GLASS LEWIS

June 14, 2024

To: Euronext

Re: Consultation Paper – 24-01; Consultation on the launch of the Irish Corporate Governance Code

Glass, Lewis & Co. (Glass Lewis) appreciates the opportunity to comment on the latest consultation regarding the launch of the Irish Corporate Governance Code ("Irish Code").

The responses provided below are not meant to be exhaustive but are intended to address what Glass Lewis sees as the main issues and concerns raised in the Consultation Paper, or where Glass Lewis' expertise may be of particular relevance. Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

About Glass Lewis

Glass Lewis is the leading global provider of research and corporate governance solutions with a client base of more than 1,300 clients, including the majority of the world's largest pension plans, mutual funds and asset managers, who collectively manage more than $40 trillion in assets. Glass Lewis empowers institutional investors to make sound voting decisions at more than 30,000 meetings each year by analysing and assessing corporate governance and material environmental and social risks at public companies domiciled in approximately 100 global markets. We provide comprehensive research for all listed companies held in our clients' portfolios. More information available at www.glasslewis.com.

Glass Lewis is submitting this comment as an interested industry advisor and not on behalf of any of its clients.

Glass Lewis' Views on the Proposal

While Euronext outlines that Ireland is one of only two jurisdictions in the 49 surveyed by the OECD in 2022 (including all OECD, G20 and Financial Stability Board members) which does not have its own national corporate governance code, we do not believe that this has been problematic thus far, particularly given the proximity to the UK, the Irish market's standard of reporting against the UK Code, and the generally high standard of corporate governance at Irish-listed companies. Nonetheless, we acknowledge the rationale for the adoption of a local code, particularly noting evolving regulatory developments in the European Union.

Furthermore, we welcome the additional flexibility which would be afforded through the adoption of an Irish code. The UK market's reputation is generally viewed as 'best in class' for corporate governance and acts as a key differentiator relative to other standards; as such, we are supportive of the decision to select the UK Code as a starting point for building an Irish national corporate governance code.

Below, we have outlined our stance on certain proposed departures from the UK Code in more detail. Our comments are limited to the consultation questions on which we believe that our expertise and unique position in the proxy voting chain is additive to the discussion.

Question 1. Are there any specific principles/provisions of the Irish Code which diverge from the UK Code which you think are not appropriate/should be revised. If yes, please give further detail.

Provision 4 – Shareholder Dissent

Key Divergences:

- *Raising the threshold for addressing shareholder dissent from 20% to 25% of votes cast against a board recommendation*
- *Removal of recommendation for publication of 6-month update on shareholder discussions and proposed actions*

In Glass Lewis' opinion, the proposal to raise the threshold level for the purposes of reporting against shareholder dissent has not been sufficiently rationalised.

In accordance with our EMEA policies, we believe that, when 20% or more of shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate some level of responsiveness to address the shareholder concerns. These include instances when 20% or more of shareholders: (i) abstain from (or vote against) a director nominee; (ii) vote against a management sponsored proposal; or (iii) vote for a shareholder proposal when the board has not recommended doing so.

In our view, a 20% threshold, as adopted by the Investment Association in the UK and other investor bodies, is significant enough to warrant a close examination of the underlying issues and an evaluation of whether or not a board response was warranted and, if so, whether the board responded appropriately following the vote. We believe that raising this threshold could lead to legitimate concerns from a significant minority of shareholders (between 20% and 25%) not being given due consideration.

While we acknowledge that a recommendation to provide a 6-month update may encourage companies to engage early and often, from our experience, UK-listed companies' publications tend to contain relatively boilerplate disclosure acknowledging the dissent and a commitment to engage, and rarely detail the specific concerns raised by shareholders. As such, we do not believe the removal of this recommendation would be detrimental to shareholders. However, in lieu of this update, we would encourage a recommendation for companies to provide enhanced disclosure surrounding the engagement process undertaken in the next relevant annual reporting at the latest. This would promote accountability and act as an incentive for boards to engage with shareholders on dissent in a timely manner.

Provision 5 – Workforce Engagement

Key Divergence:

- *Removal of prescribed method of engagement with workforce (e.g. director appointed from workforce, workforce advisory panel, designated non-executive NED)*

A prescribed workforce engagement mechanism was introduced to the UK Code in its 2018 iteration to "enhance the public's trust in business" and promote broader stakeholder engagement and good corporate culture. We believe the underlying motive for the provision is applicable to all markets, and not unique to the UK. We acknowledge that outlining specific methods of engagement with the workforce in

the Code may be overly prescriptive for certain companies; however, we do not believe the full exclusion of this provision serves the best interests of shareholders.

Rather, we believe that shareholders would benefit from boards providing a clear description of the engagement process that took place during the year, particularly as it relates to the wider workforce. We note that, outside the prescribed workforce engagement mechanisms, the UK Code calls for an explanation of any alternative arrangements and their efficacy.

Provision 10 – Independence Criteria

Key Divergences:

- *Criteria which is likely to impair a directors' independence changed from being an employee of the company within the last 5 years to within the last 3 years*
- *Inclusion of the "factors the board took into account in making its determination" on a non-executive director's independence*

In our view, a five-year look-back is appropriate, as we believe it allows enough time for any conflicting relationships between former management and directors to be fully resolved, with limited exceptions (e.g. interim positions for less than a year). In contrast, Glass Lewis may consider the look-back period irrelevant when a former executive has significant ongoing ties to the company. For example, executives' long-term incentive plans generally extend over five-years, which better aligns with a five-year cool-off period.

We are, however, supportive of the recommendation that Companies outline the "factors the board took into account in making its determination" on a non-executive director's independence, which we believe will encourage enhanced transparency and accountability.

Provision 15 – External Commitments

Key Divergence:

- *Removal of requirement for full time directors not to take on more than one non-executive directorship in a FTSE 100 company*

While we acknowledge that the reference to FTSE 100 companies is UK-specific, we believe that it would be beneficial to maintain an expectation for executive directors not to take on "more than one other significant non-executive appointment", particularly given the expanding remit of non-executive directors at public companies, including in relation to cybersecurity and broader ESG issues. This could be supplemented with a footnote providing a definition relevant to the Irish context, perhaps through a market capitalization threshold, or a clarification that this could apply to an appointment at a "FTSE 100 company or equivalent".

Provisions 21 & 22 – Board Evaluation and Succession Planning

Key Divergences:

- *Replacement of reference to "FTSE 350 companies" with "companies with a market capitalisation in excess of €1 billion" in the recommendation for an external board review every 3 years*
- *New paragraph on description of skills as part of the succession planning*

Glass Lewis strongly supports routine director evaluation, including independent external review. With regard to Provision 21, we find the market capitalisation threshold of €1 billion reasonable for requiring an externally facilitated board review to be conducted at least every three years.

Further, we believe the board should evaluate the need for changes to board composition based on an analysis of skills and experience necessary for the company, as well as the results of the director evaluations. Therefore, we welcome the strengthening of the language around the outcomes of evaluation and board skills in Provision 22, as we believe it reinforces board accountability to implement changes in response to evaluation findings.

Provision 24 – Audit Committee Composition

Key Divergences:

- *Audit committees recommended to have a majority of, rather than all, independent non-executive directors*
- *At least one member of the audit committee should have "competence in accounting or auditing" rather than "recent and relevant financial experience"*
- *Removal of the reference to smaller companies having a minimum membership of 2 independent non-executive directors on their audit committees (should be 3 irrespective of size)*

In this case, we question the absence of a compelling rationale for a transition to majority-independent audit committees, especially considering that most Irish companies have historically succeeded in maintaining audit committees entirely composed of independent members. While we recognise majority independence of the audit committee is a common expectation in continental Europe, we believe the UK standard (as also reflected in other markets such as the US) reflects the gold standard in this regard. We believe that the area of financial disclosure is critical to shareholders and that any potential conflict between a director's own interests and those of shareholders should be strictly monitored for board members who oversee accounting and disclosure issues. It is perhaps an oddity of the proposed code that, as currently envisaged, the audit committee would not be expected to be independent, but the remuneration committee would.

At a minimum, we believe the proposed provision should call for solely non-executive directors to sit on the committee, as the presence of an executive director reflects, in our view, a considerable conflict of interest.

As such, and absent a cogent rationale for the amendment to audit committee independence thresholds – which has, in our experience, been broadly adopted by listed Irish companies – we believe that the Irish market would benefit from maintaining the recommendation that an audit committee consist of all independent non-executive directors.

Given the key role of audit committees, we believe that raising the minimum number of members to three could be beneficial for smaller companies. Having a broader range of perspectives could result in more balanced and well-rounded decision-making.

We believe the introduction of an explicit reference to "competence in accounting or auditing" represents a positive addition.

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Provision 32 – Remuneration Committee Composition

Key Divergence:

- *Removal of the reference to smaller companies having a minimum membership of 2 independent non-executive directors on their remuneration committees (should be 3 irrespective of size)*

Given the key role of remuneration committees, we believe that raising the minimum number of members to three could be beneficial for smaller companies. Having a broader range of perspectives could result in more balanced and well-rounded decision-making.

Provision 36 – Long-term Incentive Vesting Schedule

Key Divergence:

- *Vesting and holding period reduced from 5 years to 3 years*

Glass Lewis believes that the majority of the incentive opportunity should generally be subject to a performance period of at least three years. In the UK market, we generally expect awards to be subject to an extended vesting/holding period whereby awards are only released at least five years after they were granted or that at least a portion of vested awards be held for an additional period after vesting. In continental Europe, we encourage additional vesting periods; however, recognise they are not necessarily market practice.

We believe an extended holding period may enhance further alignment with shareholders, as well as to strengthen the committee's ability to operate recovery provisions should the need arise.

Additionally, we question whether this may have an adverse impact on the length of performance periods which companies adopt. For example, should the total expected vesting and holding period be reduced to three, companies may choose to reduce the length of performance period with a maximised holding period offsetting the ultimate goal of long-term pay for performance alignment.

As such, and absent a cogent rationale for the removal of such a requirement – which has, in our experience, been broadly adopted by listed Irish companies – we believe that the Irish market would benefit from maintaining the reference to a total vesting and holding period of five years or more.

Provisions 37 & 38 – Clawback and Malus

Key Divergence:

- *Decision not to adopt the UK Code's new Provision 38, which is more prescriptive as to the nature of the description of clawback and malus in annual reports.*

Glass Lewis supports the inclusion of a detailed description of clawback and malus provisions in annual reports. We believe that outlining the circumstances in which clawback and malus can be used provides stakeholders with crucial ex-ante information to be able to assess if a board should have attempted to apply either following a material event. We note that it is currently common practice for listed Irish companies to provide, at least, high-level detail of the triggers of recovery provisions.

Further, we believe that including information on whether the provisions have been utilised and their accompanying explanations benefit shareholders more generally when assessing the appropriateness of

outcomes. Indeed, understanding the committee's decision-making during the year is a critical element of shareholders' evaluation of the remuneration committee.

Therefore, we suggest that the same expectations, or at least an approximation of the same, be applied to the Irish Code.

Provision 39 – Pensions

Key Divergence:

- *Exclusion of the UK Code provision regarding pensions*

We are opposed to the wholesale removal of the provision regarding pension, which provides important guidance to companies. Full and clear disclosure of pension contributions has been an expectation of UK and Irish governance since the 1992 Cadbury Code.

Glass Lewis believes that executive pension contributions should be calculated as a percentage of base salary only and aligned with the wider workforce.

In accordance with the Investment Association's guidelines, we believe that aligning executive pensions with those of the broader workforce promotes fairness and can enhance employee relations.

Further, we are concerned that failure to specify that only basic salary should be pensionable could result in excessive contributions, or in pension-related payments being used as a means for increasing total remuneration, which Glass Lewis strongly opposes.

Question 3. Are there any other issues which you feel should be addressed in the Irish Code?

We suggest that the panel consider including a requirement for additional disclosure regarding external commitments under Provision 15, as originally envisioned in the Financial Reporting Council's consultation document for the revised UK Corporate Governance Code. Specifically, the proposed phrasing was: "*All significant director appointments should be listed in the annual report, describing how each director has sufficient time to undertake their role effectively in light of commitments to other organisations. This should describe any actions taken as a result of this assessment.*"

Glass Lewis believes that directors should have the necessary time to fulfil their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. As such, we would support enhanced disclosure in this area.

Question 4. Are you supportive of issuers dual listed on Euronext Dublin and in the UK having a choice as to whether to apply the Irish Code or the UK Code?

We acknowledge that companies that have a primary listing on Euronext Dublin will be subject to the Irish Code and that companies with a premium listing on the London Stock Exchange ("LSE") will continue to be required to report against the UK Corporate Governance Code. As such, the option to either follow the Irish Code or the UK Code would be available for a limited cohort of companies with a primary listing on the standard or specialist fund segments of the LSE, which are typically smaller firms or investment funds.

As such, from a reporting burden standpoint, we believe these companies may benefit from the flexibility to adopt the code that best aligns best with their operations and shareholder base.

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Glass Lewis is available to answer any questions regarding the comments provided above.

Additionally, Glass Lewis raises no objection to these comments being published on the Euronext website.

Respectfully submitted,

/s/
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/s/
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