

Diversity Reporting Obligations for Listed Fund Companies

Listed Funds which are constituted as companies are obliged to comply with diversity reporting obligations for financial years beginning on or after 1 August 2017.

Funds (whether constituted as companies or not) are not in scope of the non-financial reporting obligations (assuming they will not have an average number of employees exceeding 500).

Diversity Reporting Obligations for Listed Fund Companies

Listed Funds which are constituted as Part 24 companies or UCITS companies and which have shares admitted to trading on a “regulated market” of any EEA Member State (in Ireland, this is the Main Securities Market of The Irish Stock Exchange, trading as Euronext Dublin) must comply with diversity reporting obligations for financial years beginning on or after 1 August 2017. These listed fund companies will have to include information on their diversity policies in the corporate governance statement section of the directors’ report or include an explanation as to why there is no such policy.

The requirements arise under S.I. No. 360/2017 - European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017. www.irishstatutebook.ie/eli/2017/si/360/made/en/print as amended by SI 410 of 2018 <https://dbei.gov.ie/en/Legislation/Legislation-Files/SI-No-410-of-2018.pdf>

The diversity report must include:

- a description of the diversity policy applied in relation to the company’s board of directors with regard to aspects such as age, gender or educational and professional backgrounds
- the objective of that diversity policy
- how that diversity policy has been implemented by the company
- the results of that policy in the financial year.

Listed fund companies may opt not to apply any such diversity policy and in that event must include an explanation as to why there is no policy in their corporate governance statement.

The statutory auditors must opine on whether, in their opinion (based on the work undertaken in the course of the audit), the requisite information on the diversity report is contained in the company’s corporate governance statement.

Central Bank focus on diversity

The Central Bank of Ireland (Central Bank) has delivered a number of speeches which highlight an increasing focus on diversity. These include remarks on [The Supervision of Conduct in the Funds Market –by Colm Kincaid, Central Bank Director of Securities and Markets Supervision](#) who spoke at a recent Asset Management and Investment Funds Group Seminar hosted by A&L Goodbody. Mr Kincaid noted:

“As I have said in previous remarks, diversity of gender, experience and background has an important role to play in ensuring good governance and sound decision-making within management bodies. It acts as an essential safeguard against the emergence of groupthink and harmful industry practices. We expect firms to take steps to ensure they are sufficiently diverse and inclusive and to improve on their current position.”

A recent speech on Culture, diversity and the way forward by Central Bank Deputy Governor Ed Sibley is also noteworthy. Deputy Governor Sibley noted:

“Low levels of diversity in key decision-making roles in banks and other financial services firms creates excessive risks and will inhibit necessary cultural change. While some firms are starting to make progress, much more needs to be done to increase the diversity of experience, thought, background and attributes at senior levels, to reduce the likelihood of groupthink, reduce overconfidence, improve decision-making, increase the level of internal challenge, improve risk management, and reduce excessive resistance to external challenge.”

Diversity Policy- Some Factors for Consideration by the Board.

Listed Fund companies will have many elements to balance when considering a diversity policy in relation to the company's board of directors. These will include Central Bank policy indicators and may also include:

- The company's many regulatory obligations, such as:
 - » the obligation to have 2 directors resident in the State
 - » the obligation to comply with the Central Bank of Ireland's Fitness and Probity Regime
- The company's existing arrangements with current directors
- The board's duty to act in the best interests of investors (subject to regulatory overlay). The duty to act in the best interests of investors encompasses keeping costs to a minimum
- The nature, scale and complexity of the business
- Market sentiment, which may favour the capture of a diverse range of perspectives, insights and challenge on a board, so as to support good decision making.

A board may wish to ensure that its membership reflects diversity in its broadest sense. It may wish to capture a combination of demographics, skills, experience, race, age, gender, educational and professional background and other relevant personal attributes so as to provide a diverse range of perspectives, insights and challenge which will support good decision making.

However a board may not find it appropriate to set specific targets with regard to issues such as age, gender or educational and professional backgrounds, given the nature scale and complexity of the company.

A board may also choose to resolve that new appointments to the board should be made on merit, taking account of the specific skills and experience, independence and knowledge needed to ensure a rounded board and the diversity benefits each candidate would bring to the overall board composition.

For more information in relation to this topic please contact a member of the Asset Management & Investment Funds team.

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