



29 June 2010

International Credit Institutions  
Prudential Policy Unit  
Financial Regulator  
PO Box 9138  
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Dublin 2  
E-mail: [corpgov@centralbank.ie](mailto:corpgov@centralbank.ie)

Dear Sirs/Madam

## CONSULTATION PAPER CP 41: CORPORATE GOVERNANCE REQUIREMENTS FOR CREDIT INSTITUTIONS AND INSURANCE UNDERTAKINGS (“CP”)

The purpose of this letter is to set out observations in relation to the CP.

### Executive Summary

Citibank Europe plc (“CITI”) welcomes the proposed regulatory framework contemplated in the CP and believes that it will enhance Ireland’s regulatory regime. In considering the CP, we have sought to focus on the key aspects of relevance to CITI. We recommend that with respect to:

- Board composition: that the requirement that there be a *‘balance between Independent and other directors’*, be deleted or there be an ability to apply for an exemption from this requirement.
- Chairman: that a Non-executive director, other than an Independent Non-executive director, be permitted to perform the role of Chairman of an Irish credit institution and to also act as Chairman or Chief Executive Officer of another credit institution in the same financial services group.
- Remuneration Committee: that the CP be amended, where necessary, to clarify the Requirements where a Board has decided, with the approval of the Financial Regulator, not to form a Remuneration Committee.

We have also provided observations on other aspects of the CP under the general heading ‘Other’. Unless otherwise indicated, all defined terms have the meaning ascribed to them in the CP.

### 4.0 Composition of the Board

- 4.1a) CITI recommends that the exemption under Requirement 4.1a) be clarified to note that it will apply where the ultimate parent of the credit institution is an entity that is regulated by the Financial Regulator or an equivalent authority.

Citibank Europe plc

Directors: Aidan M Brady, Sanjeeb Chaudhuri (U.K.), Mark Fitzgerald, Bo J. Hammerich (Sweden), Brian Hayes, Mary Lambkin, Frank McCabe, William J. Mills (USA), Terence O’Leary (U.K.), Patrick Scally, Naveed Sultan (U.K.), Christopher Teano (U.S.A.), Francesco Vanni d’Archirafi (Italy), Tony Woods.

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Citibank Europe plc is regulated by the Financial Regulator

We endorse the exemption from the requirement that the majority of a Board be Independent Non-executive directors, set out in Requirement 4.1a). We believe, however, that the requirement that there be '*a balance between independent and other directors*' should be deleted or amended to allow credit institutions apply for a specific exemption from this requirement. We make this recommendation as 'balance' may refer to (i) the number of directors, an equal number or otherwise, or (ii) the level and depth of experience of the directors, having regard to the business and complexity of the credit institution. Arguably, this requirement also conflicts with the prior requirement that the majority of Non-executive directors need not be Independent Non-executive directors. A reasonable interpretation would suggest 'balance' means an equal number. Assuming this to be the case, we believe that this requirement does not take into consideration the fact that certain major credit institutions, particularly those being part of a 'wider group' and/or with branch networks, will include certain office holders on their Boards to ensure proper representation across all relevant business areas and best corporate governance.

This requirement for a balance (equal number) will result in such credit institutions having to:

- (i) reduce the number of directors, other than Independent Non-executive directors, to three (3) (assuming there currently being three such directors on the Board), resulting in a Board comprising of six (6) directors, or
- (ii) increase the number of Independent Non-executive directors to a number that will equal the number of the other directors which have been appointed for the reasons stated above.

We believe that option (i) will result in a reduced Board, which we contend, may not be sufficiently representative of the size and complexity of the business of a major credit institution and may not (and, in the context of CITI, would not) be sufficiently effective nor, therefore, conducive to effective corporate governance. With respect to option (ii), we believe that, of itself, this approach would not improve corporate governance and may create unwieldy Board structures. By example, based on our understanding of 'balance', CITI would be required to have a total of twenty-six (26) directors on its Board, thirteen (13) of whom would be Independent Non-executive directors. We view this Requirement as overly prescriptive. Furthermore, CITI believes that the current Independent Non-executive directors fully meet the requirements under Requirement 7.4 of the CP.

Requirement 4.1a), that the Chairman be independent appears to be unnecessary given that Requirement 5.6 requires this to be the case in all circumstances.

## **5.0 Chairman**

CITI supports the rationale for the introduction of requirements vis a vis the role of the Independent Non-executive directors and views these as integral to the governance structure of a credit institution. However, we query whether Requirement 5.6, which states that the Chairman be independent, is a necessary or optimal method of seeking to meet the stated objective of the CP.

We make this statement as:

- (a) the role of the Chairman is to provide leadership and drive the strategy for a credit institution. We believe that a Non-executive director who meets the Requirements 5.2 and 5.3, coupled with a detailed knowledge of the credit institution and, in a group context, the overall group strategy, is best placed to perform this role. Per Requirement 7.1, the Independent Non-executive directors are required to bring an 'objective and independent' viewpoint to the activities of the management and of the credit institution. These are two different but fundamental roles, which should be aligned but, we believe, discharged by different individuals. We believe our view is consistent with the recommendation in the Walker Report,<sup>1</sup> that a senior independent director provide a sounding board to the Chairman, for the evaluation of the Chairman and to serve as a trusted intermediary when necessary; and
- (b) Per Requirement 5.2, the Chairman is required to promote effective communication between the executive and Non-executive directors. Consistent with the foregoing, we believe that a Non-executive director, given his/her experience and knowledge, is best placed to discharge this function.

We believe that the CP provides sufficient measures to counter any concerns in this role being discharged by a Non-executive director. By way of example, Requirement 4.2 (voting), Requirement 11.3 (requirements regarding minutes) and Requirement 21.0 (Compliance Statement).

We recommend that Requirement 5.10 be amended so as to enable the Chairman of an Irish credit institution to also act as Chairman or Chief Executive Officer of another credit institution within the same financial services group. This amendment would be consistent with Requirement 4.5, where the limit on the number of directorships held does not apply in the case of a financial services group.

On the basis that our recommendations regarding the Chairman are accepted, Requirement 4.1a) would require a corresponding amendment.

## **11.0 Meetings**

We believe that a Board is best placed to determine how many Board meetings are required to be held, and when, in any financial year to ensure that it meets its Irish and common law requirements, including those contemplated under the CP. Furthermore, we query if the prescriptive requirement of monthly meetings will increase corporate governance effectiveness. However, we do recognise a benefit in the Financial Regulator setting a de-minimus requirement regarding the number of Board meetings to be held per year and believe that five Board meetings per year is a reasonable minimum threshold, regardless of the size and complexity of the credit institution.

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<sup>1</sup> A Review of corporate governance in UK banks and other financial industry entities. Final recommendations 26 November 2009.

## **14.0 Remuneration Committees**

We recommend that the term 'senior management' (Requirement 9.2) be defined and that all corresponding changes be made to the CP, where necessary, in circumstances where a credit institution has availed of the right, per Requirement 14.1, not to form a Remuneration Committee as contemplated in the CP.

### **Other**

We have set out below some general observations which the Financial Regulator may wish to consider.

### **Proposal**

#### **2.0 Legal Basis**

Per Requirement 2.6, a contravention of the requirements would result in an administrative sanction under Part IIIC of the Central Bank Act 1942 and would constitute also an offence. Given these consequences, we believe it prudent where possible, that the Requirements be precise and non-subjective, so as to avoid a credit institution inadvertently breaching a Requirement. By way of example, Requirement 4.7 requires that 'Non-executive directors shall ensure that they have sufficient time available to fulfil their role and functions as a director of an institution.' Accordingly, we recommend that the Financial Regulator consider (a) providing guidance on how the Financial Regulator proposes to interpret those Requirements which are subjective in nature, or (b) make only those Requirements that are not subjective in nature, capable of administrative sanction and constituting an offence in the event of a breach, while the remaining Requirement will be amended to constitute recommendations or guiding principles.

#### **4.0 Reporting to the Financial Regulator**

We believe that it is appropriate, particularly in the case of subjective requirements, that obligation to notify the Financial Regulator within 5 working days of identifying a deviation from the Requirements, be amended to refer to 'material deviations'.

#### **5.0 Transitional Arrangements**

We believe it would be beneficial also to clarify whether the following requirements will apply prospectively or retrospectively: Requirement 4.6 (need for prior approval of the Financial Regulator where directorships exceed five (5)), Requirement 5.8 (prior approval of Financial Regulator required before Chairman can assume a directorship); and Requirement 6.4 (contract review of Chief Executive Officer).

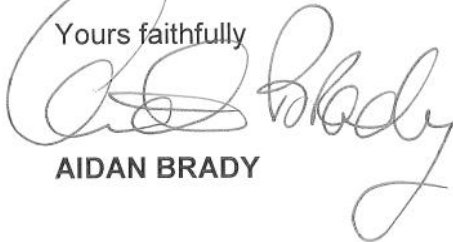
### **Consultation Paper**

#### **21.0 Compliance Statement**

CITI agrees, in principle, with the objective of seeking an annual compliance statement. In order to comment more definitively on this issue, CITI would welcome the opportunity to review a draft of the proposed compliance statement.

We also thank the Financial Regulator for the opportunity to provide it with our comments and observations in relation to the CP. We are available to discuss any aspect of this letter should you so wish.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Aidan Brady', written in a cursive style. The signature is positioned to the right of the typed name 'AIDAN BRADY'.

**AIDAN BRADY**