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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

27<sup>th</sup> June 2018

**Re: Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators (CP120).**

The Institute of Directors in Ireland (IoD) welcomes the opportunity to submit our views on the Central Bank's second consultation paper on Corporate Governance Requirements for Investment Firms and Market Operators.

**About The Institute of Directors in Ireland:**

The Institute of Directors in Ireland is the representative body for 2,800 directors and senior executives within the private, public and not-for-profit sectors. As the leading voice in the debate on improving corporate governance standards, the Institute of Directors is dedicated to developing and improving the effectiveness and performance of directors and boards throughout Ireland.

**Initial remarks:**

The IoD welcomes the Central Bank of Ireland's move to finalise specific statutory corporate governance requirements for investment firms and market operators, following the recent implementation of MiFID II, which is aimed at strengthening investor protection and improving the functioning of financial markets making them more efficient, resilient and transparent.

The Corporate Governance Requirements will also serve to provide clarity to the industry and promote the highest standards of corporate governance within firms. We recognise that the requirements are intended to supplement MiFID II and CRD IV.

Good corporate governance structures can greatly improve board effectiveness and the boards of investment firms will no doubt benefit from a framework of best practice, which will not only encourage greater levels of transparency and oversight for investment firms, but also contribute to increased confidence in Ireland's IFSC sector. The IoD particularly welcomes the requirement that boards are comprised of a majority of non-executive directors since many of these firms' boards are comprised solely of executive directors.

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## **Response to consultation:**

### **2.2 - The Requirements will not apply to Firms designated as Low Impact by the Central Bank. However, such Firms are encouraged to adopt these Requirements**

It is proposed that investment firms deemed Low Impact are encouraged to adopt these requirements, but are not required to do so. The IoD believes that it will be difficult for many Low Impact firms, especially those with smaller boards, to take meaningful guidance from the draft requirements, especially in terms of board composition and the suggested committee structures. While we recognise the reasons for taking such an approach, by adopting only some elements of the requirements, on a discretionary basis, such Low Impact firms may not have a sufficient or appropriate level of corporate governance. The strength of any code of governance is the sum of its parts, rather than the requirements in isolation, and the IoD would recommend that the Central Bank should provide greater clarity, and equip Low Impact firms with sufficient guidance on corporate governance.

### **2.3 - The Requirements will not apply to foreign incorporated subsidiaries of an Irish Firm. Such Firms are encouraged, however, to adopt equivalent good corporate governance practices.**

In the same way that the IoD suggests that more clarity on corporate governance should be provided for Low Impact firms, we also suggest that there should be more clarity on corporate governance for foreign incorporated subsidiaries of an Irish Firm. Governance of an overseas subsidiary may be different than that of a domestic subsidiary, due to differences in the legal and regulatory environment, tax regimes and culture. Accordingly, we recommend that the Central Bank's draft requirements should provide additional guidance in order to address these matters.

### **4.1 - A Firm shall ensure that the board is of sufficient size and expertise to oversee adequately the operations of the Firm.**

The IoD welcomes the proposal that it is the responsibility of the firm to ensure that the board is of sufficient size and expertise to oversee adequately the operations of the firm. However, in respect of board composition, we believe that the requirements as outlined should also address the size of the board, and state the minimum number of directors who should sit on a board, in a similar way to the Corporate Governance Requirements for Insurance Undertakings 2015, which states that boards shall have a minimum of seven directors. We also recommend that the draft requirements should have more distinct 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 Governance Code.

### **4.2 - A Firm shall ensure that the board is composed of a majority of independent non-executive directors.**

We are particularly welcoming of the proposal that the board is composed of a majority of independent non-executive directors. This is consistent with the proposed revisions to the Financial Reporting Council's UK Corporate Governance Code (2018), which operates on a comply or explain basis, and applies to Irish incorporated listed companies on the Main Securities Market (MSM) of the Irish Stock Exchange. Under the proposed Corporate Governance Code, independent non-executive directors, including the chair, should constitute the majority of the board.

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However, while the IoD welcomes the draft requirement that the board is composed of a majority of independent non-executive directors, we recommend that the Central Bank's finalised requirements contain guidance on re-election eligibility criteria.

Additionally, according to CP120, the finalised requirements are to be applied to relevant firms on 1<sup>st</sup> July 2019. We suggest that the requirements should allow for an 18 month transition period for boards. It is important that sufficient time is allowed for firms to take a phased approach to meet the requirements in the interest of continuity and reducing the impact of institutional memory loss.

**4.3.3 - In the case of Medium Low Impact Firms, the majority of the board may be composed of group directors and independent non-executive directors provided that in all cases the Firm shall have at least one independent non-executive director.**

The IoD is concerned that it will be difficult for many Medium Low Impact Firms to achieve the high level of governance outlined in the draft requirements with only one independent non-executive director. We believe that the requirements as outlined are more suitable for boards with a minimum of two independent non-executive directors, as is proposed for Medium-High Impact firms. However, it is also proposed that *"In any case the Central Bank retains the discretion to require that the Firm shall have a greater number of independent non-executive directors than specified in this Section"* and we welcome this proposed provision.

**4.4 - Group directors shall act critically and independently so as to exercise objective and independent judgement.**

While we are in favour of the draft requirement for group directors to act critically and independently so as to exercise objective and independent judgement, the IoD is concerned about whether this will be appropriately acted upon and monitored.

We recognise that the draft requirement for the board to be comprised of a majority of independent non-executive directors, will certainly provide for a high level of independence on the board, however we believe that there should be specific reference to regular board evaluation to serve as a robust method of monitoring this draft requirement.

**5.3 - A Firm shall ensure that the Chairman shall be an independent non-executive director. By way of exception to this general requirement, in the case of a Firm that is a subsidiary, the Chairman may be a group director. If a deputy Chairman is required, the role shall be taken by an independent non-executive director or in the case of a subsidiary, may be taken by a group director.**

IoD Ireland welcomes the proposed requirement that the Chairman shall be an independent non-executive director. However, we would have a concern in relation to subsidiary firms, where the Chairperson may be a group director.

The Chairperson has a significant role in the development and monitoring of the implementation of strategy. While we recognise that there appears to be no "one-size approach", clearly, the subsidiary board's Chairperson – group director or otherwise – must be objective and at the same time be familiar with the business philosophy, culture and strategic direction of the parent company and we would recommend that this is clearly specified in the draft requirements.

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**6.1 - Firms shall ensure, subject to Section 6.4 below that the board establishes, at a minimum, both an audit and a risk committee.**

Section 6.1 should allow for greater flexibility for the establishment of risk and audit committees, where an investment firm has a smaller board. While it is important that audit matters and risk matters are discussed separately from board meetings, it may be more practical for smaller firms with three directors to combine the audit and risk committees, given that membership will comprise the same directors.

**6.3 - In the case of Medium Low and Medium High Impact Firms, where the board comprises 5 or less members, the full board, including the Chairman and the Chief Executive Officer, may act as the audit committee and/or the risk committee.**

Section 6.3 should be extended to specifically preclude the Chairperson of the board from chairing both the audit and risk committees, where a board is comprised of fewer than five members, to ensure that one individual does not hold undue influence within the firm.

**6.8 - A Firm shall ensure that when appointing committee members, the board assesses and satisfies itself as to the relevant expertise and skills of members and as to their ability to commit appropriate time to the committee.**

In respect of the board appointing committee members, in addition to candidates having the relevant expertise and skills, this draft requirement should include relevant experience and knowledge as conditions of appointment.

**6.23 - A Firm shall ensure that, where possible, all members of the remuneration committee are independent non-executive directors but, in any event, that the majority of members of the committee are independent non-executive directors.**

With the establishment of the remuneration committee, policies and procedures should be designed to promote the long-term success of the firm. One of the most important responsibilities of the members of the committee is to remain up-to-date on appropriate levels, structuring methods and types of remuneration in the environment in which the company operates.

We believe that Section 6.23 should be extended to specify that, ideally, all members of the remuneration committee are independent non-executive directors.

This section should also be extended to preclude the Chairperson of the board from chairing the remuneration committee to ensure that one individual does not hold undue influence.

**Conclusion:**

We welcome the Central Bank of Ireland's move to finalise specific statutory corporate governance requirements for investment firms and market operators.

With the introduction of the Corporate Governance Requirements, governance will be enhanced and investment firms will benefit from the independent expert counsel and advice that independent non-executive directors will bring to the board and to audit, risk and remuneration committees. The

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Corporate Governance Requirements will also serve to provide clarity to the industry and promote the highest standards of corporate governance within firms.

We appreciate the opportunity to present this submission and would be delighted to discuss the issues raised in greater detail or to make any further contributions as necessary.

Yours sincerely



Maura Quinn  
Chief Executive  
Institute of Directors in Ireland

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