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[Governance Challenges for the Boards of Investment Funds and Fund Managers: Evidence from Ireland]

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Governance Challenges for the Boards of Investment Funds and Fund Managers: Evidence from Ireland

Blanaid Clarke and Antonia Egli *

[The Survey set out in this working paper was presented by Prof. Clarke at the Institute of Bankers' Certified Investment Fund Director Programme Annual Seminar 2023 in September and some of the Paper's findings were presented by Prof. Clarke at the International Conference on Sustainability and Supply Chains in the Face of the Climate Crisis conference in University Carlos III in November.]

I. Introduction

This Report presents insight into the views and expectations of investment fund professionals, identifying current practices and key challenges to good governance of funds and fund managers in Ireland. It also suggests areas where further research or guidance might be beneficial.

The professionals in question, alumni of the Certified Investment Fund Director programme ("CIFD") run by the Institute of Bankers ("IOB"), responded to a survey ("the Survey") conducted in January – March 2023 by Professor Blanaid Clarke with the assistance of the IOB. The Survey collected the views and experiences of respondents of the role and composition of the boards of both "funds" and "fund managers". A "fund" was defined in the Survey as an undertaking for collective investment in transferable securities ("UCITS") or an externally managed alternative investment fund ("AIF") established as an Irish Collective Asset-Management Vehicle ("ICAV") or an investment company. The term "fund manager" was defined as: a UCITS management company; an alternative investment fund manager ("AIFM"); or a self-managed UCITS or a self-managed AIF authorised in Ireland as an AIFM or

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UCITS management company. The experience of respondents stemmed largely from: directorships of Irish registered funds (62%); directorships, senior management roles or employment in "investment managers" (35%); directorships in Irish authorized fund managers (29%); and directorships or employment in a fund administration company (24%). The latter term was used to describe an asset management company authorised or registered for the purpose of portfolio management (where this is outsourced) and subject to prudential supervision in the relevant jurisdiction. Several respondents had experience as a director of a non-Irish registered fund (16%), a Designated Person (PCF39A-39F) (16%) and a Director of Organisational Effectiveness in an Irish authorized fund manager (11%). Finally, a few (under 10%) had experience in risk management, depositary services or legal services.

Although the funds examined constitute corporate structures, fund governance differs from corporate governance in a number of significant ways:

- In order to protect investors and financial markets, the funds sector, including fund governance, is a highly regulated sector both at a domestic and EU level.
- A fund is both a legal entity and a financial product. Investors might be considered thus as both customers of the investment manager and shareholders of the fund (Roiter, 2016).
- Most funds provide investors with redemption rights entitling them to withdraw their capital under certain conditions.
- Fund governance involves a unique organisational structure based on "the separation of funds and managers" (Morley, 2014). Formally, the fund outsources to a fund manager which appoints an investment manager. In practice, an investment manager establishes a fund with a view to drawing in investors who are attracted to its particular investment strategy and deriving an income from the fees it charges. Funds may not have executive managers or employees and the investment manager is responsible for choosing fund directors and appointing the fund manager. This intertwined relationship structure often leads to the appointment of fund directors who are employees or directors of the investment manager or the fund manager and who may be on the board of a number of funds managed within the same group.

- Fund governance is vulnerable to significant potential conflicts of interest which need to be managed. While investors, funds, fund managers and investment companies possess a common interest in the fund's success, their interests are not always parallel. Investors for example benefit from keeping the performance fees imposed by fund managers and investment managers low, whereas this reduces these managers' incomes. Similarly, third party fund managers have an incentive to retain good relations with the investment management community and this may affect their ability to objectively monitor the performance of the investment manager and to take remedial action if needed.
- A mismatch thus has been identified between regulatory expectations and principal–agent problems with regulators expecting fund managers to behave as 'principals' acting on behalf of funds appointing and overseeing the investment manager as 'agents' whereas in reality fund managers are service providers to investment managers (Barker and Chiu, 2022). To complicate matters, a director of a fund manager is subject both to a duty under AIFM or UCITS regulations to act in the interests of the fund and its investors and also a duty under the Companies Act 2014 to act in the best interests of the fund manager itself. These conflicts place greater importance on the appointment of an effective independent non-executive director ("INED") as a counter-balance.
- While boards typically delegate tasks internally, external delegation is part of the business model in the funds sector. A large number of Irish funds delegate management to a third-party management company while many others use a related entity. In both cases, the management company outsources the day-to-day operational activities to a delegated service provider including an administrator, distributor, risk manager and investment manager. This leads, as discussed further below to the existence of two boards with, often overlapping, oversight functions.
- Market discipline exists but engagement by fund investors typically differ significantly from shareholder activism.

The Survey sought to explore the implications of these unique structures and systems of fund governance, paying particular attention to the role of the boards of the fund and the

fund manager and their composition. The expectations of the regulators are high in the context of a growing awareness of the systemic importance of funds, and the Survey serves a useful function in measuring current practices or perspectives against best practice, identifying areas where guidance or change is needed and anticipating some of the challenges boards will face in this context.

II. Summary of Survey Findings

Below is a summary of the Survey's findings.

• A total of 75.6% of respondents (see Figure 1) agreed or strongly agreed with the statement: "The **purpose of a fund** is simply to invest its capital in accordance with the particular investment programme directed by its promotor/investment manager and set out in its prospectus." There seemed to be no question for the majority of adopting a more stakeholder-oriented purpose unless this was consistent with the prospectus. Only a minority of respondents (see Figure 2) considered that the boards of the fund and fund manager, the investment company and the investors (through the exercise of proxy voting) had "substantial" or "complete" flexibility to re-interpret the fund's purpose in a manner not specifically provided for the fund's current strategy, constitution or product terms. The entity considered to possess the greatest flexibility was the fund board, with 40% agreeing that it had "substantial" or "complete" flexibility in this regard. However, a majority felt that each of the entities have at least "a little flexibility" with investors (53.3%) and fund boards (31.1%) scoring most highly. While the purpose and values of the fund are discussed at least at some meetings of the fund board in the experience of 84.4% of respondents (compared to 77.8% at the fund manager's board) (see Figure 4), there was not a strong perception that the fund board played a leadership role in relation to purpose, value and culture and its function appears more likely to be viewed as an oversight task (see Figure 3). The Survey results reveal a perhaps understandable perception that the purpose of the fund has largely been determined at the time of its establishment and that there is little room to deviate after that. However, there is a clear lack of consensus as to whether any flexibility exists, suggesting that this is an area in which more guidance would be beneficial.

• The five most important **attributes of a director** of a fund or fund manager (see Figure 5) were: “the qualifications and expertise necessary to perform the functions of a director” followed by: “integrity”; “behavioural skills including courage, critical thinking skills and independence of mind”; “experience in the funds sector (including with service providers)”; “the absence of conflicts of interest”; “a strong ethical sense”; and “sufficient time to perform the functions of a director”. The next tier included: “accreditations from recognized bodies, e.g., Chartered Director (CDir), Certified Investment Fund Director (CIFD)”; “experience as a director on any board”; “good reputation; “financial soundness”; “cultural leadership skills”; and “demonstrable commitment to ongoing education”. At the end of the list of attributes was: “gender (improving the board’s gender diversity balance)”; “frequency of physical attendance at meetings”; and “place of residence”. Notably, “ethnicity (improving the board’s ethnic diversity balance)” and “nationality (improving the board’s geographic diversity balance)” did not fall within any respondent’s top attributes.

• On the topic of **gender diversity** on boards of funds and fund managers (see Figure 7), 60% of respondents supported a voluntary target with only 8.9% approving the introduction of a mandatory quota. In relation to the former, 26.7% favoured a target set by the company itself, 20% favoured a voluntary target set by the Regulator and 13.3% favoured a target set by an industry body.

• An **understanding of risk management** is an essential skill on a board. Asked to confirm whether all directors are expected to have “a reasonable understanding of” specified risks, 86.7% of respondents agreed in respect of portfolio composition risk, 82.2% for Environmental Social and Governance risk, 80% for cyber risk and 60% for Artificial Intelligence risk (see Figures 8-11).

• A significant governance challenge arises because of the **conflicts of interest** which exist between the fund manager and the investment manager. Asked about the possibility of successfully managing this conflict, a disquieting 48.9% of respondents opined that this could not be completely done, with only 35.5% believing that the conflict could be so managed (see Figure 12).

• The **board appointment process** can alleviate or exacerbate concerns about a conflict of interest. From a list proposed in the Survey, the appointment of a non-executive director (“NED”) following an open advertising campaign was the most popular process,

which 84% of respondents considered would be acceptable (see Figure 13). Support for other forms was as follows: the nomination of an “independent” non-executive director (“INED”) by the investment manager (53.3%); the nomination by an investment manager of a NED who is also their employee (24.4%); the nomination by the investment manager’s legal adviser of a NED (42.2%); the nomination by the fund manager’s legal adviser of a NED (40%); and the nomination by the fund manager of a NED (35.6%).

• **Independent directors** play an important role in managing conflicts and lengthy board tenure may jeopardise the perception of independence. In respect of an INED in a fund or fund manager (see Figure 15), the maximum period of board service they should serve before no longer being considered independent was identified as “between 7-9 years” by 44.4% of respondents and “between 4-6 years” by 22.2%. Focusing on board tenure more generally, there was a similar difference of opinion as to the time an executive or non-independent NED should serve. A total of 37.8% believed that a director of the fund should not serve on a board for more than 6 years, 35.6% believed they should not serve on a board for more than 9 years and 20% were prepared to accept a longer term expressing the view that a director should not serve for more than 12 years (see Figure 16). For boards of fund managers, the views were somewhat similar with 35.6% believing that a director should not serve on a board for more than 9 years, 31.1% for not more than 6 years; 22.2% for not more than 12 years; and 11.1% for not more than 3 years (see Figure 17).

• Respondents were asked to choose, based on their own experience of fund or fund manager board meetings, all the **main impediments to board effectiveness** in a fund or fund manager from a list provided (see Figure 18). The two most popular were “inadequate information or poor reporting to the board” (chosen by 44.5%) and “poor challenge of delegates by NEDS” (42.2%). Given that respondents replied to this question based on their own experience, the fact that a majority of respondents did not believe these factors impeded the board can be interpreted positively in the sense that it could suggest that the quality of reporting and challenge is sufficiently high. Next on the list of impediments were “poor challenge of other directors by NEDS” and “an inefficient chair” (both 40%); “overly prescriptive nature of regulation” (37.8%); “group think and other biases” (35.6%); “lack of competence on the part of the NED”, “an increasing regulatory burden”, “insufficient time allowed for board discussion” and

“over-long board tenure” (all 33.3%); “a domineering chair” (31.1); “manifest conflict of interest” (28.9%); “evidence of a lack of clarity as to the allocation of responsibilities” and “poor board culture and/or values” (both 26.7%). Other significant impediments were “insufficient board dialog with delegates” (22.2%); “insufficient attention paid in meetings to risk and compliance functions” and “a lack of diversity on the board in respect of educational and/or professional background” (both 20%); “limited co-operation from delegates” and “gender imbalance on the board” (both 15.6%); “a lack of age diversity on the board”(13.3%); “a lack of ethnic diversity on the board” (11.1%); and a “lack of diversity on the board in respect of sexual orientation” (4.4%). Looking to the lower end of the spectrum, given the low rates of diversity on boards, one might consider that the responses here must be interpreted to suggest that despite this, board meetings have not been adversely affected.

• **Performance fees** tend to be a contentious issue and identifying the entities and other influences that had significant positive effects on controlling performance fees is thus important (see Figure 19). The most common entity identified was the fund board (named by 48.9% of respondents); the INEDS in the fund board (44.4%) and market discipline (44.4%). A similar number identified the fund’s investors, the board of the fund manager and the regulator (33.3%) followed by the INEDS in the board of the fund manager (28.9%) and finally the DP for Capital and Financial Management (8.9%).

• The Survey questioned the value of a new or updated **Fund Governance Code** aimed at directors of Irish funds or fund managers (see Figure 20). A total of 82.2% of respondents considered a Code published by the Central Bank of Ireland (“the CBI”) and applying on a “comply or explain” basis would be valuable. If a Code applied on a mandatory basis, a still sizeable 71.1% considered it would be valuable. Finally, 55.6% also supported the idea of a Code published by a recognized industry body and applying on a comply or explain basis.

• Given the prevalence of third-party management companies, it is important that **directors on fund boards understand the responsibilities they retain** despite the significant delegation of functions (see Figure 21). Whilst 73.5% of respondents agreed that these responsibilities are generally well understood, this leaves more than a quarter of respondents doubting the boards’ understanding in this regard.

- There was strong support for the manner in which the CBI carries out assessments pursuant to its **Fit & Proper Regime** with 78% of respondents considering that this makes an important contribution to ensuring the suitability of directors on the boards of funds and fund managers (see Figure 22).
- Finally, respondents identified from a list provided both positive and negative implications of the CBI's proposed individual accountability regime for directors of funds and management companies (see Figure 23). The most common response was that it would lead to more risk-averse decision-making from directors (60%). There were also concerns that it would: increase directors' fees (53.3%); create a disincentive to take up or renew board appointments (42.2%); blur the lines between the responsibilities of executive and non-executive directors (26.7%); and negatively affect the collective functioning of the board (20%). On the positive side, there were expectations that it would: render it easier to hold directors to account for misbehaviour (53.3%); strengthen companies' internal controls and processes (35.6%); improve the quality of board decision-making (31.1%); improve investor protection (28.9%); emphasise the importance of cultural leadership (26.7%); and pre-empt directors' misbehaviour (22.2%). As the regime has not yet commenced even for in-scope entities, it is too early to form a view as to the validity of these expectations. However, research suggests that many of the aforementioned negative implications have not emerged in other jurisdictions, such as the UK and Australia, where similar regimes apply and the regimes are generally perceived to have contributed positively to governance and enforcement (Clarke, 2021).

III. Survey Findings

1. Findings on Fund Purpose

UCITS and AIFs established as investment companies or ICAVs are corporate entities with distinct legal personalities separate to their shareholders. There has been a wide-ranging and prolonged academic and political debate over the last ninety years about the purpose of a traditional company. The two main schools of thought are: the shareholder primacy view, associated most closely with Milton Friedman and his *New York Times* article "The Social

Responsibility of Business is to Increase its Profits" (1970); and a broader, stakeholder-oriented perspective described by Ed Freedman in 1984. The term "stakeholders" includes not just shareholders but also directors, employees, customers, suppliers and society. Most recently, the latter has been expressed as an "enlightened shareholder value" approach, a term coined by the UK Company Law Review Steering Group (1999) and associated with section 172 of the UK Companies Act 2006 (Keay,2013). Broadly, this retains the focus on shareholders, but rejects an exclusive concentration on their short-term financial gain (Mayer (2021)). The idea here is that directors should pursue a more pluralistic approach to decision-making, allowing all stakeholders to benefit in the long term. This will allow companies to deliver both purpose and profit (Edmans (2020)). Under the Irish Companies Act 2014, whilst there is a duty to have regard to the interests of the company's employees in general (section 224), the duty imposed on directors "to act in good faith in what the director considers to be the interests of the company" (section 228(1)(a)) has been interpreted as relating to shareholders (Quinn, 2016). While the interests of shareholders and other stakeholders may be aligned, even in the UK there remains a degree of uncertainty as to the extent to which directors may pursue a corporate purpose, through strategy and policies, which conflicts with shareholders' interests, leading to an "uncompensatable cost" (Parkinson, 1995).

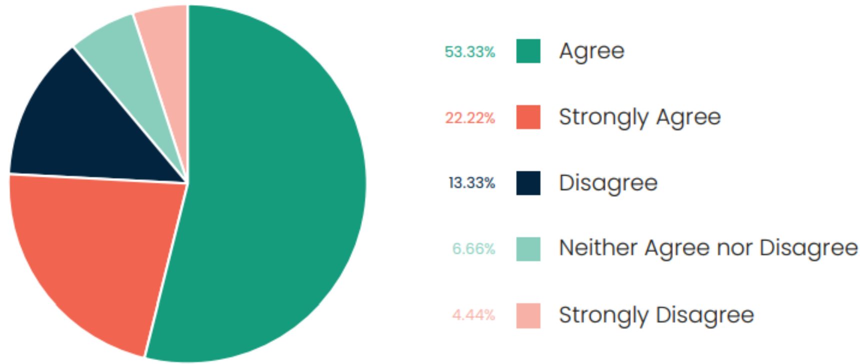
By contrast, there has been very little debate about the broader purpose of corporate funds. The focus has tended to rest on institutional stewardship and the role investment managers can play through engagement with their portfolio companies (Katelouzou and Klettner (2020) and Lund (2022)). Investment managers may engage on a micro-level of stewardship in an individual company for example by voting on ESG initiatives such as diversity targets or pushing for divestment from oil companies. The market dominance of the three largest investment managers, Blackrock, Vanguard and State Street, also allows them to engage in macro-level stewardship on a portfolio, sector or market level, engaging with governments and regulators in order to correct market failures and mitigating systemic risks (Katelouzou, 2022). Following Larry Fink's letter to CEOs in 2018 advising them of the need not only to deliver financial performance but "to show how it makes a positive contribution to society", the three largest investment managers became more vocal about their commitment to ESG and particularly Climate Change. However, following an anti-ESG backlash from certain

sectors and increasing political polarisation in the US, support for shareholder proposals on environmental and social issues globally has been declining (Financial Times, 2023) and responsibility is being redirected to investors as to how they wish their money to be managed. Initiatives by State Street, Vanguard and Blackrock including the latter's Voting Choice initiative is similarly part of a stated intention to allow investors to exercise greater control over their voting for the companies in their index equity portfolios. In the context of fund governances, it is submitted that this leads to increased attention on investors and their perspective on fund purpose with a resulting focus on the actions of the boards of funds or fund managers acting on investors' behalf.

In the Survey (see Figure 1 below), 75.6% of respondents agreed or strongly agreed with the following statement: "The purpose of a fund is simply to invest its capital in accordance with the particular investment programme directed by its promotor/investment manager and set out in its prospectus." A minority of 17.8% disagreed or strongly disagreed. There seemed to be no question for the majority of adopting a more stakeholder-oriented purpose unless this was consistent with the prospectus and certainly no question of focusing on the interests of other stakeholders in the event of a conflict with investors' interests. This is perhaps not surprising given the desire to avoid misrepresentation and the statutory framework of corporate funds which describes their "sole objective" as collective investment with the aim of spreading investment risk to the benefit of investors.

Figure 1: **Fund Purpose**

"The purpose of a fund is simply to invest its capital in accordance with the particular investment programme directed by its promotor/investment manager and set out in its prospectus."



The Survey then explored the amount of flexibility parties might have in interpreting fund purpose (see Figure 2 below). Only a minority of respondents considered that the boards of the fund and fund manager, the investment company and the investors (through the exercise of proxy voting) had "substantial" or "complete" flexibility to re-interpret the fund's purpose in a manner not specifically provided for the fund's current strategy, constitution or product terms. The entity considered to possess the greatest flexibility was the fund board with 40% agreeing that it had "substantial" or "complete" flexibility in this regard. However, a majority felt that each of the entities have at least "a little flexibility" with investors (53.3%) and fund boards (31.1%) scoring most highly.

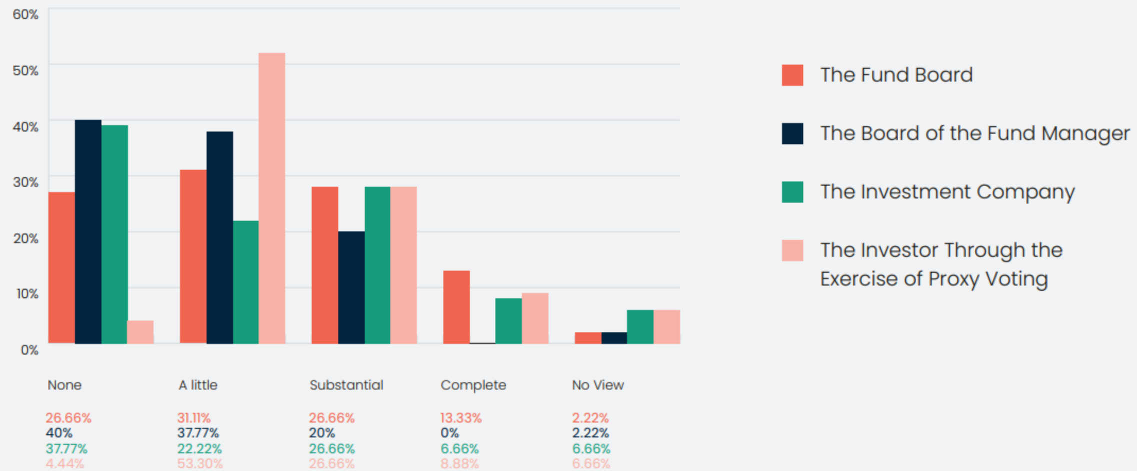


Figure 2: **Flexibility to Re-interpret the Fund's Purpose**

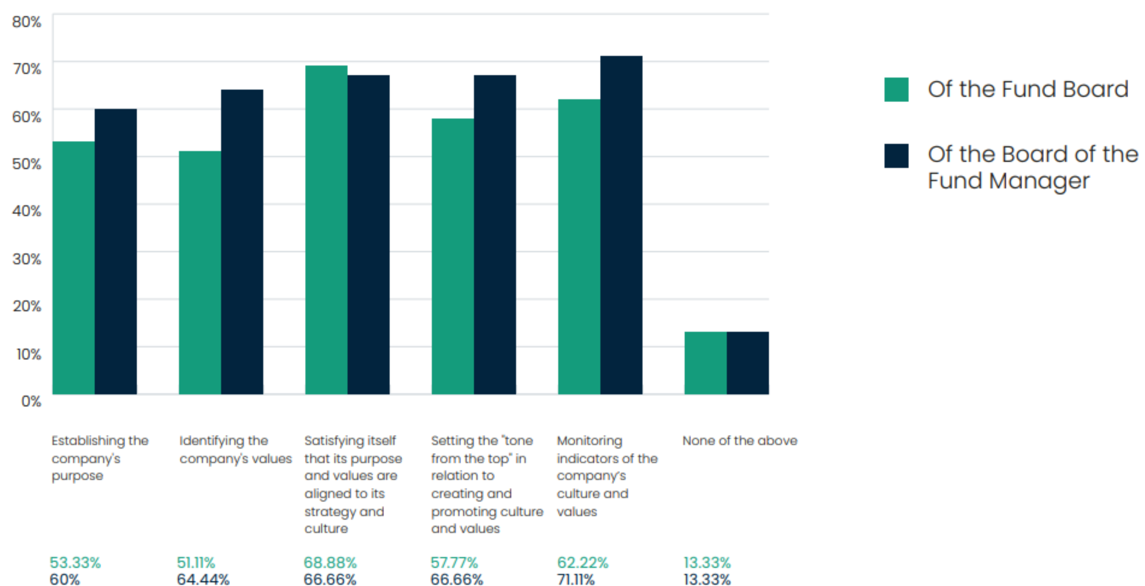
These results suggest the majority view that the purpose of the fund has largely been determined at the time of its establishment and that there is little room to deviate after that. However, it also demonstrates a significant lack of consensus on this point, suggesting that this is an area in which more guidance is needed particularly if funds and investors are being called upon to exercise greater discretion through the aforementioned voting choice initiatives or where funds hold their portfolios through separately managed accounts. If, for example, an Article 6 Sustainable Finance Disclosure Regulation fund was asked to take a position on a proposal detrimental to investors' financial interests, but with a broader social or environmental value, what discretion would the board have to support it? It would appear that any discretion would need to be exercised in accordance with its existing statutory duties to investors.

The specific role of the fund board in relation to purpose, value and culture was explored further in the Survey (see Figure 3 below). The results were consistent with the idea that the board is generally perceived as not playing a strong leadership or defining role in this regard and that its function is mainly an oversight one. The most prevalent roles of the board identified by respondents, while important in themselves, are more reactive ones: "satisfying itself that its purpose and values are aligned to its strategy and culture" (68.9%) and "monitoring indicators of the company's culture and values" (62.2%). Best practice suggests that a board should also play a leadership role in determining purpose and values

(UK Corporate Governance Code, 2016). It is striking then that a large number of respondents felt the board played no role in “establishing the company’s purpose” (46.7%), in “identifying the company’s values” (48.9%) or in “setting the “tone from the top” in relation to creating and promoting culture and values” (42.2%) with 13.3% stating that the board played none of these roles.

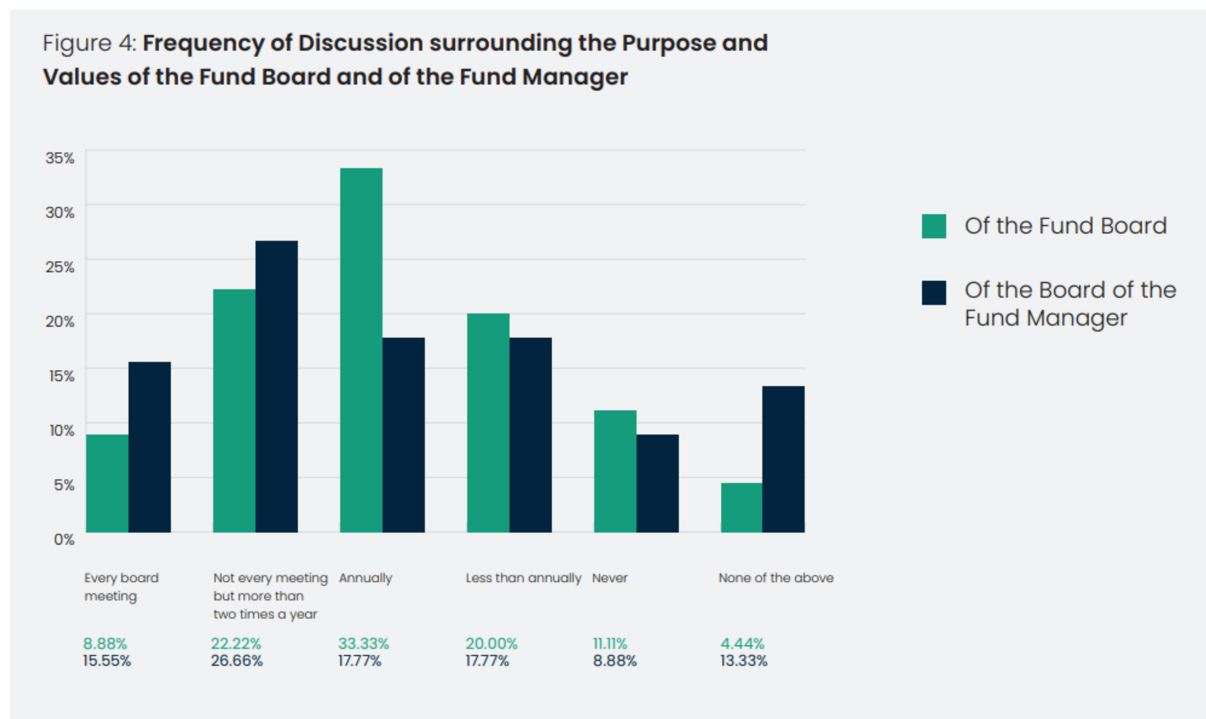
Respondents were also asked about the role of the board of the fund manager in relation to the same issues and in all but one criteria, there was even stronger support for the board playing a role as follows “monitoring indicators of the company’s culture and values” (71.1%); “satisfying itself that its purpose and values are aligned to its strategy and culture” (66.7%); “setting the “tone from the top” in relation to creating and promoting culture and values” (66.7%); “identifying the company’s values” (64.4%); and “establishing the company’s purpose” (60%).

Figure 3: **Roles of the Fund Board and of the Fund Manager**



The Survey (see Figure 4 below) confirms that the purpose and values of the fund is discussed at least at some meetings of the fund board in the experience of 84.4% of

respondents. Respondents opined that 20% of boards discuss this topic less than annually, 33.3% discuss it annually, 22.2% discuss it more than two times a year but not at every meeting and only 8.9% discuss it at every board meeting. In relation to the board of the fund manager, the fund purpose and values is a more regularly discussed agenda item being discussed at least at some meetings of the fund manager board in the experience of 77.8% of respondents. Respondents opined that 26.66% discuss it more than two times a year but not at every meeting; 17.8% of boards discuss this topic less than annually; 17.8% discuss it annually; and 15.55% discuss it at every board meeting. Based on the previous response, we can assume that these discussions are more likely to relate to monitoring and oversight rather than strategic leadership and direction.

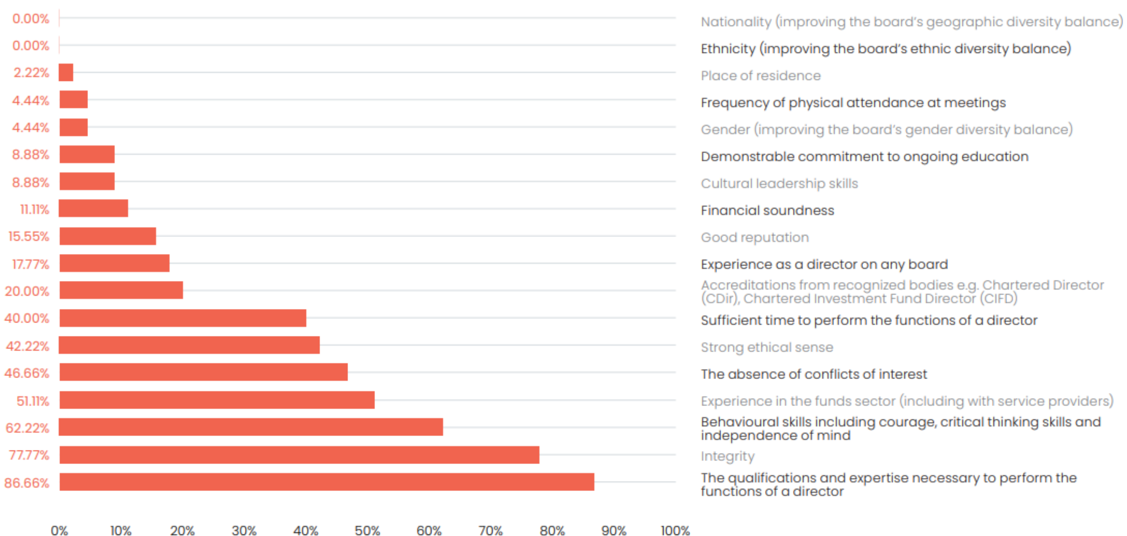


2. Findings on Director Attributes

Valued Attributes

The quality of governance in a firm will depend to a large extent on the quality and efficiency of the board. Respondents were asked to rank the five most important attributes of a director of a fund or fund manager out of 18 suggested in the Survey (see Figure 5 below). The most important attribute was identified not surprisingly perhaps as "the qualifications and expertise necessary to perform the functions of a director" followed by: "integrity"; "behavioural skills including courage, critical thinking skills and independence of mind"; "experience in the funds sector (including with service providers)"; "the absence of conflicts of interest"; "a strong ethical sense"; and "sufficient time to perform the functions of a director". The next tier included: "accreditations from recognized bodies e.g. Chartered Director (CDir), Certified Investment Fund Director (CIFD)"; "experience as a director on any board"; "good reputation; "financial soundness"; "cultural leadership skills"; and "demonstrable commitment to ongoing education". At the end of the list of attributes was: "gender (improving the board's gender diversity balance)"; "frequency of physical attendance at meetings"; and "place of residence". Notably, "ethnicity (improving the board's ethnic diversity balance)" and "nationality (improving the board's geographic diversity balance)" did not fall within any respondent's top attributes.

Figure 5: **Five most important Attributes of a Director of a Fund or Fund Manager**



Respondents were then asked to mark all attributes that they considered to be important in order to identify a clearer picture of factors that may not be ranked in the top five but are

still considered to be valuable and by contrast attributes which are not considered important at all (see Figure 6 below).

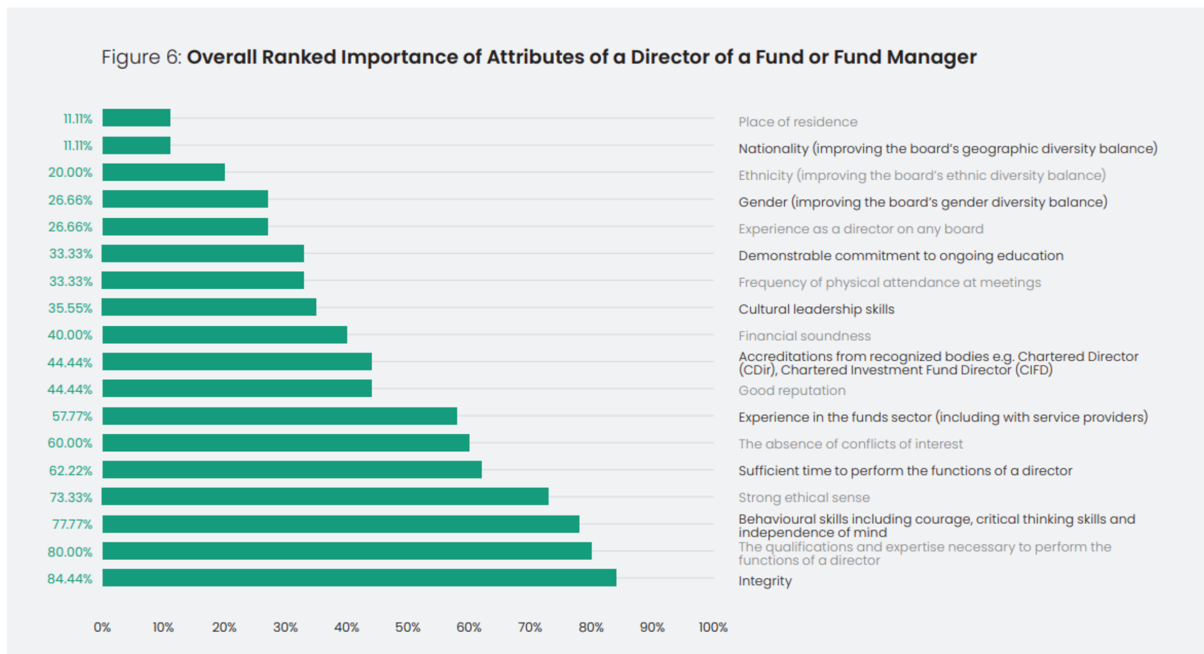


Figure 6: **Overall Ranked Importance of Attributes of a Director of a Fund or Fund Manager**

A number of comments may be made about these rankings:

- Not surprisingly, **the top three ranked attributes were “Integrity,“ “Qualifications and expertise necessary to perform the functions of a director” and “Behavioural skills including courage, critical thinking skills and independence of mind” and these were chosen by most respondents**. The weight placed on qualifications, expertise and relevant experience is welcome. Bitter lessons have been learned from the Global Financial Crisis where poor risk management was attributed in part to insufficiently qualified and competent boards. In some cases, independence or diversity was achieved at a cost to expertise and experience. This was regretful as it is not necessary to see these measures as alternatives – the pipeline of independent minded expert NEDS or female expert NEDS is robust.
- One of the most striking findings is the number of attributes not identified in Figure 6 as important. A significant number of respondents did not consider measures of diversity in its different forms (e.g., geographic location, nationality, ethnicity and gender) to be important. In respect of the ranked attributes in Figure 5, where choice is limited to five, this may be explained on the basis that many of the benefits

of diversity such as reduced group think, absence of conflicts etc. are listed separately in the Survey. However, in Figure 6, no limit was applied on choice. This finding might suggest that respondents consider diversity to be a factor without merit, which would be a concern. Even if respondents considered it to be justified less on the business case than on grounds of equality and inclusiveness, one would expect that they would have identified it as important.

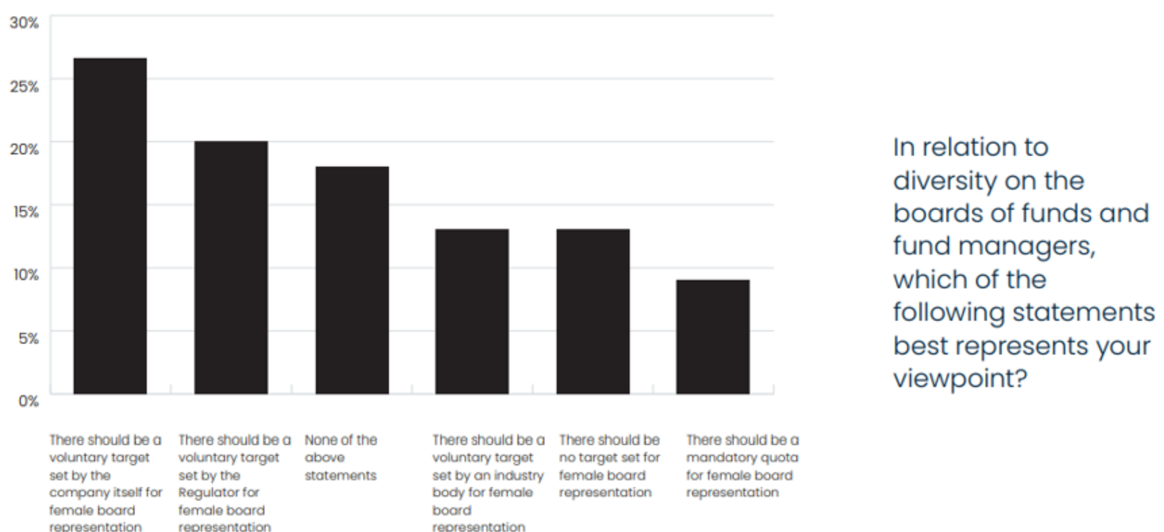
- The Survey results recognise the importance of character, behavioural skills and judgment. This is consistent with a growing awareness that these factors are key to good and ethical decision-making on the board (Killingsworth, 2013).
- As the environment in which funds operate becomes more complex and the regulatory demands more onerous, it is important that directors can devote sufficient time to meeting their responsibilities. The inclusion of “sufficient time to perform the functions of a director” as one of the top five criterion in Figure 6 signals an appreciation of this point. Setting aside sufficient time to fulfill the responsibilities of office has been the focus of regulatory attention in recent years, leading for example to targeted guidance in the CBI’s *Fund Management Companies Guidance* (2016), more commonly known as “CP86. A related issue is overboarding, which is likely to reduce the amount of time available to directors.

Diversity

Notwithstanding the above results on directors’ attributes, the topic of diversity remains a key focus of attention for investors, investment managers, employees, regulators, public policy makers and civil society. The Central Bank of Ireland ("CBI") publishes data on the level of gender diversity at senior levels of regulated firms. In 2022, only 23% of current Pre-Approval Controlled functions (“PCF”) role holders in asset management sector were women though this was up 3% from the previous year. Examining the specific PCF roles, the ratio for directorships was also 23%:77%. The CBI subsequently called on all regulated entities “to be sufficiently diverse and inclusive, at all levels and particularly at senior level, to prevent group-think, guard against overconfidence, and promote internal challenge.” (Rowland (2023). The importance of diversity and inclusion in the composition of the board is already highlighted in international Corporate Governance Codes, including the UK

Corporate Governance Code. There have been a number of voluntary initiatives both sectoral and general such as Ireland for Finance and the 30% Club, but no mandatory quota or target applies to the funds sector in Ireland. The Survey asked respondents to choose the statement that best represents their opinion towards gender diversity on the boards of funds and fund managers (see Figure 7). In an indication of broad support for diversity initiatives, 60% supported a voluntary target. Of these, 26.66% considered it should be set by the company itself, 20% suggested it should be set by the Regulator, and 13.3% suggested it should be set by an industry body. Whilst only 13.3% opposed the idea of a target, the introduction of a mandatory quota received only 8.9% approval. Based on these responses, fund boards consider they should set their own targets for diversity and should measure and disclose their progress in achieving and maintaining these quotas.

Figure 7: **Gender Diversity Initiatives**



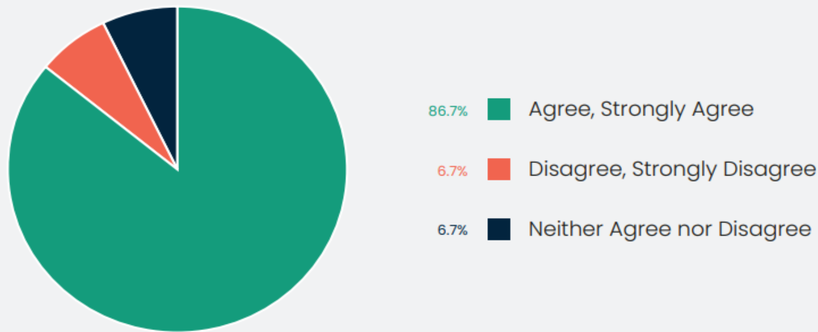
Knowledge of Risk Management

Good governance requires good risk management and the board of the fund and the fund manager play an important role in demonstrating ownership of new and emerging risks such as cyber, ESG and artificial intelligence ("AI") as well as more traditional portfolio composition risk. The Survey explores whether every director is expected to bring a "reasonable understanding" of these risks to the board table in order to satisfy themselves that the appropriate risk management framework is in place. This would require an ability to

understand at some level the design, implementation and operation of the risk management and internal control systems. While some directors may have expert knowledge in some of these areas, the decision of a board is of course a collective one and the Survey explores whether every director of a fund or fund manager is expected to have some degree of competence in these areas. What might be considered "reasonable" may depend on the circumstances of each case. A useful guide in that regard is the standard imposed on all company directors by the Companies Act 2014. Section 228(1)(g) requires directors to act with "the care, skill and diligence" which would be exercised in the same circumstances by a reasonable person having both: "the knowledge and experience that may reasonably be expected of a person in the same position as the director; and the knowledge and experience which the director has". This means that if a particular director possesses specialist knowledge or experience, they will have to meet a higher standard of skill and diligence appropriate to their actual knowledge and experience. On a practical level, fund directors must have a sufficient degree of knowledge to understand the topic, to challenge the information they are given and to support the specialist directors on the board.

A total of 86.7% of respondents agreed with the statement "all directors are expected to have a reasonable understanding of portfolio composition risk" and only 6.7% disagreed (see Figure 8 below).

Figure 8: **Directors' Knowledge of Portfolio Composition Risk**



"all directors of a fund or fund manager are expected to have a reasonable understanding of portfolio composition risk"

Asked the same question in relation to ESG risk (see Figure 9 below), 82.2% of respondents agreed and 8.9% disagreed. This is an area which is subject to increasing regulatory attention. For example, Commission Delegated Regulation (EU) 2021/1255 and Delegated Directive (EU) 2021/1270 on sustainability risks and sustainability factors require all authorised fund managers even those that do not manage sustainable funds, to integrate sustainability risks in their portfolio and risk management processes and overall governance structure. Reports to fund boards will include information on the consistency between the current levels of risk incurred by each fund and the risk profile agreed and the adequacy and effectiveness of the risk management process. Directors must have the capacity to understand, assimilate, and tease out this information.

Figure 9: **Directors' Knowledge of ESG Risk**

"all directors of a fund or fund manager are expected to have a reasonable understanding of ESG risk"

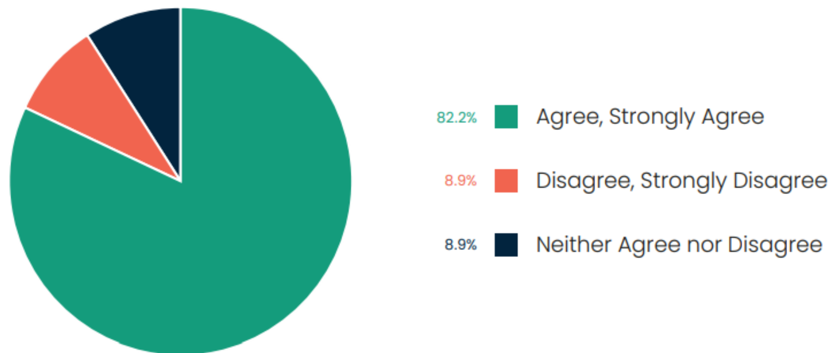
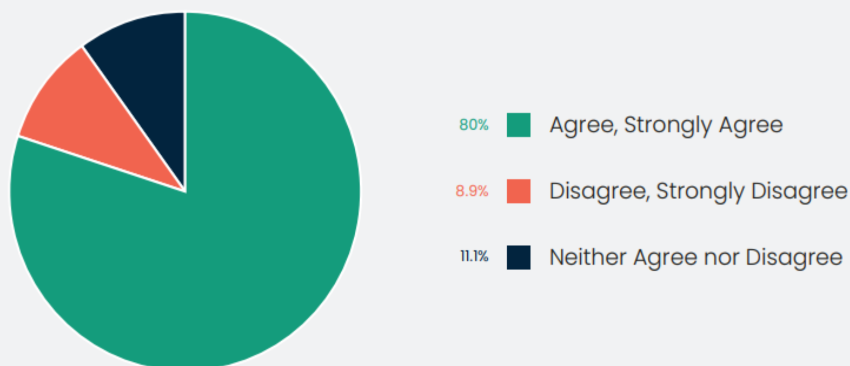


Figure 10: **Directors' Knowledge of Cyber Risk**

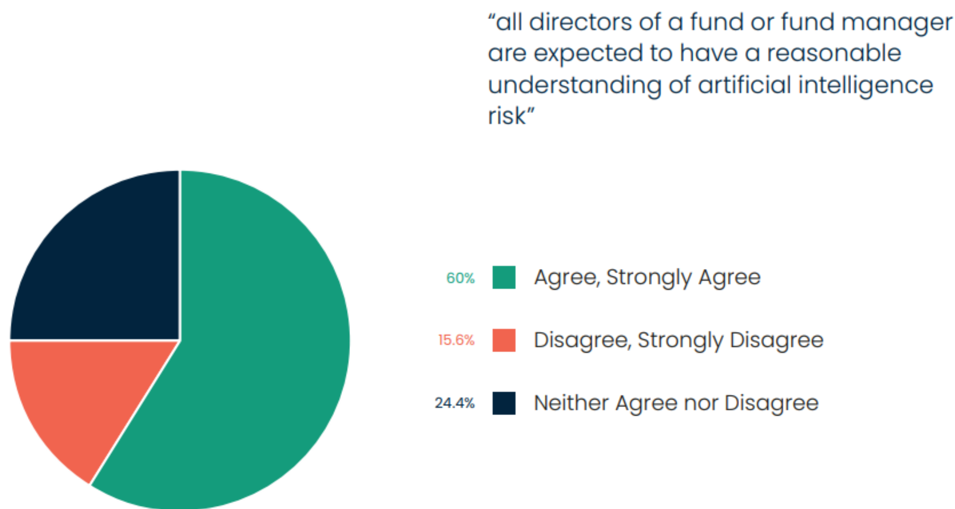


"all directors of a fund or fund manager are expected to have a reasonable understanding of cyber risk"

Perhaps because of the more specialist knowledge involved and the extraordinary rate of developmental change in the field, only 60% agreed that all directors of a fund or fund manager should have a reasonable knowledge of AI risk with 15.55% disagreeing (see Figure 11 below). AI plays an increasing role in fund management and governance. It forms an

integral part of the processes used by investment managers in company selection, risk management etc. with index-tracked funds in particular involving a largely automated process. A lack of a reasonable understanding of AI and the manner in which it operates could thus lead to a potential governance exposure. Not all directors need to be experts in AI but a reasonable understanding should be considered to be essential and this may be an area where additional training or guidance is needed.

Figure 11: **Directors' Knowledge of AI Risk**



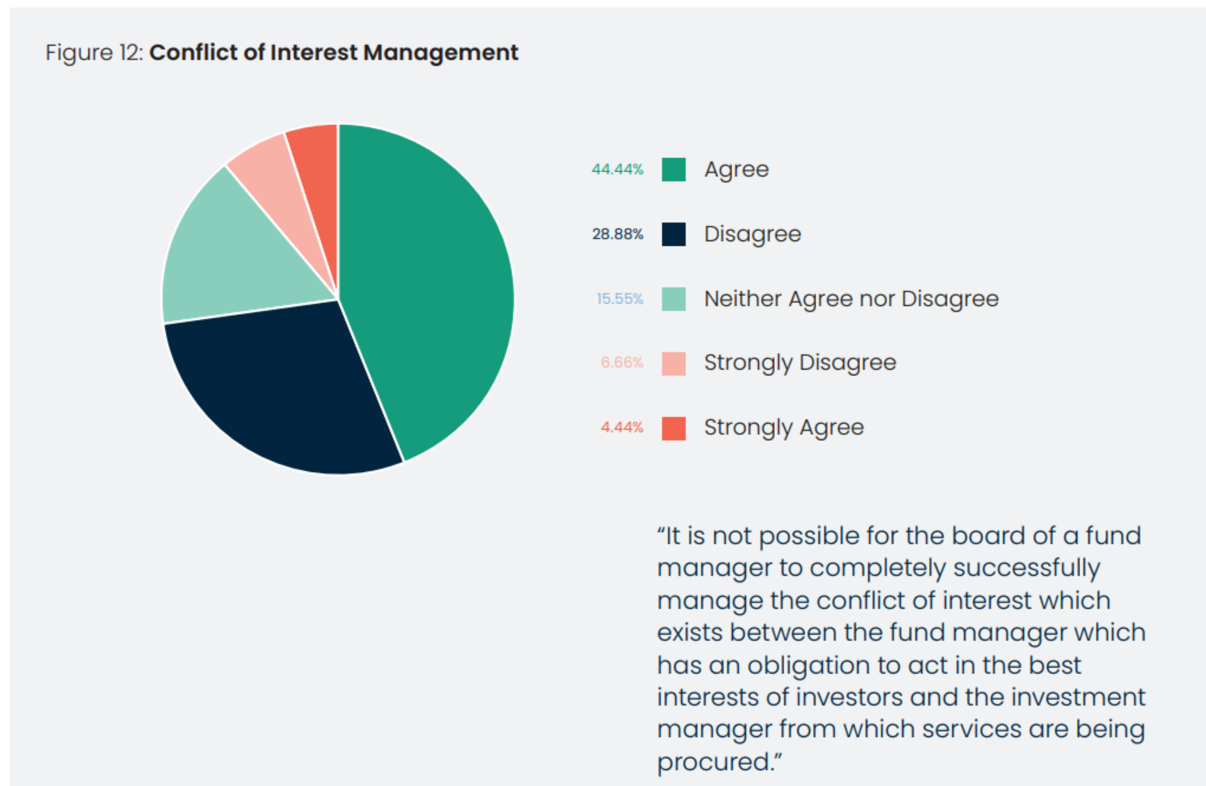
3. Findings on Conflict of Interest

Conflict Management

As noted above, one of the distinguishing features of fund governance is the existence of conflicts of interest between the investment manager, the fund manager and the investors. The unique organisational structure referred to earlier is a key part of this and one that affects both the composition and role of boards. CP86 states that the fund board must "consider and identify any conflicts of interest that may arise and should satisfy itself that such conflicts are being appropriately managed". Asked about the possibility of successfully managing "the conflict of interest which exists between the fund manager which has an obligation to act in the best interests of investors and the investment manager from which

services are being procured", there was a very mixed response with 48.9% of respondents opining that this could not be completely done and 35.5% disagreeing (see Figure 12).

Figure 12: **Conflict of Interest Management**



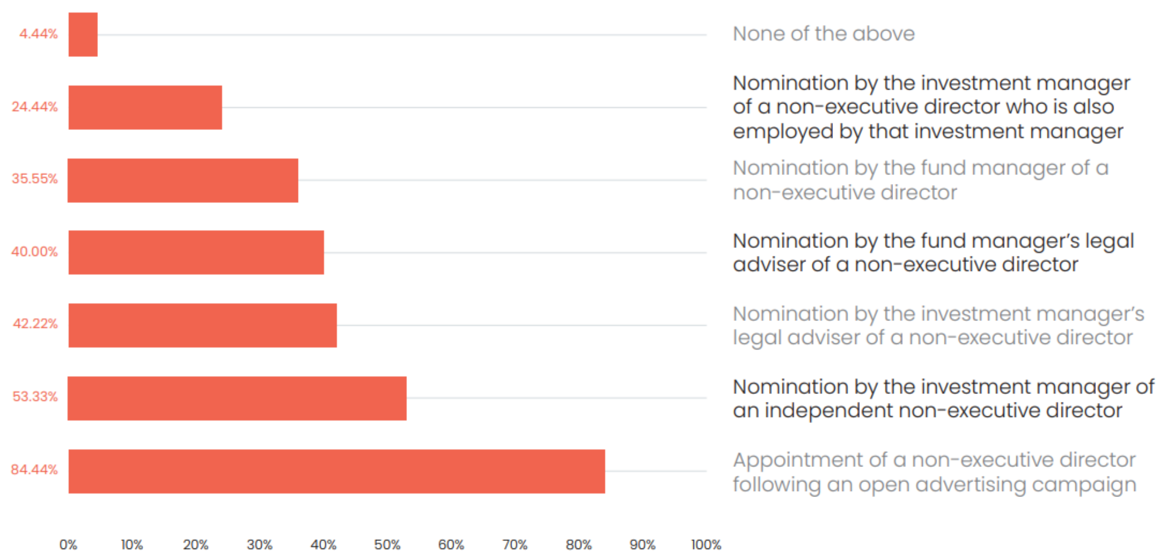
The view from almost half of the respondents, industry insiders and CIFD alumni familiar with the demands of the sector and the practical realities, is that these conflicts cannot be completely successfully managed. This should give pause for thought. Whether it requires regulatory, structural or operational changes, or greater guidance, further reflection is needed on this important point.

INEDS on the Fund Board

On a related conflict of interest point, one of the peculiarities of fund governance is the manner in which directors are appointed to a fund board and the influential role of investment managers in this regard. This has generated a lot of comment in recent years. Frequently, law firms have been influential in identifying and recommending potential NEDS for funds to investment firms. Respondents were asked to identify which of the appointment practices listed they considered to be acceptable – some of which were

commonplace and some which were not. A total of 84% considered the appointment of a non-executive director following an open advertising campaign to be acceptable (see Figure 13 below). This was noteworthy given that this is not a typical means of recruitment at present and it suggests a demand for a more transparent process allowing access to a broader pool of applicants and potentially reducing conflict of interests.

Figure 13: **Acceptable Appointment Practices for a Fund Director**



Support for the nomination of an "independent" non-executive director ("INED") by the investment manager was marginal at 53.33%. There was only minority support for any of the following common practices: nomination by the investment manager's legal adviser of a non-executive director (42.22%); nomination by the fund manager's legal adviser of a non-executive director (40%); and nomination by the fund manager of a non-executive director (35.55%). The common practice of an investment manager nominating a non-executive director who is also their employee received the lowest support at 24.44%. If there is to be change it seems unlikely to come from the investment managers themselves, as they would have been in a position to change the status quo if they had desired to do so. Any change

thus might need to come from pressure from the CBI, sectoral bodies such as Irish Funds or thought leaders such as the Institute of Bankers or the Irish Fund Directors Association.

A related discussion involves the appropriate balance of executive and non-executive directors on the fund board (though often the fund has no employees and this is not relevant) and independent and non-independent non-executive directors. Irish Funds in its code, requires at least one INED. The Survey revealed no support at all for the idea of a fund board comprising all INEDS (see Figure 14 below). A total of 48.8% of respondents favoured a board comprised of a majority of INEDS, 31.1% favoured a board comprised of less than a majority but some INEDS and 13.3% supported a board comprised of a majority of NEDS whether independent or not. In relation to the composition of the fund manager, the Survey similarly revealed no support at all for the idea of a board comprising all INEDS. The greatest support at 53.3% was for a board comprised of less than a majority. Only 20% favoured the board being comprised of a majority of INEDS, but some INEDS and 17.77% supported a majority of NEDS whether independent or not.

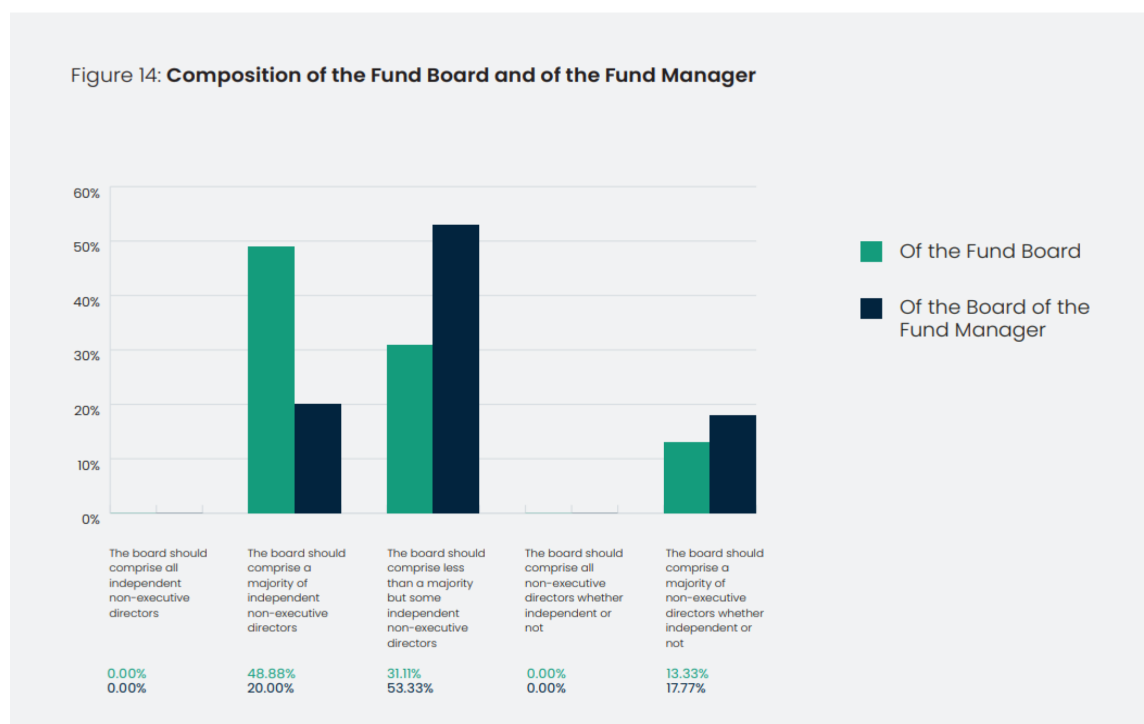
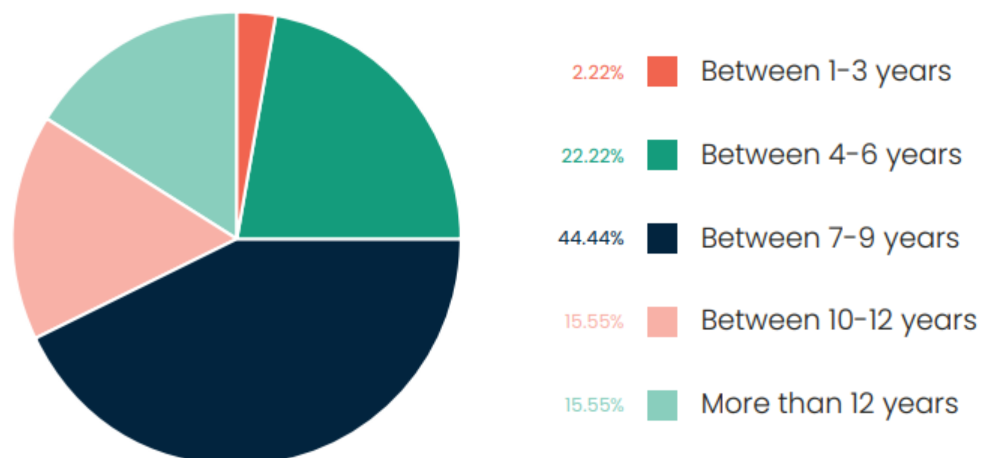


Figure 14: **Composition of the Fund Board and of the Fund Manager**

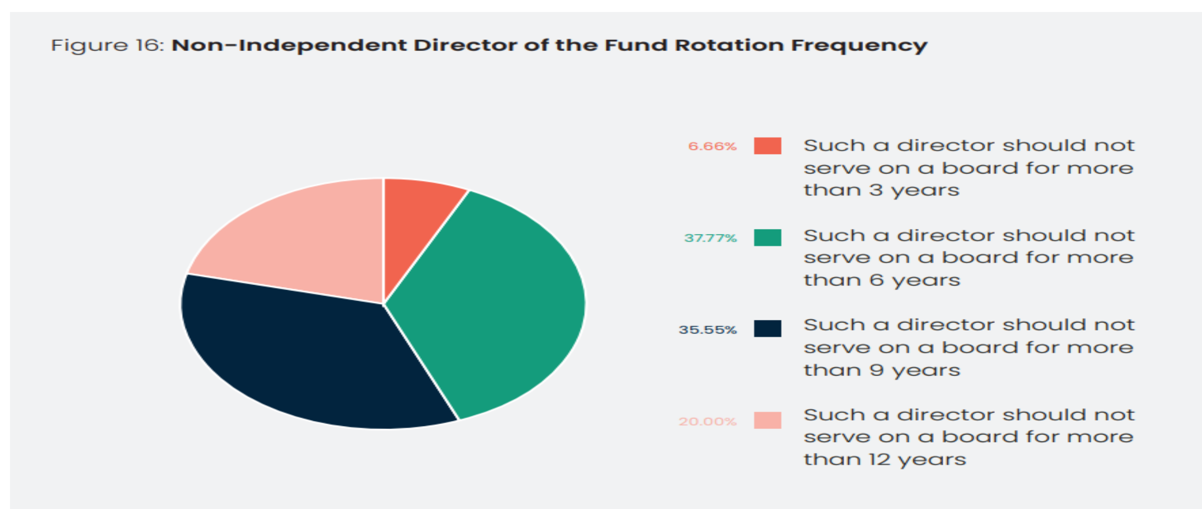
Meaning of "Independence"

The notion of independence involves a cognitive as well as a structural dimension. Independence of mind involves individuals possessing character trait allowing them to make objective and independent decisions. The ESMA-EBA Suitability Requirements refer in this context to certain behavioural skills including: courage, conviction and strength to effectively assess, question and challenge other directors' decisions; and being able to resist 'group-think' (2021). Independence also refers to the absence of conflicts of interest. One potential cause of a conflict of interest is tenure on a board with a long time in office risking the introduction of biases and threatening objectivity. Respondents were asked to identify what maximum period of board service a non-executive director of a fund or fund manager could serve before no longer being considered independent (see Figure 15 below). The majority of respondents (44.44%) opted for "between 7-9 years", with the next most common length being "between 4-6 years" (22.2%). This is consistent with best practice. Both the UK Corporate Governance Code and the Financial Conduct Authority Rulebook for example suggests no more than nine years. It is concerning thus that a significant 15.6% of respondents opted for both "between 10-12 years" and "more than 12 years".

Figure 15: **Period of Board Service beyond which a Non-Executive Director of a Fund or Fund Manager should no longer be considered Independent**

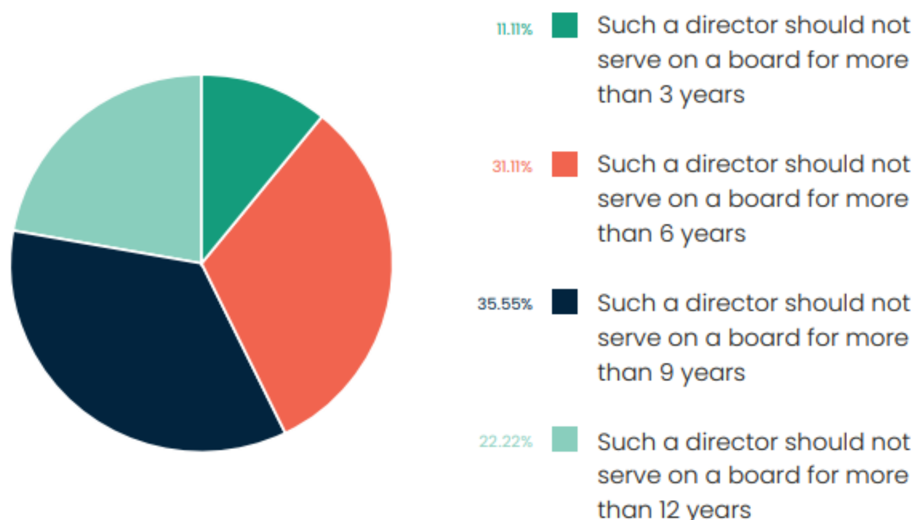


On a related point, respondents were invited to identify the statement that best represents their view in respect of board tenure for an executive or non-executive (non-independent) director in a fund or in a fund manager (see Figure 16 below). A total of 37.77% believed that the director of the fund should not serve on a board for more than 6 years, 35.55% believed they should not serve on a board for more than 9 years and 20% were prepared to accept a longer term expressing the view that a director should not serve for more than 12 years. Only 6.66% opined that a director should not serve on a board for more than 3 years.



For boards of fund managers, the views were somewhat similar with 35.55% believing that a director should not serve on a board for more than 9 years, 31.11% for not more than 6 years; 22.22% for not more than 12 years; and 11.11% for not more than 3 years (see Figure 17). These last two figures represent a less straightforward metric perhaps given that there are both positive and negative consequences to having long serving directors on the board and increased knowledge and experience need to be balanced against independence.

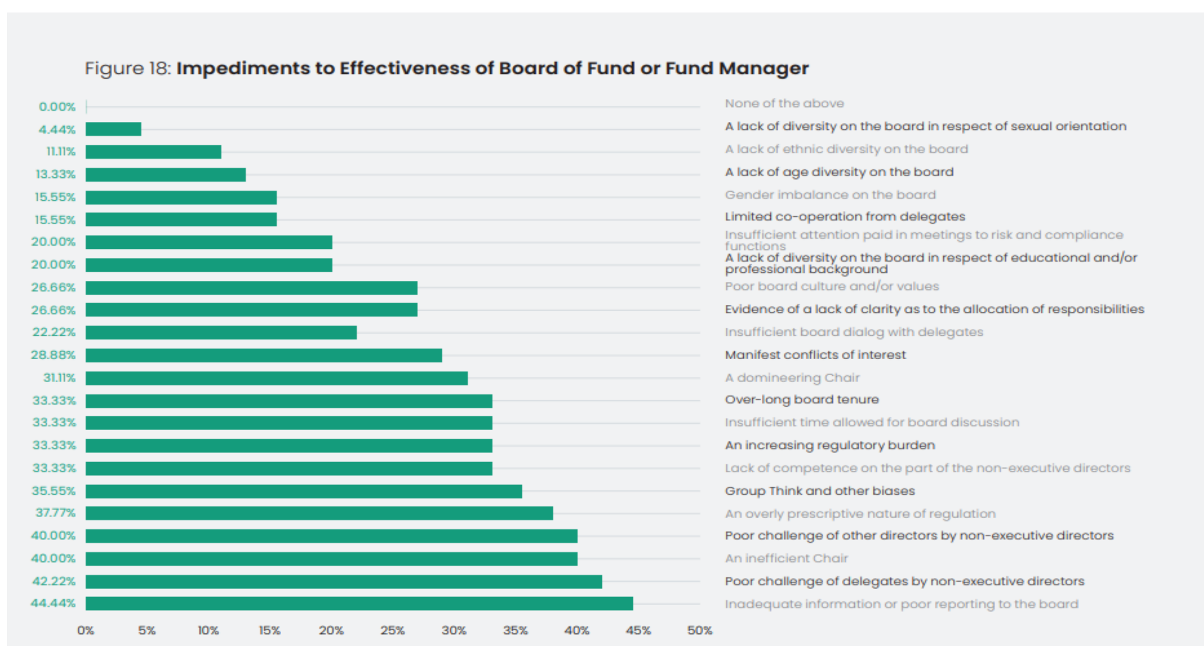
Figure 17: **Non-Independent Director of the Fund Manager Rotation Frequency**



4. Findings on Board Effectiveness

Qualified directors do not inevitably lead to an effective board and there are many other contributing factors. Based on their own experience of fund or fund manager board meetings, respondents were asked to choose all main impediments to board effectiveness in a fund or fund manager (see Figure 18 below). The two most popular were "inadequate information or poor reporting to the board" (chosen by 44.44%) and "poor challenge of delegates by NEDS" (42.22%). Given that respondents replied to this question in terms of their own experience, the fact that a majority of respondents considered these factors did not impede the board can be interpreted positively in the sense that it could suggest the quality of reporting and challenge is sufficiently high that they did not experience problems in this regard. Next on the list of impediments were "poor challenge of other directors by NEDS" and "an inefficient chair" (both 40%); "overly prescriptive nature of regulation" (37.8%); "group think and other biases" (35.6%); "lack of competence on the part of the NED", "an increasing regulatory burden", "insufficient time allowed for board discussion" and "over-long board tenure" (all 33.3%); "a domineering chair" (31.1); "manifest conflict of

interest" (28.9%); "evidence of a lack of clarity as to the allocation of responsibilities" and "poor board culture and/or values" (both 26.7%). Other significant impediments were "insufficient board dialog with delegates" (22.2%); "insufficient attention paid in meetings to risk and compliance functions" and "a lack of diversity on the board in respect of educational and/or professional background" (both 20%); "limited co-operation from delegates" and "gender imbalance on the board" (both 15.6%); "a lack of age diversity on the board"(13.3%); "a lack of ethnic diversity on the board" (11.1%); and a "lack of diversity on the board in respect of sexual orientation" (4.4%).

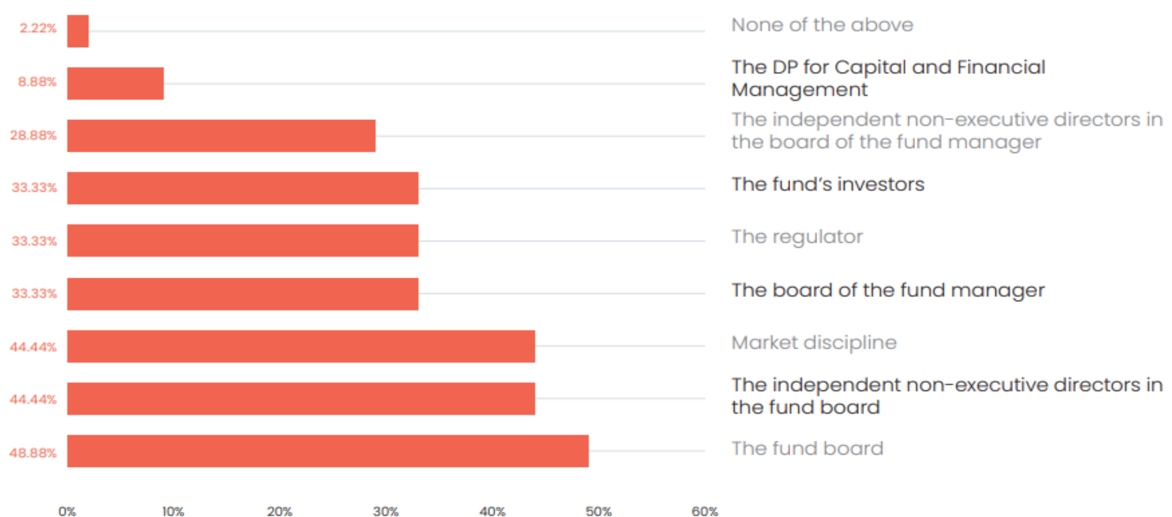


Not surprisingly, these responses mirror to an extent the earlier findings in terms of important attributes for board directors. They also include most of the issues which challenge robust discussion and debate. Looking to the lower end of the spectrum, however, and given the low rates of diversity on boards, the responses here might be interpreted to suggest that board meetings have not been adversely affected. This would signal a lack of importance attributed to diversity in its various forms which would be a matter of concern.

5. *Findings on Performance Fees*

Performance fees are paid to the investment manager by the investors as a reward for producing positive returns. They are subject to both statutory requirements and Guidance, including for example in the CBI UCITS Regulations 2019, the AIF Rulebook, the CBI Performance fees of UCITS and certain types of Retail Investor AIFs Guidance, and they remain a contentious area. A key element for example in the European Commission's Retail Investor strategy (May 2023) involves proposed amendments to UCITS and AIFMD to prohibit undue costs. Fund managers will be required to have an effective and periodically reviewed pricing process and funds will be required to report on costs and performance to the CBI. In the Survey, respondents were tasked with identifying all entities and other influences from a specified list that had significant positive effects on controlling performance fees (see Figure 19 below). The most common answer was the fund board (named by 48.88% of respondents); the INEDS in the fund board (44.44%) and market discipline (44.44%). A similar number identified the fund's investors, the board of the fund manager and the regulator (33.33%) followed by the INEDS in the board of the fund manager (28.88%) and finally the DP for Capital and Financial Management (8.88%). Although the order in which influences were reported might be expected, it is interesting to observe that the majority of respondents did not consider any of these parties to be in a position to control costs.

Figure 19: **Influences on Performance Fees**



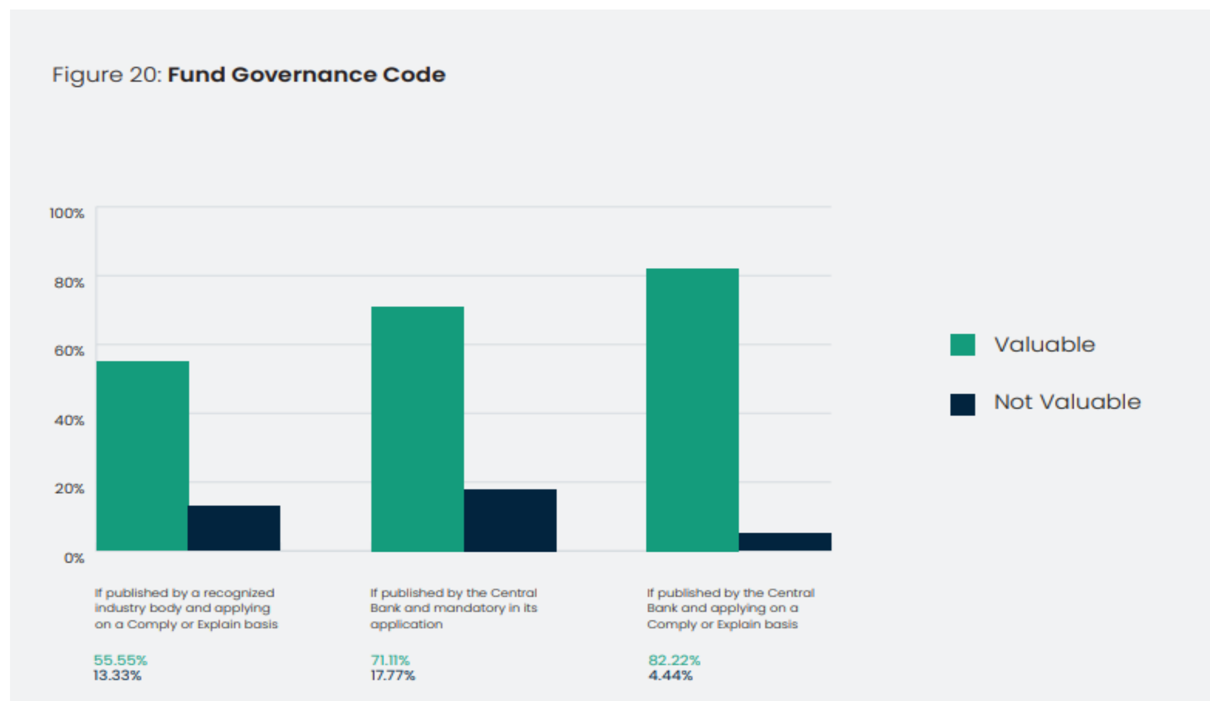
6. Findings on Fund Governance Code

Governance codes provide guidance for board members and directors, setting out best practices on governance in their organisations. A Code focusing on governance in funds or fund managers could serve to ensure that these entities are organized, managed and operated efficiently and effectively in the interests of fund investors. CP86 provides excellent guidance focusing on the role of boards of funds and fund management companies in relation to the external delegation of significant tasks. For other aspects of a boards' work, it specifically lays responsibility on the board for the design of governance practices "so as to be appropriate and commensurate to the business of the relevant company and, where applicable, the investment funds it manages". Whilst it is correct that no one size fits all and a degree of flexibility is important, clearly, a board might benefit from guidance on best practices in this regard. A code subject to a "comply or explain" form of compliance would seem appropriate. Encouraged by the CBI, in 2011 Irish Funds published a *Corporate Governance Code for the Collective Investment Schemes and Management Companies* in order to "promote strong and effective Governance". This is a voluntary code which fund management companies and Irish authorized funds structured as investment companies were invited to apply on a "comply or explain basis.". This code has not been updated and whilst some of the provisions remain relevant, there are many gaps including, for example, a failure to mention diversity, culture, ESG, cyber risk or AI.

There is a number of other useful best practice guidance for boards - although not directly applicable, guidance is available from other regulators or industry bodies such as the Association of Investment Companies in the UK and the Association of the Luxembourg Fund Industry. More general corporate governance guidance serves a purpose, too and the Financial Reporting Council's *Guidance on Board Effectiveness* is an excellent source of information for all corporate directors.

The Survey questioned the value of an updated Fund Governance Code aimed at directors of Irish funds or fund managers (see Figure 20 below). Three different types of code were mooted. A total of 82.2% of respondents considered a Code published by the CBI and

applying on a Comply or Explain basis as being valuable and only 4.4% considered it not valuable. If the Code applied on a mandatory basis, a lesser number of 71.1% considered it would be valuable with 17.7% considering it not to be valuable. Finally, the least support of (55.6% was for an updated Code published by a recognised industry body and applying on a Comply or Explain basis.



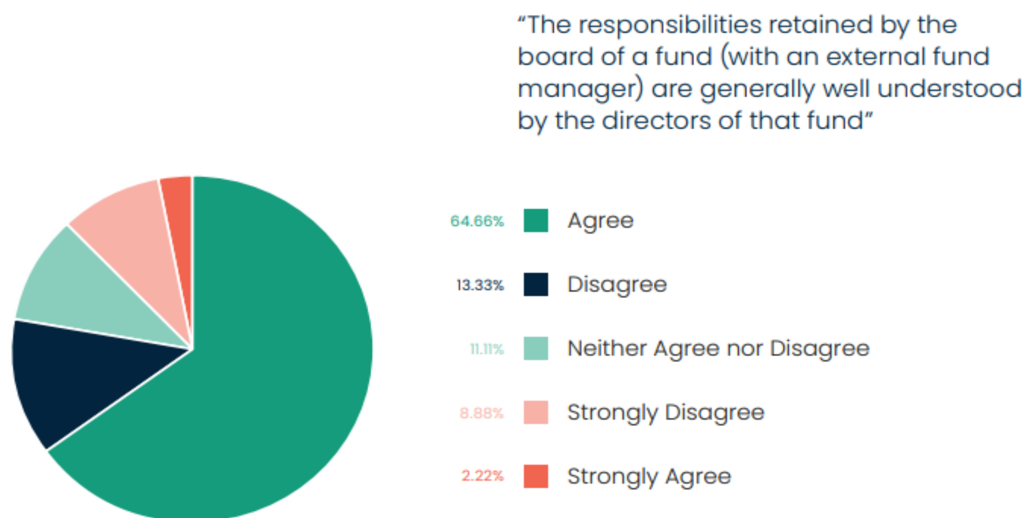
The CBI has produced corporate governance codes for many regulated entities, including credit institutions and investment firms. The introduction of a code for funds and fund managers drawing together aspects of CP86, industry statements etc. would be worth exploring further.

7. Findings on Relationship Between the Fund Board and the Board of an External Fund Manager

A total of 73.5% of respondents agreed with the following statement: "The responsibilities retained by the board of a fund (with an external fund manager) are generally well understood by the directors of that fund" (see Figure 21 below). While this number is high,

it still leaves more than quarter of respondents doubting the boards' understanding in this regard. This is concerning given that a lack of appreciation of the roles of the two boards could lead to responsibilities being overlooked by either board or conflicts arising. CP86 is particularly clear and helpful in this regard. It emphasises that the fund board "retains ultimate responsibility for its management" and lists various key tasks that are retained. These include "satisfying itself that its relationship with the fund manager is such that the relevant board responsibilities are discharged".

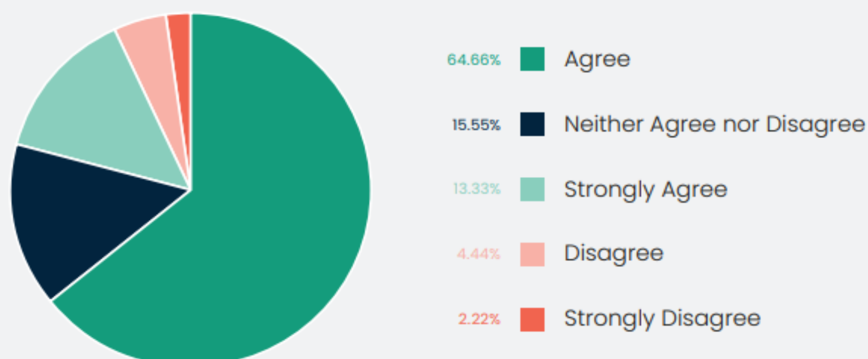
Figure 21: **Understanding of the Responsibilities Retained by Fund Board**



8. Findings on the Suitability (Fitness & Probity) and the Individual Accountability Regime

Individuals need to pass the CBI's fit and proper test prior to appointment as a fund director. There was strong support for this regime with 78% of respondents agreeing with the statement: "The carrying out of fit and proper assessments by the Central Bank of Ireland pursuant to its Fit & Proper Regime makes an important contribution to ensuring the suitability of directors on the boards of funds and/or fund managers" with only 6.66% disagreeing (See Figure 22 below).

Figure 22: **Suitability and the Individual Accountability Regime**

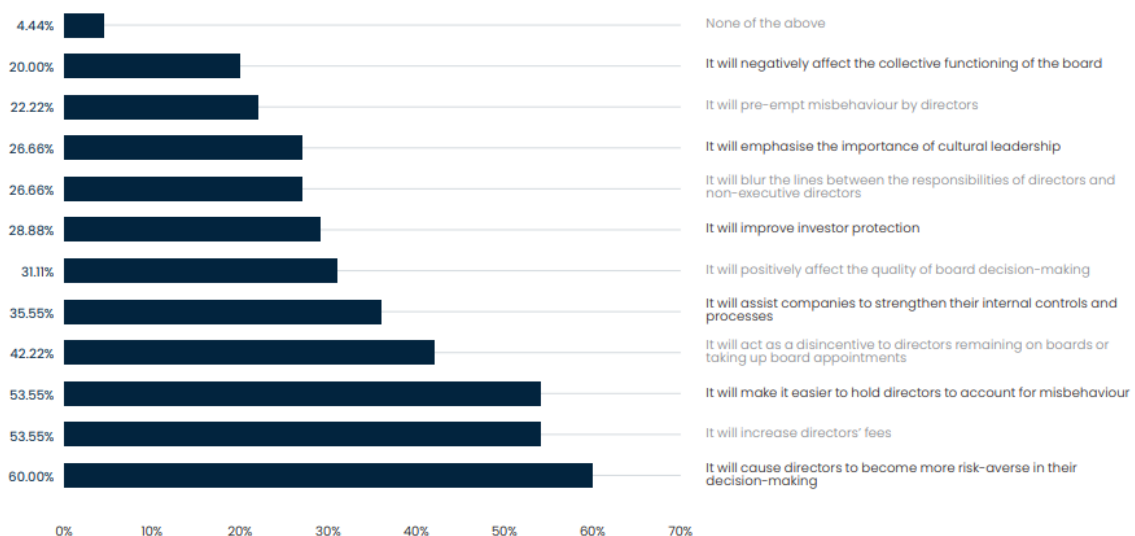


"The carrying out of fit and proper assessments by the Central Bank of Ireland pursuant to its Fit & Proper Regime makes an important contribution to ensuring the suitability of directors on the boards of funds and/or fund managers"

The Central Bank (Individual Accountability Framework) Act 2023, which was signed into law on 9 March 2023, introduced the Senior Executive Accountability Regime ("SEAR") for in-scope regulated financial services providers. Although this currently does not include funds or fund managers, they are likely to be included in the future. The objective of SEAR is to enhance governance, performance and accountability at the senior management level. In the Survey, respondents were asked to choose any of a list of potential implications the proposed individual accountability regime (set out in the Central Bank (Individual Accountability Framework) Bill 2022) were likely to have on directors of funds and management companies. As anticipated, the responses identified both negative and positive implications. The most common response was that it would lead to more risk-averse decision-making from directors (60%). There were also concerns that it would: increase directors' fees (53.3%); create a disincentive to take up or renew board appointments (42.2%); blur the lines between the responsibilities of executive and non-executive directors (26.7%); and negatively affect the collective functioning of the board (20%). On the positive side, there were expectations that it would: render it easier to hold directors to account for misbehaviour (53.3%); strengthen companies' internal controls and processes (35.6%); improve the quality of board decision-making (31.1%); improve investor

protection (28.9%); emphasise the importance of cultural leadership (26.7%); and pre-empt directors' misbehaviour (22.2%). As the regime has not yet commenced even for in-scope entities, it is too early to form a view as to the validity of these expectations. However, research suggests that many of the aforementioned negative implications have not emerged in other jurisdictions such as the UK and Australia where similar regimes apply and the regimes are generally perceived to have contributed positively to governance and enforcement (FCA, 2019; Clarke, 2021**).**

Figure 23: **Likely Effects of the Application of the Individual Accountability Regime to Directors of Funds and Fund Managers**



V Conclusion

Ireland is proud of its reputation as a centre of excellence for the investment funds sector and there is an expectation that the fund sector will continue to grow in size and importance. There is an awareness, too that, as the sector continues to play an important role as an alternative source of financing for the real economy and as the nature of its activities evolve and expand, new types of risks and opportunities will emerge (Department of Finance, 2023). Faced with regulatory, socioeconomic, political and environmental challenges, risk management is key and it is important that we ensure that governance in the systemically important fund sector remains robust.

There has been a wide-ranging and prolonged academic and political debate over the last ninety years about the purpose of a traditional company and yet there has been very little debate about the broader purpose of corporate funds. What discussion there has been has tended to rest on institutional stewardship and the role investment managers can play through engagement with their portfolio companies (Katelouzou and Klettner (2020) and Lund (2022)). The Survey reflects a strong view that the purpose of a fund is simply to invest its capital in accordance with the particular investment programme directed by its promotor/ investment manager and set out in its prospectus and that the parties have little flexibility in this regard. There seemed to be little support by the majority of respondents for adopting a more stakeholder-oriented purpose unless this was consistent with the prospectus and certainly no question of focusing on the interests of other stakeholders in the event of a conflict with investors' interests. This is perhaps not surprising given the statutory framework of funds which describes their "sole objective" as collective investment with the aim of spreading investment risk to the benefit of investors. However, such a finding has implications for the broader debate of the public interest role expected to be played by funds and the social obligations this might engender.

One consequence of the unique organisational set-up in the fund sector based as it is on "the separation of funds and managers" is the innate conflicts of interest which arise. The lack of consensus revealed in the Survey as to whether the conflicts which exist between fund managers and investment managers are capable of being completely successfully managed suggests that this is an area requiring further reflection, innovation and possibly regulation. Possible areas for change identified in the Survey include moving away from the traditional means of appointing non-executive directors and reviewing board tenure rules. A second consequence is the parallel existence of the boards of the fund and the fund manager with the former delegating key functions and yet retaining responsibility for the exercise of those functions. Whilst almost three quarters of respondents agreed that these retained responsibilities are generally well understood by the fund board, this leaves more than one quarter of respondents doubting the boards' understanding in this regard. This is perhaps the most worrying of the Survey's findings as it suggests duplication at best and a potential oversight gap at worst. It also suggests that further guidance and training in this regard is necessary as a matter of urgency.

The Survey revealed a welcome appreciation for the value of expertise and integrity on boards of funds and fund managers. However, its findings in regard to diversity were less positive, particularly in the context of an obvious need for improvement in diversity metrics in the sector. Measures of diversity relating to place of residence, nationality, ethnicity and gender were identified by the least number of respondents as an important attribute of a director. Similarly, asked to choose all impediments to board effectiveness based on their own experience of fund or fund manager board meetings, a lack of diversity relating to educational/professional background, gender, age, ethnicity and sexual orientation was chosen by the least number of respondents. Viewed, however, in the context of a significant majority in favour of a voluntary target or mandatory quota for female board representation, this suggests perhaps that the business case for greater diversity was less persuasive than other justifications such as equality and inclusion, unlocking talent etc. It must be emphasised that while voluntary targets have proven to be effective in the past, they should be linked to a policy on diversity and inclusion and accompanied by disclosure of how the targets are to be achieved and regular explanations of success or failure in meeting them.

Finally, the Survey revealed strong support for a new or updated Fund Governance Code aimed at directors of Irish funds or fund managers. Such a code could address some of the uncertainties the Survey has revealed in terms of governance. Whilst the idea of a Code published by the CBI to apply on a “comply or explain” basis was considered most valuable, it is noteworthy that a mandatory code received significant support too. If it chose to respond to this demand, the CBI could draw together aspects of its excellent CP 86 guidance and previously published, industry statements, “Dear CEO” letters etc. and combine it with best practice from other sectors and other jurisdictions. The CBI has produced useful governance codes for many other regulated entities including for credit institutions in the wake of the Banking Crisis. Whilst in this case, the CBI would be acting pre-emptively, a Fund Governance Code could serve a similar function of ensuring that appropriate and robust corporate governance frameworks are in place and implemented to reflect the risk and nature of the funds sector.

Appendix

1. Definitions of terms used in Survey

"Independent non-executive director" (INED) - a director meeting the independence criteria set out in the Irish Funds' Corporate Governance Code for Collective Investment Schemes and Management companies. It states "The following criteria shall be considered and given reasonable weight when assessing director independence: any financial or other obligation the individual may have to the firm or its directors; whether the individual is or has been employed by the firm or a group entity in the past and the post(s) so held; whether the individual is or has been a provider of professional services to the firm in the recent past; whether the individual represents a significant shareholder; circumstances where the individual has acted as an independent non-executive director of the firm for extended periods; any additional remuneration received in addition to the director's fee, related directorships or shareholdings in the firm; and any close business or personal relationship with any of the firm's directors or senior employees."

"Fund board" – board of a corporate fund i.e. an Irish Collective Asset-Management Vehicle (ICAV) or an investment company (UCITS or Alternative investment fund (AIF) which is externally managed.

"Fund manager" (MANCo) – (a) a UCITS management company; (b) an alternative investment fund manager (AIFM); or (c) a self-managed UCITS or a self-managed AIF authorised in Ireland as an AIFM or UCITS management company.
"Delegates" - the fund administration company, investment manager, risk manager and distributor.

"Service Provider" – any service to the fund that is not formally designated as a "delegate".

“Investment Manager”” – the asset management company which is authorised or registered for the purpose of portfolio management (where this is outsourced) and subject to prudential supervision in the relevant jurisdiction.

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3. Methodology

The Report utilised data made available by the Institute of Bankers (“IoB”). The data resulted from a Survey designed by Professor Clarke and conducted on her behalf by the IoB between January 13th and March 20th 2023. The Survey was made available to 220 alumni of the IoB’s Certified Investment Fund Director programme (“CIFD”). No personally identifying information was collected and the questions were designed to safeguard the anonymity of participants. Overall, 47 respondents participated in the IOB Good Fund Governance survey. Of these, two omitted to grant informed consent notice, leaving a total sample size of 45 respondents. The response rate thus was 20% which for a smaller sample

size reaches the rate necessary to provide a fairly confident estimate. The usual caveats however apply as with all small samples. The data was made available to Professor Clarke in aggregate anonymous form by Antonia Egli as a statistical data set. Research Ethical Approval was granted pursuant to the TCD Research Ethics process.

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4. Survey Questionnaire

Questions

1. Which of the following describes your work **experience?** Tick all that are relevant.
   - A director of an Irish registered fund
   - A director of an Irish authorized fund manager
   - A director of a non-Irish registered fund
   - A director of non-Irish authorized fund manager
   - A director or senior manager in an investment manager
   - An employee (below senior management level) in an investment manager
   - A director or employee in a depositary
   - A director or employee in a fund administration company
   - A director or employee in a risk manager
   - A director or employee in a financial services firm not listed above

- A partner or employee in a law firm
- A Chief Executive of an Irish authorized fund manager
- A Designated Person (PCF39A-39F) in an Irish authorized fund manager
- A holder of a Pre-Approval Controlled function in an Irish authorized fund manager
- A director performing the Organisational Effectiveness role in an Irish authorized fund manager
- None of the above

2. How much do you agree or disagree with the following statement?

The purpose of a fund is simply to invest its capital in accordance with the particular investment programme directed by its promotor/investment manager and set out in its prospectus. [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]

3. To what extent does each of the following have **flexibility to** re-interpret the fund's purpose in a manner not specifically provided for in the fund's current strategy, constitution or product terms?
    - The fund board [none, a little, substantial, complete, no view]
    - The board of the fund manager [none, a little, substantial, complete, no view]
    - The investment company [none, a little, substantial, complete, no view]
    - The investor through the exercise of proxy voting [none, a little, substantial, complete, no view]

4. Which of the following is part of the **role of the fund board**? Tick all that are relevant.
    - Establishing the company's purpose
    - Identifying the company's values
    - Satisfying itself that its purpose and values are aligned to its strategy and culture
    - Setting the "tone from the top" in relation to creating and promoting culture and values
    - Monitoring indicators of the company's firm's culture and values
    - None of the above

5. Which of the following is part of the **role of the board of the fund manager**? Tick all that are relevant.
    - Establishing the company's purpose
    - Identifying the company's values

- Satisfying itself that its purpose and values are aligned to its strategy and culture
- Setting the “tone from the top” in relation to creating and promoting culture and values
- Monitoring indicators of the company’s culture and values
- None of the above

6. How often are **fund purpose and values** discussed at meetings of the fund board? Tick all that are relevant.
   - Every board meeting
   - Not every meeting but more than two times a year
   - Annually
   - Less than annually
   - Never
   - None of the above
   -
7. How often are **fund purpose and values** discussed at meetings of the board of the fund manger? Tick all that are relevant.
   - Every board meeting
   - Not every meeting but more than two times a year
   - Annually
   - Less than annually
   - Never
   - None of the above

8. Rank what you consider to be the top 5 **most important attributes of a director** of a fund or fund manager from the following list:
   - The absence of Conflicts of Interest
   - The qualifications and expertise necessary to perform the functions of a director
   - Experience in the funds sector (including with service providers)
   - Experience as a director on any board
   - Gender (improving the board’s gender diversity balance)
   - Ethnicity (improving the board’s ethnic diversity balance)
   - Nationality (improving the board’s geographic diversity balance)
   - Place of residence
   - Good Reputation

- Integrity
- Financial Soundness
- Strong Ethical sense
- Cultural leadership skills
- Sufficient Time to perform the functions of a director
- Behavioural skills including courage, critical thinking skills and independence of mind
- Frequency of physical attendance at meetings
- Demonstrable commitment to ongoing education
- Accreditations from recognized bodies e.g. Chartered Director (CDir), Chartered Investment Fund Director (CIFD)

9. In the following list of **attributes of a director** of a fund or find manager, tick any that you consider to be important (including the 5 you have identified in the previous answer):
    - The absence of Conflicts of Interest
    - The qualifications and expertise necessary to perform the functions of a director
    - Experience in the funds sector (including with service providers)
    - Experience as a director on any board
    - Gender (improving the board’s gender diversity balance)
    - Ethnicity (improving the board’s ethnic diversity balance)
    - Nationality (improving the board’s geographic diversity balance)
    - Place of residence
    - Good Reputation
    - Integrity
    - Financial Soundness
    - Strong Ethical sense
    - Cultural leadership skills
    - Sufficient Time to perform the functions of a director
    - Behavioural skills including courage, critical thinking skills and independence of mind
    - Frequency of physical attendance at meetings
    - Demonstrable commitment to ongoing education
    - Accreditations from recognized bodies e.g. Chartered Director (CDir), Chartered Investment Fund Director (CIFD)

10. How much do you agree or disagree with each of the following statements in respect of the **understanding** of directors of a fund or fund manager (irrespective of fund type)?
    - All directors are expected to have a reasonable understanding of ESG risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - All directors are expected to have a reasonable understanding of Cyber risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - All directors are expected to have a reasonable understanding of Artificial Intelligence risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - All directors are expected to have a reasonable understanding of Portfolio Composition Risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - Not all, but at least one director is expected to have a reasonable understanding of ESG risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - Not all, but at least one director is expected to have a reasonable understanding of Cyber risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - Not all, but at least one director is expected to have a reasonable understanding of Artificial Intelligence risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]
    - Not all, but at least one director is expected to have a reasonable understanding of Portfolio Composition Risk [Strongly disagree, Disagree, Neither agree nor disagree, Agree, Strongly Agree]

11. In relation to **diversity** on the boards of funds and fund managers, which of the following statements best represents your viewpoint?
    - There should be a mandatory quota for female board representation
    - There should be a voluntary target set by the Regulator for female board representation
    - There should be a voluntary target set by an Industry body for female board representation
    - There should be a voluntary target set by the company itself for female board representation
    - There should be no target set for female board representation
    - None of the above statements

12. Which of the following do you consider to be acceptable practice in relation to the **appointment of a director to a fund**? Tick all that are relevant.
    - Nomination by the investment manager of an independent non-executive director
    - Nomination by the investment manager of a non-executive director who is also employed by that investment manager
    - Nomination by the fund manager of a non-executive director
    - Nomination by the fund manager's legal adviser of a non-executive director
    - Nomination by the investment manager's legal adviser of a non-executive director
    - Appointment of a non-executive director following an open advertising campaign
    - None of the above

13. Which of the following statements best expresses your viewpoint on the **composition of the fund board**?
    - The board should comprise all independent non-executive directors
    - The board should comprise a majority of independent non-executive directors
    - The board should comprise less than a majority but some independent non-executive directors
    - The board should comprise all non-executive directors whether independent or not
    - The board should comprise a majority of non-executive directors whether independent or not
    - The board should comprise less than a majority but some non-executive directors whether independent or not
    - None of the above

14. Which of the following statements best expresses your viewpoint on the **composition of the board of the fund manager**?

- The board should comprise all independent non-executive directors
- The board should comprise a majority of independent non-executive directors
- The board should comprise less than a majority but some independent non-executive directors
- The board should comprise all non-executive directors whether independent or not
- The board should comprise a majority of non-executive directors whether independent or not
- The board should comprise less than a majority but some non-executive directors whether independent or not
- None of the above

15. How much do you agree or disagree with the following statement?
It is not possible for the board of a fund manager to completely successfully manage the **conflict of interest** which exists between the fund manager which has an obligation to act in the best interests of investors and the investment manager from which services are being procured. [Strongly disagree, Disagree, Neither agree nor disagree, Agree Strongly Agree]

16. Based on your own experience of fund or fund manager board meetings, which of the following have you observed which you consider to be an impediment to **board effectiveness**? Tick all that are relevant.
    - Poor challenge of delegates by non-executive directors
    - Insufficient board dialog with delegates
    - Poor challenge of other directors by non-executive directors
    - Manifest conflicts of Interest
    - Limited co-operation from delegates
    - An inefficient Chair
    - A domineering Chair
    - Poor board culture and/or values
    - Inadequate Information or poor reporting to the board
    - Lack of competence on the part of the non-executive directors
    - An increasing regulatory burden
    - An overly prescriptive nature of regulation
    - Insufficient time allowed for board discussion
    - Insufficient attention paid in meetings to risk and compliance functions
    - Evidence of a lack of clarity as to the allocation of responsibilities
    - Group Think and other biases
    - Over-long board tenure
    - Gender imbalance on the board
    - A lack of ethnic diversity on the board
    - A lack of age diversity on the board
    - A lack of diversity on the board in respect of sexual orientation
    - A lack of diversity on the board in respect of educational and/or professional background
    - None of the above

17. How much do you agree or disagree with this statement?

The **responsibilities retained by the board of a fund** (with an external fund manager) are generally well understood by the directors of that fund. [Strongly disagree, Disagree, Neither agree nor disagree, Agree Strongly Agree]

18. Which of the following do you consider may have a significant positive effect on **controlling performance fees**? Tick all that are relevant.
    - The fund board
    - The Independent non-executive directors in the fund board
    - The board of the fund manager
    - The Independent non-executive directors in the board of the fund manager
    - Market discipline
    - The Regulator
    - The fund's investors
    - The DP for Capital and Financial Management
    - None of the above

19. Which of the following statements best represents your view in respect of **board rotation of an executive or non-executive (non-independent) director in a fund?**
    - Such a director should not serve on a board for more than 3 years
    - Such a director should not serve on a board for more than 6 years
    - Such a director should not serve on a board for more than 9 years
    - Such a director should not serve on a board for more than 12 years

20. Which of the following statements best represents your view in respect of **board rotation of an executive or non-executive (non-independent) director in a fund manager?**
    - Such a director should not serve on a board for more than 3 years
    - Such a director should not serve on a board for more than 6 years
    - Such a director should not serve on a board for more than 9 years
    - Such a director should not serve on a board for more than 12 years

21. Which of the following statements best represents your view: The period of board service beyond which a non-executive director of a fund or fund manager should no longer be considered **independent** is:
    - Between 1 and 3 years
    - Between 4-6 years
    - Between 7-9 years
    - Between 10-12 years
    - More than 12 years

22. How valuable would you consider an updated **Fund Governance Code** aimed specifically at the directors of Irish funds or fund managers to be?
    - If published by a recognized industry body and applying on a Comply or Explain basis [Not valuable at all, Not so valuable, Neutral value, Somewhat valuable, Very valuable,]
    - If published by the Central Bank and mandatory in its application [Not valuable at all, Not so valuable, Neutral value, Somewhat valuable, Very valuable,]
    - If published by the Central Bank and applying on a Comply or Explain basis [Not valuable at all, Not so valuable, Neutral value, Somewhat valuable, Very valuable,]

23. Which of the following effects is the introduction and application to directors of funds and fund managers of the **proposed individual accountability regime** (set out in the Central Bank (Individual Accountability Framework) Bill 2022**)** likely to have? Tick all that are appropriate.
    - It will make it easier to hold directors to account for misbehaviour
    - It will pre-empt misbehaviour by directors
    - It will negatively affect the collective functioning of the board
    - It will positively affect the quality of board decision-making
    - It will blur the lines between the responsibilities of directors and non-executive directors
    - It will assist companies to strengthen their internal controls and processes
    - It will emphasise the importance of cultural leadership
    - It will improve investor protection
    - It will increase directors' fees
    - It will act as a disincentive to directors remaining on boards or taking up board appointments

- It will cause directors to become more risk-averse in their decision-making
- None of the above

24. How much do you agree or disagree with this statement?
The **carrying out of fit and proper assessments** by the Central Bank of Ireland pursuant to its Fit & Proper Regime makes an important contribution to ensuring the suitability of directors on the boards of funds and/or fund managers. [Strongly disagree, Disagree, Neither agree nor disagree, Agree Strongly Agree]

25. If you have answered either “Strongly Disagree” or “Disagree” to the previous question, please explain your answer. [box]

Please add any further comments in relation to the questions asked in the box below. You are reminded not include any personal details in your comments.