

Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators

Consultation Paper 120

Response from Susquehanna International Securities Limited

Susquehanna International Securities Limited (“SIS” or “we”) is an investment firm and is regulated by the Central Bank of Ireland (“CBI”) under S.I. No. 375 of 2017– European Union (Markets in Financial Instruments) Regulations 2017.

SIS has adopted a written corporate governance policy in order to ensure that all material aspects of its corporate governance are clearly and demonstrably in line with the EBA’s “Guidelines on internal governance under Directive 2013/36/EU” and best industry practise. In the comments below we have utilised the same numbering and headings as used in CP 120 and have quoted (in *italics*) the relevant section of CP120 to which we are referring for ease of reference.

Comments

Introduction

“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 outlined in this document therefore should be read in conjunction with the MiFID II Regulations, the Delegated Acts and the EBA and ESMA Guidelines.”

The text of CP 120 does not appear consistent in its use of the terms “Requirements” and “revised Requirements” and thus it is not clear whether the Requirements set out in CP 94 are replaced *in toto* by the revised Requirements of CP 120. We would request that the CBI clarify whether the proposed “revised Requirements” as set out in CP 120 are intended to replace the Requirements or to supplement them?

1. Definitions

Director independence

“Director Independence: the ability to exercise sound judgement and decision making independent of the views of management, political interests or inappropriate outside interests.

The following criteria shall be considered and given reasonable weight when assessing director independence:

- *Any financial or other obligation the individual may have to the Firm or its directors;*
- *Whether the individual is or has been employed by the Firm or a group entity in the past and the post(s) so held;*
- *Whether the individual is or has been a provider of professional services to the Firm in the recent past;*
- *Whether the individual represents a significant shareholder;*
- *Circumstances where the individual has acted as an independent non-executive director of the Firm for extended periods;*
- *Any additional remuneration received in addition to the director's fee, related directorships or shareholdings in the Firm; and*
- *Any close business or personal relationship with any of the Firm's directors or senior employees."*

We believe that it is crucial for the effective implementation of the revised Requirements as set out in CP 120 that Firms be able to clearly and demonstrably identify and evidence which Directors are considered Independent and which are not. We believe that it is vital therefore, that the concept of Director Independence is defined clearly and without ambiguity.

We would therefore request that the CBI provide additional clarity with respect to the following parts of the definition of Director Independence:

- a. *"considered and given reasonable weight when assessing director independence"*

We would request that the CBI provide guidance on how the criteria should be assessed and what weight should be attributed to each criteria in such assessment. For example, are some of the criteria to be given more weight than others and is it necessary that all of the criteria be met for a Director to be considered Independent or is it a balancing test?

- b. *"inappropriate outside interests" –*

We believe that it is unclear whether the CBI views all external interests as inappropriate or whether a judgement must be made by a Firm as to whether an outside interest should be considered inappropriate in the context of considering a Director's independence. We would request that the CBI clarify this. If not all outside interests should be considered to be inappropriate we would request that the CBI provide criteria for assessing whether specific outside interests should, in an individual case, be considered inappropriate.

- c. *"Circumstances where the individual has acted as an independent non-executive director of the Firm for extended periods"*

We would request that the CBI clarify what is meant by an "extended period" to enable such a judgement to be made.

d. *“Whether the individual represents a significant shareholder;”*

We would request that the CBI clarify whether this would apply where a Director is appointed to represent all of the underlying shareholders of the Firm as a whole.

We believe that where a Director is appointed by all of the shareholders of the Firm to represent their interests, the Director should be considered independent of the views of management, political interests or inappropriate outside interests. Accordingly we would request that the CBI clarify that a Director so appointed by all of the underlying shareholders of the Firm is deemed Independent by virtue of this appointment. Such a Director can clearly bring an objective and external perspective to the Board on behalf of an entire class of key stakeholders.

Group Director

“Group director” A group director may be an executive, an executive director, a non-executive director or an independent non-executive director of an entity within the group.

We would request that the CBI clarify whether a Group Director could include a Firm executive, as currently the definition doesn't seem to prohibit Firm executive acting in such a role although this may be in contradiction to what is contemplated in the body of the CP 120.

6. Committees of the Board

“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. The Firm shall ensure that the board does not carry out such functions in the absence of having obtained the Central Bank's prior approval in writing to do so. In such cases Sections 6.13 and 6.19 continue to apply. Minutes of these meetings shall reflect that the board was sitting as the audit committee or as the risk committee.”

We would request that the CBI consider removing 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. No reason has been given why this number has been chosen or why any size of Board should not be able to carry out the functions of the audit committee and/or the risk committee. Imposing such a limit could incentivise a Firm, which does not wish to establish an audit committee and/or the risk committee (with their attendant administrative and regulatory requirements) to maintain a Board of five or less Directors even in circumstances where a larger board may be more appropriate. This incentive is reinforced by the requirements in Clause 4.2 of CP 120.

Furthermore we believe that the CBI should not require that prior approval is sought from the CBI but should instead simply require a notification of such a decision by the Board. The decision as to whether to establish an audit committee and/or the risk committee should be made by the Board of a Firm without the possibility of this decision being second guessed by the CBI. We would note that under the Companies Act 2014, the Board of a Firm (being a “Large Firm (as defined therein)”) is already required to determine whether or not to establish an Audit Committee and where it decides not to establish such a committee

must make public its reasons for not doing so in its annual Directors' report. Furthermore any determination by the Directors not to establish an Audit Committee must be made in compliance with their fiduciary duties as Directors of the Firm under the Companies Act.

Notwithstanding the foregoing we believe that the CBI should at a minimum clarify the grounds on which such an approval will be granted or refused. The revised Requirements already impose considerable burden on Firms with respect to planning for the appointment and management of its Board members (e.g. prohibitions on Chairman or CEO sitting on Audit Committee, requirement that audit committee and risk committee shall have at least one shared member, requirement that audit committee is composed of non-executive directors, requirements that at least one member of audit committee has an appropriate qualification etc.). If the CBI does not provide the criteria which it will use to determine whether approval will be granted it adds material uncertainty to the planning necessary by a Firm.

Audit Committee

"6.16. A Firm shall ensure that neither the Chairman nor the Chief Executive Officer shall be a member of the audit committee."

It is unclear why an Independent Non-Executive Director who acts as Chairman of the Board would be precluded from acting on the Audit Committee of that Board. We believe that the CBI should remove this exclusion as it adds needless complexity to the administration of Board personnel without a clear benefit to the proper corporate governance of the Firm.

Remuneration Committee

"6.22. A Firm shall ensure that the Chairman of the Board is not also the Chairman of the remuneration committee."

It is unclear why an Independent Non-Executive Director who acts as Chairman of the Board would be precluded from acting Chairman of the remuneration committee. We believe that the CBI should remove this exclusion as it adds needless complexity to the administration of Board personnel without a clear benefit to the proper corporate governance of the Firm.

31 July 2018