



Central Bank of Ireland Investment Firm Corporate Governance

November 2018

The Central Bank of Ireland (the “Central Bank”) has published its Corporate Governance Requirements for Investment Firms and Market Operators 2018 (the “Requirements”) ([click here](#)). The publication of the final Requirements follows the Central Bank’s publication of CP120: Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators (“CP120”) in May of this year ([see Walkers advisory on CP120](#)). The Requirements largely track the CP120 proposals, with one material change in relation to the composition of the audit committee.

A summary of key provisions and changes from the CP120 proposals is set out below.

Application Date

The Requirements will apply from 1 July 2019. Existing investment firms should consider whether their governance arrangements are in compliance while entities seeking authorisation should ensure their application includes proposals that will meet with the Requirements.

In-scope entities

The Requirements apply to MiFID authorised investment firms or market operators and non-retail investment intermediaries authorised under the Investment Intermediaries Act 1995 which have a PRISM impact rating of High, Medium High or Medium Low (“In-Scope Firms”). While firms with Low PRISM ratings are not required to adhere to the Requirements, the Central Bank encourages such firms to do so.

Interpretation

The Requirements are to be read in conjunction with:

- » the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017) ([click here](#));
- » the delegated acts issued under MiFID II;
- » the ESMA Guidelines on the management body of market operators and data reporting services providers ([click here](#)); and
- » the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID II ([click here](#)).

Key Provisions

The Board and Chairman

The Requirements state that the board of directors of an In-Scope Firm must be composed of a majority of independent non-executive directors (“INEDs”). An exemption to this requirement applies for In-Scope Firms which are subsidiaries of a group (a “Subsidiary”), with varying INED and group director requirements depending on the Subsidiary’s PRISM Impact rating.

The Requirements set out detailed standards for determining the independence of an INED.

The chairman of the board must be of sufficient expertise, qualifications and experience and must be an INED. There is an exemption for Subsidiaries whereby the chairman can be a group director.



In-Scope Firms must prepare written terms of reference for the board and each board committee addressing various items specified in the Requirements, and a documented review of the continuing suitability of the terms of reference must be undertaken annually.

Board Committees

In-Scope Firms must establish audit and risk committees. High PRISM rated In-Scope Firms must also establish a remuneration committee.

For Medium High and High PRISM rated In-Scope Firms, the audit committee must be composed of non-executive directors (“NEDs”) and INEDs, with a majority of INEDs. For Medium Low rated In-Scope Firms, the audit committee can be composed of NEDs, provided that there is at least one INED. For all In-Scope Firms, the audit committee must be chaired by an INED, and neither the chairman of the board or the chief executive may be committee members.

The risk committee must be composed of a majority of NEDs or INEDs and must be chaired by a NED or INED.

Exceptions to the above rules on committees exist for Medium Low and Medium High PRISM rated Subsidiaries which can use group committees. High PRISM rated Subsidiaries may utilise group remuneration committees.

Where the board comprises five or less members, the entire board including the chairman and the chief executive may comprise the audit and/or risk committee, provided that committee meetings are separately minuted and that written approval has been obtained from the Central Bank.

Changes from CP120

The Requirements implement the provisions of CP120 with one material change regarding the composition of the audit committee. Under the Requirements, the audit committee of Medium High and High PRISM rated firms must be composed of a majority of INEDs while, in keeping with CP120, audit committees of Medium Low PRISM rated firms may be composed of NEDs, including one INED.

Next Steps

Once the Requirements take effect existing firms must comply with their provisions or risk administrative sanctions from the Central Bank.

The proposed corporate governance arrangements of any entities seeking authorisation as an investment firm will have to comply with the Requirements.

Businesses currently seeking authorisation - including as part of Brexit planning - should review their proposed corporate governance arrangements in light of the publication of the Requirements. Such applicants should note the material amendments to the audit committee requirements between the Requirements and CP120, particularly if such corporate governance arrangements were designed with reference to CP120.

Contacts

If you have any queries on the above or would like to discuss in more detail please do not hesitate to contact us or your regular Walkers contact.



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