



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2015

# Consultation on Corporate Governance Requirements for Investment Firms

## Consultation Paper 94

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### Introduction

The Central Bank of Ireland ('the Central Bank') is committed to strengthening corporate governance standards and practices across the financial services industry. Through its supervisory engagement with investment firms, the Central Bank continues to identify corporate governance deficiencies whereby poor corporate governance structures have resulted in firms being exposed to increased risks. These deficiencies contribute towards undermining board effectiveness, prudent management, good culture, strong risk management and oversight, and the safety and soundness of these firms. In 2012 the Central Bank conducted a thematic review of corporate governance in investment firms and issued nine recommendations for improving standards in Ireland. While improvements were observed, weaknesses continue to exist. Further to the 2012 recommendations and subsequent supervisory engagement in respect of corporate governance matters, and in line with developments relating to corporate governance in other sectors, this Consultation Paper proposes statutory corporate governance requirements for investment firms ('the requirements'). It is proposed that the requirements will apply to all Markets in Financial Instruments Directive ('MiFID') firms and non-retail investment intermediaries licensed or authorised by the Central Bank of Ireland ('firms') that are designated as High, Medium High or Medium Low Impact under the Central Bank's Probability Risk Impact System ('PRISM'). While MiFID II and CRD IV introduce new corporate governance requirements for investment firms, the requirements herein are intended to supplement these.

The Consultation Paper sets out the proposed requirements firms will be required to comply with, relating to (inter-alia):

- Minimum board size;
- The composition of the board;
- The role of the Chairman;
- The role of the CEO;

- The frequency of board meetings;
- The role and composition of the risk committee;
- The role and composition of the audit committee.

Additional requirements are proposed for firms designated as High and Medium High Impact.

### **Submission of Responses**

The Central Bank welcomes responses on the Consultation Paper from all stakeholders, in particular relating to the appropriateness of the proposed requirements set out overleaf and also regarding the scope of the requirements and the application of the principle of proportionality. Where a respondent agrees or disagrees with a proposal, he/she should set out reasoned arguments as to why the proposal is appropriate or inappropriate.

Responses can be submitted by email to: [CP94@centralbank.ie](mailto:CP94@centralbank.ie) or in writing, to:

Consultation on Corporate Governance Requirements for Investment Firms (CP94)  
Risk, Governance, Accounting and Auditing Policy Division  
Central Bank of Ireland  
Dublin 2.

Responses should be submitted no later than **5 August 2015**. It is the policy of the Central Bank to publish all responses to consultations on the Central Bank's website. Confidential information should not be included in consultation responses.

**Risk, Governance, and Accounting Policy Division**

**Central Bank of Ireland**

**5 May 2015**

## 1. Scope

1.1 The Corporate Governance Requirements for Investment Firms 2015 ('the requirements') will impose the following:

- Core requirements upon all Markets in Financial Instruments Directive ('MiFID') firms and non-retail investment intermediaries ('firms') licensed or authorised by the Central Bank of Ireland ('Central Bank') that are designated as High, Medium High or Medium Low Impact;
- Additional requirements (as set out in Appendix 1) upon all firms designated as High or Medium High Impact by the Central Bank.

1.2 The requirements will not apply to firms designated as Low Impact by the Central Bank. However, such firms are encouraged to adopt these requirements.

1.3 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.

1.4 Where a firm within the scope of these requirements also falls within the scope of the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013, the firm will be required to comply with the latter.

## 2. Definitions

The following is a list of definitions of terms used in the requirements:

**Control functions:** collectively, the internal audit function, the risk management function and the compliance function.

**Corporate governance:** the procedures, processes and attitudes according to which an organisation is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organisation – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making.

**Director independence:** the ability of a director to exercise sound judgement and decision making independent of the views of other directors or managers, 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 company in the past and the post(s) so held;
- Whether the individual is or has been a provider of professional services to the firm within the last three years;
- 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 company's directors or senior employees.

**Firm:**

- A firm authorised pursuant to MiFID; or
- A non-retail investment intermediary authorised under Section 10 of the Investment Intermediaries Act 1995.

The definition of a firm specifically excludes trustees and administrators covered by the Corporate Governance Code for Funds Service Providers published by Irish Funds Industry Association (IFIA) and retail investment intermediaries.

**Group director:** a director of a firm who would satisfy the criteria for director independence were it not for their existing relationships with the firm's direct or indirect parent and/or any other direct or indirect subsidiary of such parent other than the firm.

**High Impact / Medium High Impact / Medium Low Impact:** in relation to a firm, the firm's designation as either "High Impact", "Medium High Impact" or "Medium Low Impact", respectively, under the Central Bank's Probability Risk Impact System ('PRISM')<sup>1</sup>.

**Independent non-executive director:** a non-executive director who satisfies the criteria for director independence.

**MiFID II:** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014.

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<sup>1</sup> 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.

**Non-executive director:** means a director without executive management responsibilities for the firm or, in the case of a firm which is part of a group, who may have executive management responsibilities assigned to him or her within the group.



**3. Legal Basis**

- 3.1 The Central Bank proposes to introduce these requirements on a statutory basis, subject to the transposition and imposition of MiFID II.

**4. Reporting to the Central Bank**

- 4.1 The Central Bank will monitor adherence to the requirements through its on-going supervision of firms.
- 4.2 Any firm that becomes aware of a material deviation from these requirements shall without undue delay and in any event within 5 business days report the deviation to the Central Bank, advising of the background and the proposed remedial action.
- 4.3 Each firm shall submit an annual compliance statement as set out at Section 24, in accordance with any guidelines issued by the Central Bank, specifying whether the firm has complied with the requirements.

**5. General Requirements**

- 5.1 A firm shall promote strong and effective corporate governance and shall, at a minimum, meet the requirements herein.
- 5.2 A firm shall ensure that the board retains primary responsibility for corporate governance within the firm at all times and that the firm's senior management is responsible for operating effective oversight consistent with board policy.
- 5.3 A firm shall have robust corporate governance arrangements which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, adequate internal control mechanisms, including sound administrative and accounting procedures, IT systems and controls, remuneration policies and practices that are consistent with and promote sound and effective risk management both on a solo basis and at group level. The system of corporate governance shall be subject to regular internal review.
- 5.4 A firm shall have a corporate governance structure that shall be sufficient and comprehensive to ensure that there is effective oversight of the activities of the firm taking into consideration the nature, scale and complexity of the business being conducted.
- 5.5 A firm shall ensure that no one individual may have unfettered powers of decision in relation to the business of the firm.

- 5.6 A firm shall ensure that the corporate governance structure and policies of the firm are recorded clearly and communicated to all appropriate staff within the firm.
- 5.7 A firm shall ensure that any director who has any material concern about the corporate governance of the firm shall be required to report the concern without delay to the board in the first instance and if the concern is not satisfactorily addressed by the board within 5 business days, the director shall be required to promptly report the concern directly to the Central Bank advising of the background to the concern and any proposed remedial action. This is without prejudice to the director's ability to report the concern directly to the Central Bank at any stage.
- 5.8 A firm shall comply with the requirements herein on an individual basis. Accordingly, while a firm may adopt policies or procedures developed at group level, the firm shall satisfy itself that such policies or procedures comply with the requirements herein.
- 5.9 A firm shall ensure that it discloses in its annual report that it is subject to these requirements.

**6. Composition of the Board**

- 6.1 A firm shall ensure that its board is of sufficient size and expertise to oversee adequately the operations of the firm, and in any event shall ensure that its board is comprised of a minimum of three directors.
- 6.2 A firm shall ensure that the board is comprised of a majority of independent non-executive directors. By way of exception from this general requirement, in the case of firms that are subsidiaries of groups, the majority of the board may be composed of a combination of group directors and independent non-executive directors, provided that in all cases the subsidiary shall have at least one independent non-executive director or such greater number as is required by the Central Bank. Group directors shall act critically and independently so as to exercise objective and independent judgement.
- 6.3 A firm shall satisfy itself as to a director's independence (in accordance with the criteria for director independence set out in Section 2 herein) prior to appointing a director and shall document how it has satisfied itself in this regard.
- 6.4 A firm shall ensure that directors attend each board meeting in person wherever practicable. Where physical presence is not practicable, videoconferencing or teleconferencing is permissible. A firm shall also ensure that each director's attendance and eligibility to vote at each board meeting shall be evidenced in the minutes of each meeting.
- 6.5 A firm shall ensure that at least two of its directors are available to meet the Central Bank at short notice, if so required, and that one of the available directors shall be an independent non-executive director or the Chairman.

- 6.6 A firm shall ensure that each member of the board devotes sufficient time to the role of director and associated responsibilities, and that each director's letter of appointment to the board shall clearly stipulate his or her annual time commitment to the firm. The firm shall also ensure that a sufficient time buffer is included in each director's annual time commitment to provide for any irregular occurrences that may emerge throughout the year, and that each director is required to disclose in writing to the board any other time commitments they may have and any subsequent changes to these commitments.
- 6.7 A firm shall ensure, prior to the appointment of a director to the board and on an ongoing basis, that the number of directorships held by that director shall not affect the ability of that director to discharge his or her role and functions at the firm.
- 6.8 A firm shall in considering and/or proposing director appointments, ensure that possible conflicts of interest among the members of the board are assessed and documented, including but not limited to personal relationships, business relationships and common directorships among the members or proposed members of the board.
- 6.9 A firm shall ensure that appointments to the board shall not proceed where possible conflicts of interest may emerge as a result of such appointment, which are significant to the overall work of the board.
- 6.10 A firm shall ensure that directors shall not participate in any decision making/discussion where a reasonably perceived potential conflict of interest exists.

6.11 A firm shall ensure that a formal review of board membership is carried out by the board at least once every three years. A firm shall ensure that its policy in relation to the frequency with which board membership is renewed shall be documented and that the renewal frequency shall consider the balance of experience and independence required.

6.12 A firm shall in circumstances where an independent non-executive director of a firm:

(1) has been a member of the board of that firm for nine years or more at the time of the imposition of these requirements, or

(2) reaches nine years of membership of the board of that firm at any time following the imposition of these requirements (which period of membership shall be calculated so as to include time spent as a member of the board prior to the imposition of these requirements),

ensure that a formal review of that individual's membership of the board is carried out at the next scheduled board meeting of the firm and shall document its rationale for any continuance of the membership of that board member and so advise the Central Bank in writing.

**7. Chairman**

- 7.1 A firm shall ensure that there is a Chairman appointed to the board of the firm.
- 7.2 A firm shall ensure that the Chairman leads the board, encourages critical discussions, challenges mindsets and ensures effective communication between executive and non-executive directors.
- 7.3 A firm shall ensure that the Chairman shall have relevant financial services expertise, qualifications and experience or be required to undertake relevant and timely comprehensive training. In this context, relevant financial services expertise, qualifications and experience or training shall mean that the Chairman has the necessary knowledge, skills and experience and/or training required to comprehend each of the following:
- The nature of the firm's business, activities and related risks;
  - His or her individual direct and indirect responsibilities and the board's responsibilities; and
  - The firm's financial statements.
- 7.4 A firm shall ensure, prior to his or her appointment and on an ongoing basis, that the Chairman shall have the necessary personal qualities, professionalism and integrity to carry out his or her obligations.
- 7.5 A firm shall ensure that the Chairman shall attend and chair board meetings.
- 7.6 A firm shall ensure that the roles of Chairman and Chief Executive Officer (CEO) shall not simultaneously be exercised by the same individual.



- 7.7 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 which is a subsidiary, the Chairman may be a group director. If the Chairman is temporarily unavailable (or has a conflict of interest), the role may be taken by an independent non-executive director.
- 7.8 A firm shall ensure that the role of Chairman shall be proposed for election or reappointment on an annual basis.
- 7.9 A firm shall ensure that the prior approval of the Central Bank shall be obtained prior to the Chairman taking on any other directorships (other than within the group), as the responsibilities and required time commitment for a Chairman may be significant.
- 7.10 A firm shall ensure that no individual who has been the CEO, an executive director or a member of senior management of the firm during the previous 5 years shall advance to the role of Chairman of that firm.

## 8. Chief Executive Officer

- 8.1 The CEO is the top executive responsible for the firm; in particular he/she has ultimate responsibility for the firm's operations, compliance and performance. The CEO serves as the main link between the board and the executive.
- 8.2 A firm shall ensure that the CEO shall have relevant financial services expertise, qualifications and background or be required to undertake relevant and timely comprehensive training. The relevant financial services background or training shall ensure that the CEO has the necessary knowledge, skills and experience and/or training required to comprehend fully each of the following:
- The nature of the firm's business, activities and related risks;
  - His or her individual direct and indirect responsibilities and the board's responsibilities; and
  - The firm's financial statements.
- 8.3 A firm shall ensure that the CEO shall have the necessary personal qualities, professionalism and integrity to carry out his or her obligations.
- 8.4 A firm shall ensure that the CEO's contract is reviewed by the board on renewal and at least once every 5 years.

## 9. Independent Non-Executive Directors

- 9.1 As an integral component of the board, independent non-executive directors represent a key layer of oversight of the activities of a firm. It is essential for independent non-executive directors to bring an independent viewpoint to the deliberations of the board that is objective and independent of the activities of the management and of the firm.
- 9.2 A firm shall ensure that independent non-executive directors are identified clearly in the firm's annual report.
- 9.3 A firm shall ensure that, prior to their appointment and on an ongoing basis, independent non-executive directors have knowledge and understanding of the business, risks and material activities of the firm to enable them to contribute effectively to the activities of the board.
- 9.4 A firm shall ensure that, prior to their appointment and on an ongoing basis, independent non-executive directors have the relevant skills, experience and knowledge that is needed to provide an independent challenge to the executive directors of the board. The relevant skills, experience and knowledge referred to above may include, but is not limited to, skills in, and experience and knowledge of, the fields of accounting, auditing and risk management.
- 9.5 A firm shall ensure that dedicated support is made available to independent non-executive directors on any matter requiring additional and/or separate assistance to that available in the normal board process.

## 10. Non-Executive Directors and Executive Directors

10.1 The role of the non-executive director is:

- To ensure that there is an effective executive team in place;
- To participate actively in constructively challenging and developing strategies proposed by the executive team;
- To participate actively in the board's decision-making process;
- To participate actively in board committees (where established); and
- To exercise appropriate oversight over execution by the executive team of the agreed strategies, goals and objectives and to monitor reporting of performance.

10.2 The role of executive directors, led by the CEO, is to propose strategies to the Board and following board scrutiny, to execute the agreed strategies to a high standard.

10.3 A firm shall ensure that, prior to their appointment and on an ongoing basis, non-executive and executive directors have knowledge and understanding of the business, risks and material activities of the firm to enable them to contribute effectively to the activities of the board.

10.4 A firm shall ensure that, prior to their appointment and on an ongoing basis, the non-executive and executive directors have the relevant skills, experience and knowledge that is needed to provide an independent challenge to the executive directors of the board. The relevant skills, experience and knowledge referred to above may include, but is not limited to, skills in, and experience and knowledge, the fields of accounting, auditing and risk management.

- 10.5 A firm shall ensure that dedicated support is made available to non-executive and executive directors on any matter requiring additional and/or separate assistance to that available in the normal board process.

## 11. Role of the Board

11.1 The board of each firm is responsible for the effective, prudent and ethical oversight of the firm. The board is responsible for, among other things, setting and overseeing:

- The business strategy for the firm;
- The amounts, types and distribution of both internal capital and own funds adequate to cover the risks of the firms;
- The strategy for the on-going management of material risks;
- A robust and transparent organisational structure with the effective communication and reporting channels;
- A remuneration framework that is in line with the risk strategies of the institution; and
- An adequate and effective internal control framework, that includes well-functioning risk management, compliance and internal audit functions as well as an appropriate financial reporting and accounting framework.

11.2 A firm shall ensure that the role and responsibilities of the board are clearly documented.

11.3 A firm shall ensure that the members of the board have:

- the necessary knowledge, skills, experience, expertise, competencies, professionalism, fitness, probity and integrity to carry out their duties;
- a full understanding of the nature of the firm's business, activities and related risks;
- a full understanding of their individual direct and indirect responsibilities and collective responsibilities; and

- an understanding of the firm's financial statements;

- 11.4 A firm shall ensure that, where the board delegates authority to sub-committees or management to act on behalf of the board in respect of certain matters, the board has mechanisms in place for documenting the delegation and monitoring the exercise of the delegated functions. The board cannot abrogate its responsibility for functions delegated.
- 11.5 A firm shall ensure that, where the firm, being part of a larger group, proposes to apply group policies or use group functions, the board shall assess and document its assessment of those policies or functions in order to satisfy itself as to their appropriateness for the firm, and in particular that those policies and functions take full account of Irish laws and regulations and the supervisory requirements of the Central Bank.
- 11.6 A firm shall ensure that the board shall be able to explain its decisions to the Central Bank.

## 12. Appointments

- 12.1 A firm shall ensure that the board is responsible for appointing a CEO and senior management with appropriate integrity and adequate knowledge, experience, skill and competence for their roles.
- 12.2 A firm shall ensure that the board is responsible for:
- (i) endorsing the appointment of senior persons to any roles within the firm that may have a material impact on the risk profile of the firm; and
  - (ii) monitoring on an on-going basis any such person's appropriateness for the role.
- 12.3 A firm shall ensure that the board is responsible for the appointment of non-executive directors. By way of exception to this general requirement, in circumstances where the approval of the firm's shareholders is required prior to the appointment of a non-executive director, the firm shall ensure that the board is responsible for identifying and proposing to shareholders the appointment of non-executive directors.
- 12.4 A firm shall ensure that non-executive directors are provided with adequate induction training about the operations and performance of the firm and that adequate on-going training is provided to all directors. The reference above to adequate on-going training means training that is provided to directors as and when required in order to ensure that directors are up to date in relation to the firm's legal, regulatory and business requirements in order to enable them to make informed decisions.



- 12.5 A firm shall ensure that the board defines and documents the responsibilities of the board of directors, board committees and senior management to ensure that no single person has unfettered control of the business.
- 12.6 A firm shall ensure that the board formally reviews its overall performance and the performance of individual directors, relative to the board's objectives, at least annually, and documents all such reviews.
- 12.7 A firm shall ensure that the board puts an appropriate succession plan in place in relation to the board.
- 12.8 A firm shall ensure that the removal from office of the head of a control function shall be subject to prior board approval, and that any decision to remove the head of a control function shall be reported within 5 working days of such decision to the Central Bank with clear articulation of the underlying rationale for the removal. A firm shall not enter into any agreement with a head of a control function that would purport to preclude, or would disincentivise, the provision of information to the Central Bank by the head of the Control Function.
- 12.9 A firm shall ensure that the board, or nomination committee where one exists, establishes a written policy on diversity with regard to the selection of persons for nomination to become directors.

### 13. Risk Appetite

- 13.1 A firm shall ensure that the board understands the risks to which the firm is exposed and establishes a documented risk appetite for the firm, which shall:
- (i) be expressed in qualitative terms and shall also include quantitative metrics to allow tracking of performance and compliance with agreed strategy, which metrics may include but are not limited to any or all of the following: Value at Risk, leverage ratio, range of tolerance for bad debts, acceptable stress losses and economic capital measures;
  - (ii) be subject to annual review by the board;
  - (iii) be comprehensive and clear to all stakeholders;
  - (iv) clearly define the firm's risk appetite; and
  - (v) address separately the short, medium and long term outlook.
- 13.3 A firm shall ensure that its risk management framework and internal controls reflect its risk appetite and that there are adequate arrangements in place to ensure that the board receives regular reporting on compliance with the risk appetite.
- 13.4 A firm shall ensure that in the event of a material deviation from the firm's documented risk appetite, the details of the deviation and of the appropriate action to remedy the deviation shall be communicated to the Central Bank by the board promptly in writing and in any event within 5 business days of the Board becoming aware of the deviation.
- 13.5 A firm shall ensure that the control functions are independent of each other and have adequate resources and authority to operate effectively, reflective of the nature, scale and complexity of the firm.

- 13.6 A firm shall ensure that the board receives timely, accurate and sufficiently detailed information from each of the control functions.
- 13.7 A firm shall ensure that its remuneration practices do not promote excessive risk taking and that the board designs and implements a remuneration policy in order to meet that objective. The firm shall also ensure that the board evaluates compliance with this policy.
- 13.8 A firm shall ensure that the board identifies risks to be addressed by contingency plans based on, inter-alia:
- The areas where the board considers the firm to be especially vulnerable;
  - The risk appetite of the firm; and
  - The risk management system of the firm.

The firm shall also ensure that such contingency plans are reviewed, updated and tested on a regular basis and at least annually.

## 14. Board Meetings

- 14.1 A firm shall ensure that the board meets as often as is appropriate to fulfil its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the firm, and in any event meets at least four times per calendar year and at least once in every six month period.
- 14.2 A firm shall ensure that a detailed agenda of items for consideration at each board meeting, together with minutes of the previous board meeting, are circulated in advance of each board meeting to allow all directors adequate time to consider the material, and that sufficient and clear supporting information and papers are also circulated.
- 14.3 A firm shall ensure that detailed minutes of all board meetings are prepared with all decisions, discussions and points for further actions being documented. In this regard the firm shall ensure that the minutes of meetings:
- (i) provide sufficient detail in relation to the matters discussed at those meetings to evidence an appropriate level of attention and discussion of those matters by the board;
  - (ii) detail the substance of any discussions and their outcome;
  - (iii) document dissensions or negative votes in terms acceptable to the dissenting person or negative voter;
  - (iv) document the attendance or non-attendance of members of the board; and
  - (v) are agreed at the subsequent board meeting.
- 14.4 A firm shall ensure that the board establishes a documented 'conflicts of interests' policy for its members and where conflicts of interests arise, they are noted in the minutes.

- 14.5 A firm shall ensure that in circumstances where an on-going conflict of interests arises, the board formally considers changing the membership of the board to eliminate that conflict.

**15. Reserved Powers**

- 15.1 A firm shall ensure that the board establishes a formal schedule of matters specifically reserved to it for decision, and that this schedule is documented and updated in a timely manner.

**16. Consolidated Supervision**

- 16.1 A firm shall ensure that its board exercises adequate control and oversight over the activities of the firm's subsidiaries, whether such subsidiaries are incorporated in Ireland or overseas.

## 17. Committees of the Board

- 17.1 A firm shall ensure, subject to paragraph 17.2 below, that the board establishes, at a minimum, both an audit committee and a risk committee. Where the board comprises only 3 members, the full board, including the Chairman and CEO, may act as the audit committee and/or the risk committee. In such cases Section 20.3 and 21.3 continues to apply. Minutes of these meetings shall reflect that the board was sitting as the audit committee, or risk committee. The firm shall ensure that the board retains responsibility for the oversight of each of its committees.
- 17.2 A firm shall ensure that, where a firm is part of a wider group which has a group audit committee and/or a group risk committee, it may rely on those committees provided that the board is satisfied that they are appropriate to the specific circumstances of the firm and that the board has documented its assessment in this regard.
- 17.3 A firm shall ensure that the board documents the terms of reference of any committees established by the board in order to evidence the functions delegated to each such committee.
- 17.4 A firm shall ensure that the non-executive directors and in particular the independent non-executive directors play a leading role in these committees or where the functions are carried out at group level, they play a leading role in satisfying the board that the firm's audit and risk functions are adequately carried out.
- 17.5 A firm shall ensure that in deciding whether or not to establish a board committee, the board would, in the absence of establishing that committee,



continue to have appropriate time available to it to adequately discharge its responsibilities.

- 17.6 A firm shall ensure that, irrespective of a firm's designation under 'PRISM', the board shall, where it deems it appropriate having had regard to the firm's corporate governance arrangements, appoint a remuneration committee and/or a nomination committee.
- 17.7 A firm shall ensure the audit committee and risk committee shall have at least one shared member. As Board consideration of risk-related issues may be enhanced by members serving on more than one board sub-committee, as members may gain a greater appreciation of risk considerations across the institution, cross-memberships between key committees of the board shall be encouraged by the firm.

**18. General Requirements of Committees of the Board**

- 18.1 A firm shall ensure that agendas and all relevant material for committee meetings are circulated to all committee members in a timely manner in advance of the meeting.
- 18.2 A firm shall ensure that detailed minutes of all committee meetings are prepared recording time of meeting, location held, attendees, all key discussions and decisions.
- 18.3 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.
- 18.4 A firm shall ensure that committee members attend committee meetings regularly. Where a member is unable to provide sufficient time to attend over the medium to long term, the firm shall ensure that the board removes such member from the committee and replaces him or her with a member with appropriate availability, experience and expertise.
- 18.5 A firm shall ensure that, for the committee(s) of which they are a member, directors attend each committee meeting in person wherever practicable. However, due to the location of some directors, physical presence may not always be practicable, in which case videoconferencing or teleconferencing is permissible.
- 18.6 A firm shall ensure that cross-committee membership by an individual is managed by the firm to ensure that no one individual exercises excessive influence or control over the activities of one or more committees.

- 18.7 A firm shall ensure that committee membership is reviewed by the firm and subject to renewal by the firm with an appropriate frequency. The renewal frequency shall consider the balance of experience and independence required.
- 18.8 A firm shall ensure that committees report regularly to the board and that the minutes of all committee meetings are circulated to the board in advance of board meetings.

**19. Terms of Reference of Committees of the Board**

- 19.1 A firm shall ensure that the board establishes clear written terms of reference for each committee which outline the authority, functions, membership and reporting lines of the committee as well as meeting frequency, voting rights and quorums.
- 19.2 A firm shall ensure that each committee regularly reviews its terms of reference to ensure their continuing appropriateness with respect to the activities of that committee, and that each committee provides recommendations on revisions to its terms of reference to the board, where the committee deems necessary. A firm shall ensure that such reviews are documented and that they take place at least annually.

**20. Audit Committee**

- 20.1 A firm shall ensure that the number of members of the audit committee shall be sufficient to handle the size and complexity of the business conducted by it.
- 20.2 A firm shall ensure that the audit committee is composed of non-executive directors, including at least one independent non-executive member.
- 20.3 A firm shall ensure that the Chairman of the audit committee is an independent non-executive director.
- 20.4 A firm shall ensure that the audit committee as a whole has relevant financial experience and at least one member has an appropriate qualification.
- 20.5 A firm shall ensure that subject to the provision contained in Section 17.1 (which provides that where the board comprises only 3 members, the full board, including the Chairman and CEO, may act as the audit committee and/or the risk committee), neither the Chairman nor the CEO shall be a member of the audit committee. The firm shall ensure that the attendance by the CEO or Chairman at audit committee meetings shall be by invitation only and shall be managed to ensure the independence of the committee and the maintenance of appropriate relationships with other parties, especially external auditors.
- 20.6 A firm shall ensure that audit committee meetings are held at regular intervals and, where appropriate, to coincide with important financial reporting dates, and that they are usually only attended by the chairman of the audit committee and its members. However, members may also request the attendance of key individuals such as the external auditor, head of internal audit and the finance director. The firm shall ensure that the audit committee operates in a manner

consistent with ensuring its independence and reports its activities and decisions to the board of directors.

20.7 A firm shall ensure that without prejudice to the responsibility of the board of directors, the responsibilities of the audit committee include at least the following:

- a) Monitoring the effectiveness and adequacy of the firm's internal control, internal audit and I.T. systems;
- b) Liaising with the external auditor particularly in relation to their audit findings;
- c) Reviewing the integrity of the firm's financial statements and ensuring that they give a "true and fair view" of the financial status of the firm;
- d) Reviewing any financial announcements and reports and recommending to the board whether to approve the firm's annual accounts including, if relevant, group accounts; and
- e) Assessing auditor independence and the effectiveness of the audit process.

**21. Risk Committee**

- 21.1 A firm shall ensure that the board establishes a risk committee which is separate from the audit committee and which has responsibility for oversight and advice to the board on the current risk exposures of the firm and its future risk strategy. A firm may propose to the Central Bank that the board itself carry out the functions which would otherwise be delegated to a risk committee but 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.
- 21.2 A firm shall ensure that the number of members of the risk committee shall be sufficient to handle the nature, scale and complexity of the business conducted by it.
- 21.3 A firm shall ensure that the Chairman of the risk committee is a non-executive director or an independent non-executive director.
- 21.4 A firm shall ensure that the risk committee is composed of a majority of non-executive directors or independent non-executive directors or a combination of both.
- 21.3 A firm shall ensure that the role of the risk committee is to advise the board on risk appetite and tolerance for future strategy, taking account of the board's overall risk appetite, the current financial position of the firm and, drawing on the work of the audit committee and the external auditor, the capacity of the firm to manage and control risks within the agreed strategy. The firm shall ensure that the risk committee oversees the risk management function.

- 21.4 A firm shall ensure that the risk committee is responsible for, and liaises regularly with the risk management function in order to ensure the development and on-going maintenance of an effective risk management system within the firm that is effective and proportionate to the nature, scale and complexity of the risks inherent in the business.
- 21.5 A firm shall ensure that the risk committee is responsible for advising the board on the effectiveness of strategies and policies with respect to maintaining, on an on-going basis, amounts, types and distribution of both internal capital and own funds adequate to cover the risks of the firm.



**22. Remuneration Committee**

- 22.1 Where a remuneration committee has been established, the number of members of the remuneration committee will depend on the size of the firm.
- 22.2 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.
- 22.3 A firm shall ensure that the Chairman of the board is not also the chairman of the remuneration committee.
- 22.4 A firm shall ensure that the remuneration committee establishes remuneration policies and procedures within the firm based on best practice and any requirements which the Central Bank may issue.

**23. Nomination Committee**

- 23.1 Where a nomination committee has been established, the number of members of the committee will depend on the nature, scale and complexity of the firm.
- 23.2 A firm shall ensure that, where possible, the majority of the nomination committee are non-executive directors.
- 23.3 A firm shall ensure that the nomination committee is responsible for making recommendations to the board on all new appointments of both executive and non-executive directors.
- 23.4 A firm shall ensure that when considering appointments, the nomination committee shall prepare a comprehensive job description, taking into account, for board appointments, the existing skills and expertise of the board and the anticipated time commitment required. The firm shall ensure that the Chairman of the board does not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship of the board.
- 23.5 A firm shall ensure that the nomination committee is involved in succession planning for the board, bearing in mind the future demands on the business and the existing level of skills and expertise.

## **24. Compliance Statement**

- 24.1 A firm shall submit to the Central Bank a compliance statement specifying, in accordance with any relevant guideline issued by the Bank, whether the firm has complied with the requirements during the period to which the statement relates. This compliance statement shall be submitted to the Central Bank on an annual basis or with such other frequency as the Central Bank may notify to the firm from time to time. In the event of the firm deviating materially from the requirements, the compliance report shall include a report on any material deviations, advising of the background to the breach and the actual or proposed remedial action.

## Appendix 1 to the Corporate Governance Requirements for Investment Firms

### Additional requirements on High and Medium High Impact firms

The Central Bank proposes to introduce the following additional requirements on High and Medium High Impact firms. The numerical references relate to those used throughout the requirements. High and Medium High Impact firms shall substitute these requirements for those contained above or, where there is no corresponding requirement above, they shall insert the requirements in the appropriate numerical location.

#### 6. Composition of the Board

- 6.1 A firm shall ensure that its board is of sufficient size and expertise to oversee adequately the operations of the firm, and in any event shall ensure that its board is comprised of a minimum of five directors. In particular, the board shall comprise sufficient representation by executive directors to ensure that it is not dominated by one individual executive;
- 6.2 A firm shall ensure that the board is comprised of a majority of independent non-executive directors. By way of exception from this general requirement, in the case of firms that are subsidiaries of groups, the majority of the board may be composed of a combination of group directors and independent non-executive directors, provided that in all cases the subsidiary shall have at least two independent non-executive directors or such greater number as is required by the Central Bank. Group directors shall act critically and independently so as to exercise objective and independent judgement.

## **12. Appointments**

- 12.6 A firm shall ensure that the board formally reviews its overall performance and the performance of individual directors, relative to the board's objectives, at least annually, and documents all such reviews. The firm shall ensure that an evaluation by an external evaluator is undertaken every three years and that the evaluation is provided to the Central Bank. Where the external evaluation is critical of the performance of the board, the Central Bank reserves the right to increase the frequency of subsequent evaluations until acceptable performance is noted.
- 12.9 A firm shall ensure that the board puts in place a formal skills matrix to ensure that there is an appropriate skills mix across members of the board, and that potential new board members are assessed by the nomination committee against the skills matrix during the appointment process.

## **17. Committees of the Board**

- 17.1 A firm shall ensure that subject to paragraph 17.2 below and the following exception in relation to firms which are part of a group, a firm that is High Impact or Medium High Impact shall ensure that the board establishes audit, risk, remuneration and nomination committees. Where a firm is part of a wider group, where remuneration and nomination committees exist, it may decide to utilise the group's committees and not to establish separate remuneration and nomination committees. In those circumstances, the firm shall promptly inform the Central Bank of this decision. Notwithstanding any decision by the firm to utilise the group's remuneration and nomination committees, the Central Bank retains the discretion to require the firm to establish its own remuneration and nomination committees. The firm shall ensure that no single individual holds the positions of chairman of the audit committee and chairman of the risk

committee simultaneously. The firm shall ensure that the board retains responsibility for the oversight of each of its committees.

[www.centralbank.ie](http://www.centralbank.ie)    [CP94@centralbank.ie](mailto:CP94@centralbank.ie)



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