

**ADVISORY**
Industry Information

Central Bank publishes CP120, Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators

June 2018

Introduction

On 10 May 2018 the Central Bank of Ireland (the “Central Bank”) published [CP120: Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators](#) (“CP120”). CP120 sets out draft corporate governance provisions (the “Revised Requirements”) and seeks stakeholder feedback; subject to which the provisions may be modified. The submission deadline for responses is 31 July 2018.

CP120 refines the provisions set out in the Central Bank’s previous consultation paper on this topic, [CP94](#) with regard to both responses received to CP94 and to various equivalent provisions of [the European Union \(Markets in Financial Instruments\) Regulations 2017 \(S.I. No. 375 of 2017\)](#), the delegated acts issued under MiFID II 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](#) (together, the “MiFID II Regime”). CP120 is to be read in conjunction with the MiFID II Regime.

As a general comment, CP120 sharply reduces the level of requirements that had previously been proposed under CP94.

In-scope entities

The Revised 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. While firms with Low PRISM ratings are not required to adhere to the Revised Requirements, the Central Bank encourages such firms to do so.

Application Date

The Revised Requirements are scheduled to apply from 1 July 2019.

Key Provisions

- » CP120 sets out detailed standards for determining director independence.
- » The Revised Requirements address board composition, the chairman and board committees; specifically audit, risk and remuneration committees.



- » The board of an in-scope investment firm must be composed of a majority of independent non-executive directors (“INEDs”). An exemption to this requirement applies for firms which are subsidiaries of a group (“Subsidiaries”), and the concessions vary according to a firm’s PRISM rating.
- » 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.
- » Firms must establish audit and risk committees though, again, there is an exemption for Medium PRISM rated Subsidiaries which can use group committees. Firms with a High PRISM rating must establish a remuneration committee though Subsidiaries may utilise group committees.
- » Firms must prepare written terms of reference for the board and each committee addressing specified items, and a documented review of the continuing suitability of these terms of reference must be undertaken annually.

Next Steps

Once the Revised 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 Revised Requirements, so any Brexit migrant investment firms should have regard to the Revised Requirements when considering corporate governance structure.

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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