

18 October 2024

**European Securities and Markets Authority**  
**201-203 rue de Bercy**  
**CS 80910 75589**  
**Paris Cedex 12**  
**France**

By electronic submission

**European Securities and Markets Authority Consultation Paper on the Supervisory expectations for the management body (ESMA84-2037069784-2168) (“Consultation”)**

MSCI<sup>1</sup> welcomes the opportunity to comment on the Consultation. It offers a constructive approach to ESMA’s expectations for management bodies.

Below we set out our main observations on the Consultation and in the attached Annex we offer more detailed comments.

1. **Considering the governance structure in global organisations:** We fully support the application of supervisory expectations which consider global organisations where certain functions may be performed at the global entity level, thus benefitting the affiliated entity by leveraging robust group-wide infrastructure rather than duplicating such infrastructure at an entity level. In this regard, we support exemptions for small supervised entities where the number of dedicated staff in the entity is below a certain threshold.
2. **Taking due account of applicable national corporate laws:** The approach to the role and existence of a Chair presupposes that the management body should be comprised of several members. This is not a requirement under some national corporate laws where a sole directorship is sufficient. In addition, the statement that *‘the chair is typically non-executive in nature’* suggests the desired presence of Independent Non-Executive Directors (INED) on a Board of Directors. In some jurisdictions, such as Germany, national corporate laws do not require more than a sole director. Stating that the Chair is typically a non-executive director implies that a board of directors should comprise at least three members with two executive directors in addition to the non-executive director. It would be disproportionate to set-up a board of directors with three members for a small entity that employs a limited number of staff and is part of a global group.
3. **Allowing for free exchange of views and opinions amongst the management body members:** While we acknowledge that a *‘comprehensive, accurate, impartial and*

---

<sup>1</sup> MSCI is a leading provider of indexes; analytics; and environmental, social, and governance (‘ESG’) data and ratings to the global investment community. MSCI ESG Ratings, research and data are produced by MSCI ESG Research LLC. MSCI Limited is an authorised benchmark administrator in the UK. This submission incorporates views from both MSCI ESG Research LLC and MSCI Limited.

*balanced internal record'* should be maintained, we would not recommend that '*at a minimum, such records should capture the key points of discussion including key contributors and dissenting voices*', as it may deter a free exchange of views in the expression of different opinions, misrepresent the complexity and subtlety of interactions, and capture opinions expressed or revised at a point in time when they are being developed as part of the natural decision-making process. As noted by ESMA, what matters most is to capture '*any decisions made and their corresponding rationale and agreed actions*.'

4. **Proportionality of expectations with respect to board meetings:** While we acknowledge ESMA's concerns that pre-board meetings may '*result in an insufficient level of formality so that their discussions, follow-up actions and decisions are not recorded and tracked*', we do not concur that '*pre-board meetings should be recorded to a sufficient level to ensure that key discussions, decisions and follow-up actions are tracked and reported to the entire management body*'. Such a solution would be disproportionately burdensome and could have negative effect on productivity. A more proportionate solution would be for entities to define the agenda of the management body meetings with a reasonable and proportionate level of detail and record keeping.

Please do not hesitate to contact us to discuss our submission.

Yours sincerely,

/s

**Neil Acres**

**Managing Director**

**Global Head of Government & Regulatory Affairs**

## **Annex I**

**Q2: Do you agree with the proposed approach to proportional application? If not, please explain.**

We fully support a proportional application which would also consider that, in global organisations, certain functions may be performed at the global entity level, thus benefitting the affiliated entity by leveraging the overall infrastructure rather duplicating them at an entity level. In this regard, we support exemptions where dedicated staff of a supervised small entity is below a certain threshold.

**Q3: Do you agree with the expectations regarding the role and responsibility of the management body? If not, please explain.**

### ***The role of the management body***

The proposed approach to the role of the management body rests on a certain conception of a corporate structure that does not sufficiently consider the implications of a supervised affiliate entity of a small size operating within a global enterprise structure, where not all the staff would necessarily be located within the same jurisdiction. In this context, the strategy set by the management body of a supervised entity as well as its risk management policies are informed by the organization's global strategy and frameworks.

### ***Overseeing strategy setting and implementation***

We note that ESMA acknowledges that *'where the entity is a subsidiary of a group, the group's business strategy may to a large part determine the strategy of its subsidiary.'* The management body of the supervised entity should be informed of the overall strategy. We agree that it is the role of a management body to *'consider whether key strategic initiatives set by the group pose a risk to the entity meeting its regulatory obligations including towards stakeholders, as well as market integrity and financial stability.'* We also agree that *'the management body should also have the ability to escalate its concerns to the group board'* and suggest that this escalation could be equally to senior management and/or internal control functions.

### ***Overseeing risk***

Whilst we generally agree with ESMA's proposed approach, we would emphasise the need for the management body in a regulated entity, which forms part of a global organisation, to be able to be supported and informed by the dedicated risk management personnel at the global level.

### ***Tone from the top***

We fully adhere to the tone from the top concept. We consider that for a small size supervised entity belonging to a global group, it is important that the corporate culture flows down from the highest level and spreads across. This tone from the top is typically

channelled through the global Code of Conduct (as noted by ESMA), global townhalls including all staff members, as well as local townhalls with senior management when visiting the supervised entity. We believe that this is very impactful as same standards apply across all locations in a global structure. At a local level, the corporate culture is informed by the broader organization. Hence, the need for the statement '*the management body of the entity should agree on the corporate culture it intends to establish within its organisation*' to be understood in a holistic manner and as part of the global corporate culture with minimum standards at the enterprise level.

**Q4: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain.**

It is important that expectations set out in this section are adjusted to reflect how some of the regulated entities operate as part of global organisations. One way to do that would be an exemption for small entities, employing less than 50 employees, a solution already functioning in other areas (such as credit rating agencies regulation).

However, to address ESMA's expectations, a small size supervised entity belonging to a global group may implement processes to achieve a flow of information whereby the management body is informed of key topics and can escalate issues to relevant stakeholders. This flow of information may include reports provided by the Heads of the Internal Control Functions as well as any other relevant information such as the global strategy.

**Q5: Do you agree with the expectations regarding operation of the management body? If not, please explain.**

***The operation of the management body***

We adhere to the concept of '*independence of mind*' and agree that there should be a sufficient frequency of meetings, as determined by the supervised entity. We also support ESMA's statement that '*independence of mind*' does not require a non-executive director.

***Reporting and record keeping***

We support the approach of requiring the right balance in terms of the content and level of information provided in reporting. In general, each supervised entity should be permitted to define its content and frequency of reports, with some of the items listed being obligatory, such as reporting of Internal Control Functions. We also agree that internal control functions should have '*unfettered access*' to an entity's management body. While we acknowledge that a '*comprehensive, accurate, impartial and balanced internal record*' should be maintained, we would not recommend that '*at a minimum, such records should capture the key points of discussion including key contributors and dissenting voices*', as it may deter a free exchange of views in the expression of different opinions, misrepresent the complexity and subtlety of interactions, and capture opinions expressed or revised at a point in time when they are being developed as part of the natural decision-

making process. As noted by ESMA, what matters most in this reporting is to capture *'any decisions made and their corresponding rationale and agreed actions.'*

### **Committees and pre-board meetings**

While we acknowledge ESMA's concerns that pre-board meetings may *'result in an insufficient level of formality so that their discussions, follow-up actions and decisions are not recorded and tracked'*, we do not concur that *'pre-board meetings should be recorded to a sufficient level to ensure that key discussions, decisions and follow-up actions are tracked and reported to the entire management body'*. Such a solution would be disproportionately burdensome and could have negative effect on productivity. A more proportionate solution would be for entities to define the agenda of the management body meetings with a reasonable and proportionate level of detail and record keeping.

### **Q6: Do you agree with the expectations regarding the role of the chair? If not, please explain.**

The approach to the role and existence of a Chair presupposes that the management body should be comprised of several members. This is not a requirement under some national corporate laws where a sole directorship is sufficient. In addition, the statement that *'the chair is typically non-executive in nature'* suggests the desired presence of Independent Non-Executive Directors (INED) in a board of directors. In some jurisdictions, such as Germany, national corporate laws do not require more than a sole director. Stating that the Chair is typically a non-executive director implies that a board of directors should comprise at least three members with two executive directors in addition to the non-executive director. It would be disproportionate to set-up a board of directors with three members for an entity that employs a limited number of staff and is part of a global group.

### **Q7: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain.**

Yes, we expect that expectations set out in this section would be overly burdensome for the reasons explained in our responses to questions 5 and 6.

### **Q8: Do you agree with the expectations regarding the effectiveness and composition of the management body? If not, please explain.**

#### **Composition of the management body**

We support the statement that *'the composition of a management body must be proportional to the nature, scale and complexity of the entity it oversees.'*

We agree that the *'members of the management body should also have a sufficient understanding of the entity's activities, sectors and the risks such activities entail'* as well as *'the entity should, in accordance with the nature, scale and complexity of its business, put in*

*place a recruitment and diversity policy to ensure that a broad set of qualities and competences are considered when recruiting members of the management body. To that end, the entity should consider setting concrete objectives in terms of diversity.'* We support the idea that the objectives in terms of diversity should be defined and applied to the recruitment process. However, while we acknowledge that it is important to identify a diverse pool of candidates, it may be difficult to effectively appoint members of the management body from diverse backgrounds due to the lack of internal talent or the inability to attract diverse talent with relevant skills and experience. In response to the question about the appropriateness of an individual being simultaneously a member of the EU supervised entity and another entity, we consider that allowing this, consistent with conflicts of interest rules, would greatly expand the talent pool for supervised entities, including in particular smaller supervised entities. In addition, the individual would be able to compare implementation of the global strategy and evolution of risks across jurisdictions.

### ***Reviewing effectiveness***

We fully support the statement that *'the frequency of such reviews and their form should be proportional to the nature, scale and complexity of the entity.'*

### ***Training and recruitment***

While we support the approach that the management body should have the right skillset and recognise the benefits of training including an induction training, we also would like to underline the importance of applying a holistic approach in this area. We do not think that a formalistic *'skills matrix, in effect mapping the key business activities and risks the entity is exposed to against the collective skills of the management body'* is necessary or proportionate. Rather, it is the ability of a suitably senior management body to identify, understand and action issues and risks, especially in a fast-changing environment, which matters.

### **Q9: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain**

It is key that ESMA applies a proportional approach and takes into consideration the implications of a small size of supervised entity belonging to a global group that provides it with support.