions of the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines and gave due consideration to the scope of the revised Requirements in terms of application and proportionality. Given that MiFID II includes reference to the establishment of a Nomination Committee, the Requirements have been amended such that High Impact Firms should also establish a Remuneration Committee, which is in line with best practice and is consistent with the Corporate Governance Requirements for both Credit Institutions and Insurance Undertakings.
6.4 Committees of the Board	17.2 Committees of the Board	One respondent requested clarity regarding whether or not committee arrangements between firms and groups were subject to the prior approval of the Central Bank.	The Central Bank maintains that it is preferable that such firms discuss this option in advance with their supervisory team in the Central Bank.
6 Committees of the Board	20 Audit Committee	One respondent argued that in the case of firms which are group subsidiaries it would be counter-productive to move the consideration of audit to a firm-specific committee.	This feedback is addressed in Section 6.4 of the revised Requirements.
6 Committees of the Board	21 Risk Committee	One respondent argued that in the case of firms, which are subsidiaries of a group, it would be counter-productive to move the consideration of risk to a firm-specific committee.	This feedback is addressed in Section 6.4 of the revised Requirements.



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