

19.9.16

ISE Response to Department of Finance Consultation on MiFID II National Discretions

The Irish Stock Exchange (ISE) welcomes the opportunity to comment on the national discretions in the Markets in Financial Instruments Directive (“MiFID II) incorporating elements of the Insurance Distribution Directive (“IDD”).

By way of background, the ISE is authorised under MiFID to operate the regulated market (Main Securities Market) in Ireland on which equity securities, government bonds, collective investment undertakings and debt securities are admitted. In addition, it is authorised to operate three multilateral trading facilities, the Enterprise Securities Market, the Atlantic Securities Market and the Global Exchange Market. At the end of August 2016, the ISE had 54 quoted equities admitted to trading on its markets, 32 government bonds/treasury bills, 1,861 funds and sub-funds, as well as over 28,000 debt security tranches listed.

We have only responded to the questions that are relevant to us.

NATIONAL DISCRETIONS

Art 3(1) Optional Exemptions

Q. 1

A – Yes, the ISE agrees the discretions provided for in Art 3 (1)(a)-(c) should be exercised.

Art 3(2) Optional Exemptions and Investor Compensation Scheme

Q. 2 – The ISE supports an approach that maintains the status quo and provides eligible investors with a consistent, pan-European compensation scheme. We believe this is a preferable approach to the alternative for a firm to choose professional indemnity insurance which may only provide cover in a more limited set of circumstances, thereby resulting in potentially less investor protection.

Art 28(2) Client Order Handling Rules

Q. 4 – Yes, the ISE agrees with the proposal to continue to exercise this discretion i.e. an investment firm is deemed to have complied with this provision where it transmits a client limit order to a trading venue. This continues with the established process under MiFID I, which supports the transparency of client orders and the price formation process.

Art 46(4)[MiFIR] Third Country Firms and National Regimes

The ISE believes the approach taken should be to ensure there is the possibility for 3rd country firms to be allowed carry out the relevant activities in Ireland under the national regime should there be no equivalence decision from the European Commission.

Art 48(9) Higher Fees applying to Cancelled Orders

Q. 6 – Yes, we agree this discretion should be taken up in order to provide regulated markets with the flexibility to impose higher fees for cancelled orders should they wish to do so. However, it should be made clear that they are in no way mandated to do so and it is at the discretion of the market operator.

Art 67(1) Designation of National Competent Authorities

Q.7 – Yes, we agree the Central Bank should be designated as the National Competent Authority in Ireland for MiFID II and the transposing Regulations.

Q. 9 Other points to note

Art 45 Requirements for the management body of a market operator

We believe the transposition of this Article should just follow the Level 1 EU text with no more additional text, given ESMA is empowered to publish guidelines which will provide more granular detail.

Regarding the discretion given to national competent authorities to authorise members of a management body to hold one additional non-executive directorship (Art 45 (2) (a)(para 4)), we believe this should be allowed.

Regarding the nomination committee requirements to assess the management body (Art 45 (4) (b)&(c)), we believe these assessments should not be required to be done any more frequently than annually.

Given the CBI has been undertaking additional work in this area (with its recent consultation on a Corporate Governance Code applicable to MiFID-regulated firms, which we note will be introduced on a statutory basis, subject to the transposition of MiFID II), we would hope that any finalised Irish requirements will be aligned with the EU requirements so that entities will not have to be subject to two different corporate governance regimes which in our view would be inappropriate.