Funds Quarterly Legal and Regulatory Update

Period covered:
1 October 2014 – 31 December 2014

DILLON EUSTACE

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS

(i) ESMA Issues Technical Advice to the European Commission on Insolvency protection when Delegating Safekeeping Functions and Depositary Independence

UCITS V provides that the European Commission may issue delegated legislation (level 2 legislation) in order to address certain of its provisions in a more detailed manner, namely:

- Insolvency Protection: the requirement that a third party to whom safekeeping functions (i.e. the custody of financial instruments or verification of ownership of other assets) have been delegated, take all necessary steps to ensure that in the event of its insolvency, assets held by it for a UCITS are not available for the benefit of its creditors; and

- Independence Requirement: the requirement for the UCITS management company and depositary to act independently of each other.

The European Commission requested that ESMA provide it with technical advice upon possible implementation measures which could be introduced by means of level 2 legislation in respect of these two UCITS V requirements. On 26 September 2014 (shortly after UCITS V came into effect), ESMA issued a consultation paper containing draft proposals for such measures and sought feedback on these proposals. This consultation process ended on 24 October 2014.

On 28 November 2014, ESMA issued its final technical advice to the European Commission and made available a list of responses that it has received to its September 2014 consultation paper (ESMA/2014/1183) (the "**Consultation Paper**") on technical advice on delegated acts required by the Directive 2014/91/EU ("**UCITS V**").

ESMA's Consultation Paper and the list of responses received can be viewed via the following link:

http://www.esma.europa.eu/consultation/Consultation-delegated-acts-required-UCITS-V-Directive#responses

Technical Advice on Insolvency Protection.

UCITS V provides that the third party to which custody of UCITS assets has been delegated is required to take all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held in custody by it are unavailable to its creditors. ESMA's technical advice sets out the necessary steps in the form of a non-exhaustive list of the measures, arrangements and tasks that the third party to which custody is delegated should put in place and perform on an on-going basis in order to ensure that the assets of such UCITS are adequately protected.

Technical Advice on Depositary Independence Requirements

In accordance with UCITS V, no company may act as both UCITS management company and depositary. Further, a depositary shall not carry out activities with regard to the UCITS management company which may create conflicts of interest between the UCITS, the investors in the UCITS, the UCITS management company and the depositary itself, unless the depositary has functional and hierarchically separated the performance of its depositary tasks from its other conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to investors.

ESMA's technical advice outlines certain minimum requirements in relation to structures and operational procedures which it proposes should be adhered to in order to enable the depositary and UCITS management company to be deemed to be acting independently of each other.

In particular, ESMA considers that the independence of the management company / investment company and the depositary (together the **"Relevant Entities"**) may be jeopardised by the existence of certain links between these parties. In the Consultation Paper, ESMA had identified the following categories of links for these purposes –

- Common management / supervision; and
- Cross-shareholdings / group inclusion.

While several respondents agreed that common management / supervision may to a certain extent interfere with independence of the Relevant Entities, criticism was expressed by a large number of respondents on the possible approaches envisaged on cross-shareholdings, however ESMA in its final technical advice sets out that is considers that the links it had identified in the Consultation Paper are the right ones and have decided not to modify its overall approach.

ESMA will assist the European Commission in preparing level 2 legislation based upon its technical advice. It is currently anticipated that the formal level 2 legislation will be in place by next July at the latest. EU Member States must adopt and publish the laws and regulations necessary to comply with UCITS V by 18 March 2016.

(ii) Responses to ESMA Discussion Paper on the Calculation of Counterparty Risk by UCITS for OTC Derivative Transactions subject to Clearing Obligations

On 28 October 2014, ESMA made available a list of responses that it has received to its July 2014 discussion paper on the calculation of counterparty risk by UCITS for over-the-counter ("**OTC**") derivative transactions subject to clearing obligations (ESMA/2014/876) (the "**Discussion Paper**").

The Discussion Paper concerned the calculation of the limits on counterparty risk in centrally cleared OTC derivative transactions under Directive 2014/91/EU ("**UCITS V**") in light of the requirement under the European Market Infrastructure Regulation ("**EMIR**") that certain OTC derivative transactions will become subject to clearing obligations.

Feedback on the Discussion Paper included responses from the following:

- European Association of CCP Clearing Houses;
- European Fund and Asset Management Association;
- International Swaps and Derivatives Association;
- Investment Management Association; and
- Securities Industry and Financial Markets Association.

The link to the Discussion Paper and the responses to same can be viewed via the following links respectively:

http://www.esma.europa.eu/system/files/2014-esma-876.pdf

http://www.esma.europa.eu/consultation/Discussion-paper-Calculation-counterparty-risk-UCITS-OTC-financial-derivative-transacti#responses

(iii) Irish Stock Exchange ("ISE") launches ISE Fund Hub

The ISE has announced the launch of the ISE Fund Hub, a new online information portal for funds which are listed on the ISE, which is targeted at professional investors. The ISE currently has over 7,000 fund classes listed on its Main Securities Market from every major fund domiciled across the globe. Information such as fund net asset values, key fund

documents and an individual profile area for each manager as well as extensive performance based analytics are displayed on the ISE Fund Hub.

The web based information portal was developed in partnership with FundConnect, a Danish based funds infrastructure provider to the European market. Feedback on the ISE Fund Hub has been positive thus far and various high profile investment managers have agreed to use the service, including J O Hambro, Neuberger Berman, Goldman Sachs, Lord Abbett and Dragon Capital.

(iv) The European Fund and Asset Management Association ("EFAMA") Publishes Investment Funds Industry Fact Sheets

EFAMA published its Investment Funds Industry Fact Sheet for September 2014, which provides net sales of UCITS and non-UCITS. Twenty-seven associations representing more than 99.6 percent of total UCITS and non-UCITS assets at the end September 2014 provided information in respect of net sales and/or net assets data.

The main developments in September 2014 in the reporting countries can be summarized as follows:

- Net sales of UCITS dropped to EUR 14 billion in September from EUR 41 billion in August;

- Long-term UCITS (UCITS excluding money market funds) posted net inflows of EUR 28 billion, compared to EUR 32 billion in August;

    - Bond funds registered decreased net sales of EUR 13 billion, down from EUR 16 billion in August;
    - Net flows into equity funds turned negative for the first time since June 2013, posting net outflows of EUR 6 billion compared to net inflows of EUR 2 billion in August;
    - In contrast, balanced funds registered increased net sales of EUR 18 billion, up from EUR 13 billion in August.

- Total net assets of UCITS stood at EUR 7,864 billion at end September 2014, representing a 0.8 percent increase during the month.

    - Total net assets of non-UCITS increased 0.3 percent to stand at EUR 3,112 billion at month end;
    - Overall, total net assets of the European investment fund industry stood at EUR 10,975 billion at end September 2014.

However, in October the Investment Funds Industry Fact Sheet shows that net sales of UCITS increased to EUR 44 billion from EUR 14 billion in September. This jump in net sales came on the back of large net inflows to money market funds during the month.

The Investment Funds Industry Fact Sheet can be viewed via the following link:

http://www.efama.org/Pages/UCITS-net-sales-jump-to-EUR-43-billion-in-October.asp

(v) Central Bank Publishes Third and Fourth Editions of UCITS Q&A

On 5 November 2014, the Central Bank published a third edition of the UCITS Q&A. A new question ID 1011 on master feeder arrangements is included. This question outlines that the application of an anti-dilution levy by a master UCITS would not be considered as falling within the prohibition set out in Regulation 86(2) of the EC (UCITS) Regulations 2011 where:

- the prospectus includes complete and unambiguous disclosure on the purpose and nature of the charge which may arise; and
- any such anti-dilution levy is applied at the master UCITS level only.

The UCITS Q&A sets out answers to queries likely to arise in relation to UCITS and is published in order to assist in limiting uncertainty.

The Q&A is divided into four parts under the following headings:

- Investments in open-ended non-UCITS investment funds;
- Implementation of ESMA guidelines on ETFs and other UCITS issues;
- Permitted markets for UCITS; and
- Master-Feeder UCITS

The third edition of the UCITS Q&A can be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/141104%20UCITS%20QA%20NO%203_%20FINAL.pdf

On the 17 December 2014, the Central Bank published a fourth edition of the UCITS Q&A. A new question ID 1012 in relation to UCITS ETFs is included. See the section below relating to ETFs in respect of the new question ID 1012. Question ID 1007 has also been amended and now reads as follows:

"Q. When does a UCITS money market fund have to comply with paragraph 43(e) of the European Securities and Markets Authority (ESMA) guidelines on ETFs and other UCITS issues (ref: ESMA/2012/832) ("the guidelines")?

A. The Central Bank of Ireland issued a memorandum to the Irish funds industry regarding implementation of the guidelines in February 2013 which inter alia noted that:

UCITS created before 18 February 2013 can avail of the transitional provisions set out in guidelines 63-70 of the ESMA guidelines.

Since then, ESMA revised the rules for the diversification of collateral received by UCITS in the context of efficient portfolio management techniques and OTC transactions. The Central Bank issued a consultation paper on the adoption of these revised guidelines in July 2014 and the responses to that consultation are still under review.

In the light of that consultation it is reasonable for a UCITS money market fund, authorised before 18 February 2013, to delay its compliance with paragraph 43(e) of the ESMA guidelines until such time as the Central Bank has issued its feedback and concluded the consultation process."

The fourth edition of the UCITS Q&A can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/UCITS%20QA%20NO%204_%20FINAL%2017%20DECEMBER%202014.pdf

(vi) ESMA Publishes Discussion Paper on Share Classes of UCITS

On 23 December 2014, ESMA published a discussion paper on share classes of UCITS (the "**Discussion Paper**"). In the Discussion Paper, ESMA sets out its views on what constitutes a share class, including how to distinguish share classes from compartments of UCITS. The Discussion Paper goes on to provide possible approaches to the extent of differentiation between share classes that should be permitted.

ESMA has outlined that it will take into account the feedback from stakeholders with a view to establishing a common position on the use of share classes by UCITS. ESMA appreciates that national practices on the use of share classes vary significantly. Therefore, ESMA will take into account the possible impact on current market practices when developing its final position on this topic.

Promoters of multi-class UCITS products should consider this Discussion Paper. For many, this Discussion Paper may not raise any concerns but for others it may suggest approaches not consistent with what has, to date, been allowed by home state competent authorities.

ESMA has requested that comments on the Discussion Paper are provided to them by 27 March 2015. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Dillon Eustace will be providing responses to ESMA ahead of this deadline and should you wish to provide any comments on the Discussion Paper to ESMA we would be happy to incorporate them into our submission.

The Discussion Paper can be accessed via the following link:

http://www.esma.europa.eu/consultation/Discussion-Paper-Share-Classes-UCITS

Dillon Eustace has prepared an article on the Discussion Paper which can be viewed at the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/ESMA%20Discussion%20Paper%20on%20UCITS%20Share%20Classes%20v2.PDF

Exchange Traded Funds

(i) Central Bank Publishes Forth Edition of UCITS Q&A

As outlined above, on the 17 December 2014, the Central Bank published a fourth edition of the UCITS Q&A. A new question ID 1012 in relation to UCITS ETFs is included.

The Irish Funds Industry Association ("**IFIA**") has outlined that the inclusion in the answer of the following wording "*will not authorise an active ETF unless arrangements are put in place to ensure that information is provided on a daily basis regarding the identities and quantities of portfolio holdings*" has created some concern that Ireland will be out of step with the ESMA guidelines and other jurisdictions in imposing this requirement and there is further worry that it would create a disadvantage for managers of active ETFs. This publication of the Central Bank's Q&A follows the recent announcement by the Irish Stock Exchange that it has removed the need for daily disclosure of portfolio details for actively managed ETFs from its listing requirements. See (ii) below.

The IFIA requested that the fourth edition of the UCITS Q&A be suspended until there is an opportunity to discuss it with industry. The IFIA is to raise this matter with the Central Bank in early 2015.

The fourth edition of the UCITS Q&A can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/UCITS%20QA%20NO%204_%20FINAL%2017%20DECEMBER%202014.pdf

(ii) Irish Stock Exchange ("ISE") Policy Note Removing Requirement for Actively Managed ETFs to Publish their Portfolio Holdings on a Daily Basis

The Rules Committee of the ISE has approved the removal of rule 5.5.2(a) from the Code of Listing Requirements and Procedures for Investment Funds (the "**Code**").

Rules 5.5.1 – 5.5.2 of the Code relate to ETFs. Rule 5.5.2 applies to actively managed ETF's. These differ from more conventional ETF's in that, rather than merely aiming to track an index passively, they buy and sell securities, either with a view to outperforming an index or market or to pursue an investment strategy which is independent of any index.

Rule 5.5.2 (a) was introduced by the ISE in February 2011 when there were very few actively managed ETFs in Europe. The listing rule the ISE imposed was appropriate at that point in time, but as the market has developed, the ISE no longer consider it to be fit for purpose.

The ISE asserts that there are now numerous actively managed ETFs established and listed on various stock exchanges throughout Europe, including on the ISE. Research, together with feedback from market participants, indicates that the requirement to disclose portfolio details in rule 5.5.2(a) is no longer appropriate for actively managed ETFs for the following reasons:

- The information may be commercially sensitive. If the portfolio details are analysed over a period of time, the information may be used by third parties to replicate investment houses' strategies thus rendering them uncompetitive; and

- The information may give rise to undesirable market activity. It may enable other investors and managers to "front run" and otherwise trade against the funds in question, to the detriment of their investors and to market integrity.

The ISE has also outlined that it is worth noting that ESMA recently undertook a review of UCITS regulations in respect of ETF's. ESMA determined that, while UCITS ETFs should

disclose information to investors on their transparency policies, there was no need to require them to disclose specific portfolio information (other than in interim and annual accounts). In addition, other major European markets such as the London Stock Exchange and the Borsa Italiana do not require such portfolio disclosure.

European Market Infrastructure Regulation ("EMIR")

(i) Central Bank appointed National Competent Authority

On 8 October 2014, the Central Bank was appointed the sole National Competent Authority ("**NCA**") for the purposes of the European Market Infrastructure Regulation ("**EMIR**"), by the Minister for Finance in Statutory Instrument S.I. 443 of 2014 (the "**EMIR Regulation**").

In addition, the EMIR Regulation gives certain powers to the Central Bank such as supervisory and investigatory powers considered by the Minister for Finance as necessary to ensure that the Central Bank can properly fulfill its role as the NCA. The powers which have been given to the Central Bank can be summarised as follows:

- Require a counterparty to a derivative contract to submit an EMIR Regulatory Return ("**ERR**");
- Approve a "third party assessor" whose role will be to objectively assess whether the ERR has been prepared and completed in accordance with the EMIR Regulation;
- Require the taking or refraining from taking by counterparties of certain actions or to prohibit certain actions by counterparties by issuing a direction to a Financial Counterparty (or to a non-financial counterparty ("**NFC**") in certain circumstances);
- Issue a contravention notice detailing the date by which the contravention may be remedied; and
- Appoint authorised officers with powers of entry, search, inspection and other related powers to monitor compliance with the EMIR Regulation.

Lastly, the EMIR Regulation establishes Ireland's sanctions regime for infringements of obligations imposed by EMIR under the EMIR Regulation.

(ii) Consultation on the Supervision of Non-Financial Counterparties under EMIR

EMIR affects all entities "established" in the European Union that enter into derivatives. Unlike other legislation covering financial services which only applies to regulated entities, EMIR has implications for all EU entities that enter derivatives; i.e. to corporates, SPVs, pension funds, unregulated funds, etc.

Accordingly (by virtue of the Central Bank's appointment as the sole NCA in the State for

EMIR), the Central Bank has been charged with a number of new responsibilities including supervising compliance with EMIR. In particular, the Central Bank has been tasked with supervising Non-Financial Counterparties[1] ("**NFCs**") many of which will not be known to the Central Bank as a result of their unregulated status.

In light of the above, on 4 December 2014, the Central Bank published Consultation Paper 90 with proposals in relation to the supervision of NFCs under EMIR (the "**Consultation Paper**"). The Consultation Paper focuses on the supervision of EMIR compliance for NFCs, which present certain new challenges for the Central Bank.

The Consultation Paper will be relevant to any NFC and their service providers.

The Central Bank proposes that all NFCs will be required to submit a new regulatory return; the ERR. An entity may not be required to submit an ERR more than once in a twelve month period.

The EMIR Regulation provides that certain NFCs meeting certain conditions shall be exempt from the requirement to submit a ERR where they satisfy the following conditions:

(a) The counterparty has had less than 100 outstanding OTC derivative contracts at any time during the reporting period to which an ERR relates;
(b) The counterparty has outstanding OTC derivative contracts which cumulatively have a gross notional value of less than €100 million; and
(c) The counterparty has delegated the reporting of the details of their OTC derivative contracts to a third party.

The consultation process runs from 4 December until 30 January 2015. In January, the Central Bank will host a roundtable discussion covering matters raised in the Consultation Paper. The Central Bank welcomes comments and views from all interested parties by email to emir@centralbank.ie or in writing to:

Markets Infrastructure Team
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

[1] A NFC is defined as any undertaking established in the EU that enters into derivatives and does not fall within the financial counterparty category. In other words, any non-regulated EU entity will be a NFC under EMIR.

The closing date for submissions on the Consultation Paper is 30 January 2015. It is intended that submissions will be published on the Central Bank website www.centralbank.ie.

A copy of the Consultation Paper can be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP90%20Consultation%20on%20the%20Supervision%20of%20Non-Financial%20Counterparties%20%20under%20EMIR/CP90%20Consultation%20on%20the%20Supervision%20of%20Non-Financial%20Counterparties%20under%20EMIR.pdf

(iii) ESMA Updates EMIR implementation Q&As

ESMA issued a revised "Questions and Answers" document on the implementation of EMIR, (the "**Q&A**") on 24 October 2014. The updated Q&A include a table of questions, detailing which questions have been added or updated as of 24 October 2014 and to which provision of EMIR the new questions relate.

The new questions and answers include further guidance on trade reporting to trade repositories including a validation table. The Q&A's were originally published in July 2014 and have been updated on an on-going basis as issues arise since that date.

The latest version of the Q&A can be found here:

http://www.esma.europa.eu/system/files/2014-1300_qa_xi_on_emir_implementation_october_2014.pdf

(iv) Consultation Paper on the Review of the EMIR Reporting Technical Standards is published by ESMA

On 10 November 2014, ESMA published a consultation paper (the "**Consultation**") on revising the implementing technical standards ("**ITS**")[2] and the regulatory technical standards ("**RTS**")[3] which relate to the obligation to report data to Trade Repositories ("**TR"**) under EMIR.

ESMA explains in the Consultation that although the RTS and the ITS provide a description of fields, standards and formats to be used, practical experience has shown that there is still room for interpretation of the various fields of the RTS/ITS. In addition, the practical implementation of EMIR reporting has shown some shortcoming with regards to the current

[2] Regulation 1247/2012
[3] Regulation 148/2013

reporting framework and has highlighted particular instances for improvements so that the EMIR reports better fulfill their objectives. The Consultation contains a draft of the Commission Delegated Regulation containing revisions to the RTS at Annex IV, and a draft of the Commission Implementing Regulation containing revisions to the ITS is set out at Annex V, (hereinafter the "**Draft Standards**"). The Draft Standards propose to clarify the interpretation of the data fields needed for the reporting to TR's and the most appropriate way of populating them.

ESMA will consider stakeholder's feedback to the proposed revised standards by 13 February 2015. ESMA will submit its final report (containing proposed final Standards) to the European Commission after that date and the European Commission has three months to decide whether to endorse ESMA's final drafts.

A copy of the Consultation can be found at this link:

http://www.esma.europa.eu/system/files/esma-2014-1352_consultation_paper_on_the_review_of_emir_reporting_standards_under_article_9_0.pdf

(v) Report on the OTC Derivatives Regulators Group to G20 Leaders on Cross-Border Implementation Issues

The OTC Derivatives Regulators Group ("**ODRG**") is made up of authorities with responsibility for OTC derivatives markets regulation in Australia, Brazil, the European Union, Hong Kong, Japan, Ontario, Quebec, Singapore, Switzerland and the United States. The ODRG was set up to help resolve conflicts, inconsistencies, gaps and duplicative requirements across jurisdictions.

In November 2014, ODRG updated the G20 Leaders on how it has addressed or intends to address identified cross-border issues since the St. Petersburg Summit, as well other continuing areas of focus for the ODRG, including further progress made bilaterally and in other fora, (the "**ODRG Report**"). The ODRG Report consolidates for the G20 Leaders the substance of previous reports made during 2014 to the G20 Finance Ministers and Central Bank Governors.

(vi) European Commission adopts First Equivalence Decision for Third Country Regulatory Regimes

Central counterparties ("**CCP's**") located in jurisdictions outside the European Union may provide clearing services to EU clearing members and trading venues where the jurisdiction where the CCP is located has been recognised in accordance with the conditions set out in

Article 25 of EMIR. In this respect an equivalence decision must be taken by the European Commission with regards to the relevant jurisdiction in question.

The European Commission explains that it begins its equivalence assessment if a CCP from a third country seeks recognition from ESMA. Equivalence assessments are undertaken using an outcome based approach. This requires that the relevant rules operating in the third country satisfy the same objectives as in the European Union, i.e. a robust CCP framework promoting financial stability through a reduction in systemic risk. It does not mean that identical rules are required to be in place in the third country. In addition, the assessment is undertaken in cooperation with the regulators in the third country. If a determination of equivalence is made, it will be given effect through a legally binding implementing act in accordance with Article 25(6) of EMIR.

On 30 October 2014, the European Commission adopted its first 'equivalence' decisions for the regulatory regimes of CCPs in Australia, Hong Kong, Japan and Singapore in accordance with the conditions set out in Article 25 of EMIR. CCPs in these third country jurisdictions will now be able to achieve full recognition by the European Union whilst remaining subject solely to the regulation and supervision of their home jurisdiction.

With regards to the equivalence decision by the European Commission, Mr. Michel Barnier the Commissioner for Internal Market and Services stated; *"Globally agreed reforms of derivatives markets – like all financial services reforms – will only work in international markets if regulators and supervisors rely on each other. Today's decisions show that the EU is willing to defer to the regulatory frameworks of third countries, if they meet the same objectives as EU rules. We have been working in parallel on assessing twelve additional jurisdictions and finalising those assessments is a top priority. This includes the United States: we are in close and continued dialogue with our colleagues at both the SEC and CFTC as we develop our assessments of their respective regimes and discuss their approaches to deference."*

A copy of the European Commission's press release can be found at this link:

http://europa.eu/rapid/press-release_IP-14-1228_en.htm

(vii) Extension of Transitional Period for Capital Requirements for EU banks that have Exposures to CCPs

The European Commission confirmed in a press release dated 11 December 2014 the adoption of an implementing act extending the transitional period for capital requirements for EU banking groups' exposures to CCPs under the CRD IV Regulation ("**CRR**") by six months.

In order for a CCP to be considered a qualifying CCP, it has to be either authorised (for those established in the EU) or recognised (for those established outside the EU) in accordance with the rules laid down in EMIR. Since the process of authorisation and recognition takes time, the CRR provides a transitional period during which higher capital requirements will not be applied, to ensure a level playing field for EU CCPs. This transitional period was set to expire on 15 December 2014.

As the authorisation and recognition processes for existing CCPs serving EU markets will not be fully completed by that date, the European Commission has adopted an implementing act that will now extend the transitional phase to 15 June 2015.

This extension period will smooth implementation for CCPs that are still in the process of reauthorisation under the new rules. The extension is also applicable to third country CCPs seeking recognition in the EU.

For more information, please see link to the press release:

http://ec.europa.eu/finance/bank/docs/regcapital/acts/implementing/141211-press-release_en.pdf.

(viii) EFAMA Response to BCBS-IOSCO Consultation Report on the initial policy proposals on Risk Mitigation Standards for non-centrally cleared OTC Derivatives

As previously reported in our last legislative update, BCSB-IOSCO published on 17 September 2014, a consultation paper on risk mitigation standards for non-centrally cleared OTC derivatives (the "**BCBS-IOSCO Consultation**").

On 17 October 2014, the European Fund and Asset Management Association ("**EFAMA**") published its response to the BCBS-IOSCO Consultation (the "**Response**"). In the Response, EFAMA stated that it supports BCBS-IOSCO's view that any proposed standards should be compatible across jurisdictions to the largest extent possible as this is the best way to ensure cross border certainty and to avoid regulatory arbitrage. EFAMA also stresses that any such standards should be non-binding in nature. In addition, the Response notes that the proposed standards are already implemented in Europe through EMIR. Accordingly, European regulated funds and asset managers have already developed and implemented legal and operational procedures to meet EMIR requirements.

A copy of the Response can be found at this link:

http://www.efama.org/Publications/Public/Derivatives/EFAMA_reply_BCBS-IOSCO_consultation_Risk_Mitigation_Standards_OTC_Derivatives.pdf

(ix) ESMA defines Products, Counterparties and Starting Dates for the clearing of Interest Rate Swaps

On 1 October 2014, ESMA issued final draft regulatory technical standards ("**IRS RTS**") for the central clearing of Interest Rate Swaps ("**IRS**") which it is required to develop under EMIR. The IRS RTS define those types of IRS contracts which will have to be centrally cleared, the types of counterparties covered by the obligation and the dates by which central clearing of IRS will become mandatory for them.

ESMA's IRS RTS define the following four IRS classes to be subject to central clearing:

- Basis swaps denominated in EUR, GBP, JPY, USD;
- Fixed-to-float swaps denominated in EUR, GBP, JPY, USD;
- Forward rate agreements denominated in EUR, GBP, USD; and
- Overnight index swaps denominated in EUR, GBP, USD.

ESMA defined these IRS classes following an analysis of all IRS classes currently being cleared in the EU by authorised CCPs.

ESMA's IRS RTS define the implementation schedule for the counterparties to whom central clearing of the defined IRS classes will become mandatory. These counterparties will have to start central clearing of IRS after the entry-into-force of ESMA's RTS in accordance with the following phase-in periods:

1. Clearing Members (six months after the IRS RTS entered into force);
2. Financial Counterparties and other alternative investment funds ("**AIFs**") whose aggregate month end average notional amount of non-centrally cleared derivatives for the three months preceding the entry into force of the IRS RTS is above EUR 8 billion (twelve months after the IRS RTS entered into force);
3. Financial Counterparties and other AIFs with a low level of activity in un-cleared derivatives (18 months after the IRS RTS entered into force);
4. Non-Financial Counterparties (three years after the IRS RTS entered into force);

In order to properly capture systemic risk, the counterparties included in the first two categories will also have to frontload those IRS contracts they have concluded between the date of publication of the IRS RTS in the Official Journal and the respective starting date of the clearing obligation.

On 1 October 2014, ESMA submitted the final draft IRS RTS to the European Commission for approval pursuant to Article 5 of EMIR. On 18 December 2014, the European Commission sent a letter to ESMA informing ESMA of its intention to endorse, with amendments, the draft IRS RTS. In its letter the European Commission outlined certain changes which it considers are necessary to the IRS RTS which include postponing the starting date of the frontloading requirement, clarifying the calculation threshold for investment funds and excluding from the scope of the clearing obligation non-EU intragroup transactions. ESMA now has a period of six weeks in which to amend the draft IRS RTS on the basis of the European Commission's amendments and to resubmit the draft IRS RTS in the form of a formal opinion to the European Commission copying the European Parliament and the Council of the European Union. The European Commission may after the expiry of the six week period adopt the revised IRS RTS or reject the revised IRS RTS if it is not happy with the changes made by ESMA.

The IRS RTS will only enter into force after its publication in the Official Journal. This will not occur until it has been approved by the European Commission and following a period of non-objection period by the European Parliament and Council of the European Union.

(x) AIMA outlines concerns about ESMA's approach to frontloading obligation under EMIR

On 3 November 2014, the Alternative Investment Management Association ("**AIMA**") published a letter it sent to the Head of Financial Market Infrastructure, European Commission outlining concerns regarding the approach taken by ESMA with regards to frontloading. In particular AIMA raised concerns about the approach taken by ESMA in its "Final Report : Draft Technical Standards on the Clearing Obligation : Interest Rate OTC Derivatives", (the "**IRS RTS**").

In its letter, AIMA comments on the concept of frontloading and the potential impact of same and sets out challenges associated with a retroactive clearing obligation. AIMA concludes by stating that the problems associated with frontloading would be best addressed by reducing significantly the scope of activity to which frontloading may apply.

(xi) ESMA launches Consultation on Draft Standards for the Clearing of Foreign-exchange Non-deliverable Forwards under EMIR

On 1 October 2014, ESMA published, for consultation, draft regulatory technical standards ("**RTS**") it has to develop under the EMIR for the clearing of foreign-exchange non-deliverable forwards.

This paper follows the publication in July 2013 of a discussion paper on the clearing obligation under EMIR, the publication of the first consultation papers on the clearing obligation on interest rate classes and credit classes, and the publication of the final draft regulatory technical standards ("**IRS RTS**") (please see ix above).

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations, i.e. a legally binding instrument directly applicable in all Member States of the European Union. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply.

The consultation period closed on 6 November 2014 and a copy of responses received by ESMA can be viewed at this link:

http://www.esma.europa.eu/consultation/Consultation-clearing-obligation-under-EMIR-no3#responses

(xii) ESMA to delay submitting further RTS on EMIR Clearing Obligation

On 24 November 2014, ESMA published a letter (dated 20 November 2014) from Steven Maijoor, ESMA Chair to Jonathan Faull, European Commission Director General for Internal Market and Services.

The letter refers to recent discussions between ESMA and the European Commission concerning the clearing obligation under EMIR. Mr Maijoor states that as the European Commission is currently assessing certain aspects of the first regulatory technical standards on interest rate derivatives that could affect the content of the RTS for credit derivatives it will delay the publication on the RTS for credit derivatives until this assessment is finalised. Please see link below to the European Commission's letter:

http://www.esma.europa.eu/system/files/2014-esma-1385_-_letter_to_the_commission_on_credit_rts.pdf

Alternative Investment Fund Managers Directive ("AIFMD")

(i) ESMA's call for evidence in relation to AIFMD passport and third country AIFMs

On 7 November 2014, ESMA published a call for evidence (ESMA/2014/1340) on the EU passport under the Alternative Investment Fund Managers Directive (2011/61/EU) ("**AIFMD**") and third country alternative investment fund managers ("**non-EU AIFMs**").

Currently non-EU AIFMs and non-EU alternative investment funds ("**AIFs**") managed by EU AIFMs are subject to the national private placement regime of the Member States in which the AIFs are marketed or managed. This is contained in Articles 36 and 42 of the AIFMD. There is further scope for the passport to be extended in the future as specified in the AIFMD.

ESMA must submit to the European Commission, as prescribed by Article 67 of the AIFMD, an opinion on:

- The functioning of the EU passport for EU AIFMs under Articles 32 and 33 of the AIFMD;
- The functioning of the national private placement regimes under Articles 36 and 42 of the AIFMD; and
- The possible extension of the passporting regime to the management and/or marketing of AIFs by non-EU AIFMs and to the marketing of non-EU AIFs by EU AIFMs as prescribed in Article 35 and Articles 37 to 41 of the AIFMD.

ESMA must consider the above in conjunction with the provisions of Article 67(4) of the AIFMD. In particular, ESMA should be convinced that "no significant obstacles regarding investor protection, market disruption, competition and the monitoring of systemic risk" hinder the application of the passport to the marketing of non-EU AIFs by EU AIFMs in the Member States and the management and/or marketing of AIFs by non-EU AIFMs in the Member States.

Responses to the call for evidence from the EU and the non-EU stakeholders (as well as ongoing input ESMA is receiving from national competent authorities) will help ESMA develop the opinion and advice in accordance with the criteria mentioned in Article 67 of the AIFMD.

The deadline for responses to the call for evidence is 8 January 2015. ESMA will consider the feedback it receives in the first quarter of 2015. It is required to deliver the opinion and the advice to the European Commission by 22 July 2015.

If ESMA delivers a positive advice and opinion, the European Commission will be required to adopt a delegated act specifying the date when the rules set out in Article 35 and Articles 37 to 41 of the AIFMD will apply in all Member States. As a result, the EU passport would be extended to non-EU AIFs and non-EU AIFMs.

(ii) ESMA updates Q&A on application on AIFMD

On 11 November 2014, ESMA published an updated version of a Q&A related to the application of AIFMD.

The *Q&A* (ESMA/2014/1357) contains updated questions and answers on the application of the AIFMD. The new Q&As are numbers 27, 47, 48 and 49 in section III (reporting to national competent authorities under Articles 3, 24 and 42), and numbers 1 and 3 in section VIII (calculation of the total value of assets under management).

This latest Q&A can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-esma-1357_qa_aifmd.pdf

(iii) Central Bank information re submission to manage an EU AIF under Article 33

Irish AIFMs proposing to manage EU AIFs domiciled in another Member State must notify the Central Bank for approval in accordance with Regulation 34 of the EU (AIFM) Regulations 2013. A notification letter and the relevant form should be completed and submitted by the Irish AIFM in respect of the AIF it intends to manage, together with the following:

- The Member State in which it intends to manage the EU AIF directly or by establishing a branch;
- A Programme of Operations stating in particular the services which it intends to perform and identifying the EU AIF it intends to manage; and
- A letter stating that the AIFs in the relevant Member State will be managed in accordance with the provisions of the AIFMD, signed by a director of the AIFM.

The Programme of Operations should capture the following points below:

Corporate governance – increased role of the board

- Availability of the firm to attend board meetings of EU AIFs;
- Internal knowledge of local regulatory regime;
- Procedures for reporting of breaches and dealing with service provider issues; and
- Any impact on minimum capital requirements.

Administration function – ability of the Central Bank to supervise delegation

- Confirmation that the delegation agreement provides for access by the Central Bank to data relating to delegated functions;
- Co-operation by Non-Irish administrator regarding delegated functions;
- Details of additional record keeping procedures in relation to administration function;
- Confirmation that staff/Designated Persons with knowledge of the EU AIFs will be available to meet the Central Bank; and
- Details of annual due diligence assessments of non-Irish administrators.

Depositary – ability of the Central Bank to supervise activity

- Confirmation that the depositary agreement does not impair the ability of the Central Bank to gain access to data from the firm; and
- How the firm will ensure compliance with this requirement.

(iv) CB publishes Q&A 11th Edition on the Application of AIFMD

On 5 November 2014, the Central Bank published an updated Q&A on the application of AIFMD.

The amended version of the Q&A includes additional questions in relation to non-EU AIFMs and their reporting obligations as specified in the AIFM Regulations. There are also a series of questions related to Loan Originating Qualified Investors AIFs.

The Q&A confirms that non-EU AIFMs which have notified the Central Bank, in accordance with Regulation 43 of the AIFM Regulations, of their intention to market AIFs to professional investors in Ireland, but who have not yet commenced marketing are still required to report to the Central Bank in accordance with Regulation 25 of the AIFM Regulations. The obligation to report will end once a notification has been sent to the Central Bank that marketing has not commenced and the non-EU AIFM is withdrawing notification or ceasing to market in Ireland and there are no investors in the AIF in Europe.

The Q&A also introduces a section related to Loan Originating Qualified Investors AIFs ("**LOQIAIF**") that deals with the following topics:

- Investment in different levels of debt;
- Definition of an originator of a loan;
- Confirmation that a LOQIAIF can hold debt securities where used solely for treasury management purposes;
- Confirmation that a LOQIAIF may receive equity following a loan workout and the timeline shall be in the best interests of the investors;
- Requirements of the Credit Reporting Act 2013; and

- Funding of the activities of a subsidiary by loan without authorisation;

The Q&A can be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/141104%20EM%20Version%2011-%20AIFMD%20FINAL.pdf

(v) ESMA Consults on Guidelines on Asset Segregation under AIFMD

On 1 December 2014, ESMA published a consultation paper (the "Consultation") on the AIFMD asset segregation requirements. The Consultation sets out ESMA's proposals for possible guidelines regarding the asset segregation requirements whereby the appointed depositary of an AIF has delegated safe-keeping duties to an agreed third party.

The depositary provisions and, in particular those on asset segregation, are a key aspect of the AIFMD framework and are created with the objective of improving the protection for investors. This is achieved by "ensuring a common, uniform and consistent application of the rules on depositaries" throughout the EU and therefore ESMA decided to consult on a proposals for guidelines on the AIFMD segregation requirements.

The Consultation has indicated that the segregation requirement in Article 99(1) of the AIFMD Level 2 Regulation is that where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party must keep such records and accounts to enable it at any time to distinguish assets of AIF clients from (a) its own assets; (b) the assets of any other client of the third party, (c) the assets of the depositary and (d) assets held for clients of the depositary which are not AIFs. This means that the account where the AIF's assets are to be kept at the level of the delegated third party can only comprise assets of the AIF for which the safekeeping has been delegated to the third party and assets of other AIFS. Non-AIF assets cannot be included in such an account.

The Consultation is in response to questions that have arisen as to whether the assets which can be held in such an account are only those coming from the same delegating depositary or, alternatively, whether the omnibus account can hold assets for AIF clients coming from different delegating depositaries. In this regard the Consultation seeks stakeholders views on two options which are contained in the Consultation;

Option 1
The account on which the AIF's assets are to be kept by the delegated third party may only comprise assets of the AIF and assets of other AIFs of the same delegating depositary; or

Option 2
A delegated third party holding assets for multiple depositary clients would not be required to have separate accounts for the AIF assets of each of the delegating depositaries.

The Consultation closed on 30 January and ESMA has stated that it intends to publish a final report on the guidelines in the second quarter of 2015.

The Consultation can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1326_cp_-_guidelines_on_aifmd_asset_segregation.pdf

(vi) IFIA launches new publication: 'Irish AIFs: A guide to establishing Alternative Investment Funds in Ireland'

The IFIA has launched a new publication that is entitled 'Irish AIFs: A guide to establishing Alternative Investment Funds in Ireland'. It was officially launched at the IFIA's 2nd Annual UK Symposium that took place on 28 November 2014. The guide provides a wide ranging and detailed account of the various requirements and options available when establishing an AIF in Ireland.

The guide is divided into sections as follows;

- Why Choose an Irish AIF?: The reasons for any prospective investor to invest in Ireland are detailed here with particular focus on the tax and regulatory system and the country's experience and expertise in this area.
- Choosing the Right Structure: All structural options open to an AIF are outlined with a short analysis of each.
- AIFMD Compliance: All aspects of the regulatory and compliance requirements are outlined in this section. The various appointments required and also other areas including the authorisation process, risk management, delegation and conduct of business.
- Fund Approval: The approval process is also discussed in brief with sub-sections related to approval of key parties, application and the time frames involved.
- Taxation: The taxation regime in Irish including tax transparency, tax efficiency, VAT exemptions and the treaty network available to investors.
- ISE Listing: Advantages of listing the fund on the Irish Stock Exchange and the various requirements connected with the process.
- Fund Re-Domicilation: A fund may choose to re-domicile itself to another jurisdiction and the various advantages associated with same.

(vii) European Commission Adopts Delegated Regulation on Information to be Provided by National Competent Authorities to ESMA under AIFMD

On 18 December 2014, the European Commission published the text of a Delegated Regulation (the "**Delegated Regulation**") it has adopted on information to be provided by national competent authorities ("**NCAs**") to ESMA under the AIFMD.

Article 67(3) obliges NCAs to report to ESMA on a quarterly basis information on AIFMs that are managing AIFs under their supervision, either under the application of the passport regime or under their national private placement regimes. The Delegated Regulation specifies the content of information to be reported to ESMA under Article 67(2) of the AIFMD.

By and large the text of the Delegated Regulation follows ESMA's technical advice which was delivered to the European Commission in March 2014.

The Delegated Regulation will come into force 20 days after its publication in the Official Journal of the EU. The Delegated Regulation will be published in the Official Journal of the EU unless objected to by the European Parliament or the Council of the European Union.

The Delegated Regulation can be viewed via the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-9796-EN-F1-1.Pdf

Long Term Investment Funds

(i) Minutes of the Committee of Economic and Monetary Affairs ("ECON") regarding the proposed Regulation on European Long-Term Investment Funds ("ELTIF") (the "ELTIF Regulation")

On 27 November 2014, a political agreement on ELTIFs was reached in trialogue. On 8 December 2014, the agreed ELTIF Regulation text was published and the Committee of the Permanent Representatives of the Governments of the Member States to the European Union ("**COREPER**") were invited to approve the final compromise text.

On 10 December 2014, a press release was released by the Council of the European Union stating that COREPER has approved, on the Council's behalf, an agreement reached with the European Parliament on the ELTIF Regulation. In the press release the Council outlines that COREPER's agreement will enable the ELTIF Regulation to be adopted at first reading, once the text has been finalised in all languages.

For the European asset management industry, the new ELTIF framework could unlock significant capital which could influence a move towards investments in longer term projects. The ELTIF Regulation aims at directing investments into projects and companies that require long term financing that encounter trouble raising funds on stock markets or securing loans from banks. Funds that want to use the ELTIF label will have to satisfy various requirements under the ELTIF Regulation. However, once these requirements are met, funds will be able to market the ELTIF across all EU Member States.

The press release published by the Council of the EU on 10 December 2014, can be viewed via the following link:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/146140.pdf

PRIIPs KID Regulation

(i) Council of EU adopts PRIIPS KID Regulation

On 9 December 2014, the Regulation on Key Information Documents for Packaged Retail and Insurance-based investment products ("**PRIIPs KID Regulation**") was published in the Official Journal of the EU. The PRIIPs KID Regulation entered into force 20 days after its publication in the Official Journal of the EU; i.e. on 29 December 2014. Member States have two years to apply it after the entry into force and accordingly Member States must apply the PRIIPS KID Regulation by 31 December 2016.

On 13 December 2014, a corrigendum to the text of the PRIIPs KID Regulation was published in the OJ.

(ii) Joint Committee of the European Supervisory Authorities publishes Discussion Paper on Key Information Documents for PRIIPs

On 17 November 2014, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published a discussion paper on the PRIIPS KID Regulation (the "**Discussion Paper**").

The three ESAs, EIOPA, ESMA and the EBA, are required by the PRIIPs KID Regulation to prepare draft regulatory technical standards in certain areas. The Discussion Paper is the primary stage in the provision of the regulatory technical standards, and outlines the ESA's primary considerations.

Rules regarding the contents and presentation of the KID, including calculation methodologies and presentation templates necessary for a summary risk indicator,

performance scenarios and cost disclosures will be set out in the regulatory technical standards. Measures in respect of the revision, review and republication of the KID, and on the timing of the KID's delivery to the retail investor will also be outlined.

The Key Information Document or KID will need to be in place for the following types of product:

- UCITS investment funds;
- Non-UCITS investment funds;
- Packaged insurance products including unit-linked and with-profits where there is a surrender or maturity value exposed to market fluctuations; and
- Structured investment products.

The various parts of the KID that need to be covered in the regulatory technical standards are alluded to in the Discussion Paper. Particular sections which are focused on are discussed in chapters 3 and 4 of the Discussion Paper and are entitled "*What are the risks and what could I get in return*" and "*What are the costs?*". This is due to the fact that the ESAs have identified these sections as causing certain difficulties. Each of the other sections of the KID are discussed in chapter 5 of the Discussion Paper.

The ESAs plan to use replies to the Discussion Paper to prepare draft regulatory technical standards. They will consult on the draft regulatory technical standards in autumn 2015, however, prior to this the European Commission will organise a consumer testing exercise to help the ESAs to develop the draft regulatory technical standards. The ESAs also aim to publish a more technical discussion paper in spring 2015.

It should be noted that the deadline for responses to the Discussion Paper is 17 February 2015.

It is anticipated that the ESAs will submit the regulatory technical standards to the Commission at the start of 2016 and firms will begin to use the new KIDs at the end of 2016.

The Discussion Paper can be viewed via the following link:

https://www.eba.europa.eu/documents/10180/899036/JC+DP+2014+02+-+PRIIPS+Discussion+Paper.pdf

(iii) Joint Committee of the European Supervisory Authorities ("ESAs") launches Call for Expressions of Interest to Join New Expert Group Supporting Work on KID for PRIIPS

On 18 November 2014, the Joint Committee of the ESAs published a call for expressions of interest to support the work it is carrying out on the PRIIPs KID Regulation.

It is intended that a new consultative expert group (the "**CEG**") will be formed to advise and provide technical input to the joint committee's sub-group on KIDs for PRIIPs (PRIIPs sub-group), which is itself a sub-group of the joint committee's sub-committee on consumer protection and financial innovation ("**JC CPFI**"). The purpose of the call for expressions of interest is to identify members of the CEG. The CEG is anticipated to consist of 18 members, which will include representatives of market participants, independent academic and consumer behaviour experts and retail investors. The CEG's mandate will be for a period of one year.

As some of the tasks to be carried out in preparing draft regulatory technical standards under the PRIIPs Regulation are quite technical in nature, the PRIIPs sub-group believes that additional specialised expert input would be suitable, outlining the contents and format of the KID for different investment products. It is considered that this is particularly significant in relation to disclosures of risks and rewards and product costs.

Any applications must be submitted by 15 December 2014. A list of candidates meeting the criteria set out in the call for expressions of interest will then be compiled. The final selection of CEG members will be made in consultation with the executive directors of the ESAs.

The call for expressions of interest can be viewed via the following link:

http://www.eba.europa.eu/documents/10180/15736/Call+for+interest+Expert+Group+PRIIPs.pdf

(iv) EIOPA Publishes Consultation Paper on Product Intervention Powers under the PRIIPs KID Regulation

EIOPA has published a Consultation paper on powers for banning insurance-based investment products under the PRIPS KID Regulation (the "**Consultation Paper**").

With the Consultation Paper, EIOPA is preparing its technical advice, as requested by the European Commission, on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of

the whole or part of the financial system of the European Union or to the stability of the financial system within at least one Member State.

National Competent Authorities ("**NCAs**") and, in certain circumstances, EIOPA, are required under Articles 16 and 17 of the PRIIPs Regulation, to take a decision to temporarily prohibit or restrict:

- the marketing, distribution or sale of certain insurance-based investment products or insurance-based investment products with certain specified features; or
- a type of financial activity or practice of an insurance or reinsurance undertaking.

Various additional requirements are outlined in the PRIIPs Regulation that need to be fulfilled when NCAs, and, in exceptional cases, EIOPA, take a decision under the PRIIPs Regulation to temporarily prohibit or restrict a product. These include the following:

- The degree of complexity of an insurance-based investment product and the relation to the type of investors to whom it is marketed and sold;
- The degree of innovation of an insurance-based investment product, an activity or a practice;
- The leverage a product or practice provides;
- In relation to the orderly functioning and integrity of financial markets, the size or the notional value of an insurance-based investment product.

Comments on the Consultation Paper should be sent to EIOPA in the provided Template for Comments, by email to CP-14-064@eiopa.europa.eu. The closing date for responses to the consultation is 27 February 2015.

The Consultation Paper can be viewed via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-14-064_Consultation_Paper_on_Product_intervention_powers.pdf

Credit Rating Agencies Regulation

(i) European Commission adopts Regulatory Technical Standards to Implement Stricter New Rules

The European Commission has adopted three Delegated Regulations setting out Regulatory Technical Standards ("**RTSs**") needed to implement key provisions of the Regulation on Credit Rating Agencies ("**CRAs**"). These technical standards set out:

- The disclosure requirements for issuers, originators and sponsors on structured finance instruments;
- Reporting requirements for CRAs on fees charged by CRAs to their clients; and
- Reporting requirements to CRAs for the European Rating Platform

The European Parliament and the Council shall have one month to raise any objections with the possibility to extend this period for another two months. Subsequent to the expiration of this period, the RTSs will be published in the Official Journal of the European Union and will enter into force on the twentieth day following the date of their publication.

The provisions shall be directly applicable from the following dates:

- Reporting on fees charged by CRAs: date of entry into force;
- European Rating Platform: 21 June 2015; and
- Disclosure on structured finance instruments: 1 January 2017.

(ii) ESMA reports on CRAs surveillance of Structured Finance Credit Ratings

On 16 December 2014, ESMA published a report on the findings of its investigation into the way CRAs conduct surveillance of their structured finance credit ratings (ESMA/2014/1524).

ESMA examined all aspects of the CRAs processes, both from a perceived negative and positive perspective. Section 5 of the report sets out the findings of this analysis undertaken. In particular, issues that ESMA identified in one or more CRAs include:

- A gap in the process regarding quality controls over information used and received from data providers;
- Incomplete application of the full methodology during the rating monitoring process heightened by unsatisfactory disclosure of the different methodical frameworks used;
- Delays in the conclusion of the annual review of ratings;
- A need to support the role of the internal review function and the activities it performs during the review of methodologies, models and key rating assumptions applied to structured finance ratings.

There are also inadequacies related to disclosure and transparency that could be harmful to investor protection.

ESMA has requested that individual CRAs now implement corrective procedures to address the concerns raised. It has also warned all registered CRAs to note the issues identified in the report to ensure that they properly incorporate the requirements and the objectives of *Regulation 1060/2009* (as amended by the CRA III Regulation (*Regulation 462/2013*)) (the "**CRA Regulation**") into their working practices and remove any practices and procedures that conflict with these. ESMA must consider if any of the report's findings constitute a breach of the CRA Regulation and may take action as appropriate in due course.

(iii) ESMA 2014 Market Share Calculations for CRAs

On 22 December 2014, ESMA published a document which sets out a market share calculation for EU CRAs as required by Article 8d of the CRA Regulation which obliges ESMA to publish annually a list of registered CRAs, indicating their total market share and the types of credit ratings issued.

ESMA sets out a list of all registered CRAs indicating their total market share, measured with reference to the annual turnover generated from credit rating activities and ancillary services, at group level. The annual turnover is based on the calendar year 2013. It also outlines the types of credit ratings issued by registered CRAs in 2014. The rating types are classified as sovereign ratings, corporate ratings (including non-financial, financial and insurance ratings), structured finance ratings and covered bonds ratings.

The document can be vied via the following link:

http://www.esma.europa.eu/system/files/2014-1583_credit_rating_agencies_market_share_calculation_2014.pdf

(iv) Joint Committee of the European Supervisory Authorities requests Responses to Discussion Paper on use of Credit Ratings by Financial Intermediaries

On 23 December 2014, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published a discussion paper on the use of credit ratings by financial intermediaries (the "**Discussion Paper**").

The objectives of this Discussion Paper are to:

- Provide an outline of sectoral competent authorities ("**SCAs**") supervisory activities and experiences in respect of contractual reliance on ratings, and to give SCAs an opportunity to add to the responses already received to a questionnaire that was issued by the ESAs to SCAs, which dealt with the use of credit ratings by financial

intermediaries under their supervision and possible alternatives for credit quality assessment other than credit ratings;

- Encourage feedback from supervised entities to the ESAs on their degree of contractual reliance on credit ratings and their recourse to alternative means of creditworthiness assessments.

The deadline to submit responses to the Discussion Paper is 27 February 2015. The data collected will be utilised by the joint committee, along with evidence from an independent study, to draft guidelines on reducing contractual reliance on ratings. ESMA intends to publish a consultation paper outlining the responses to the discussion paper and a first draft of the guidelines in the first half of 2015. The final guidelines are expected to be adopted by the joint committee by the third quarter of 2015. They will subsequently be ratified by the ESAs.

The Discussion Paper can be viewed via the following link:

https://eiopa.europa.eu/Pages/Consultations/Discussion-Paper-on-the-use-of-credit-ratings-by-financial-intermediaries.aspx

European Social Entrepreneurship Funds Regulation (EuSEF) and European Venture Capital Funds Regulations (EuVECA)

(i) ESMA updates Q&A on EuSEF and EuVECA

On 11 November 2014, the European Securities and Markets Authority ("**ESMA**") published an updated version of a Q&A related to EuSEF and EuVECA.

The *Q&A* (ESMA/2014/1354) contains updated questions and answers on;

- the EuSEF Regulation (*Regulation 346/2013*); and
- the EuVECA (*Regulation 345/2013*). The new Q&As are numbers 1b and 1c.

This latest Q&A can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-esma-1354_qa_eusef-euveca.pdf

(ii) ESMA SMSG advice to ESMA on implementing measures under EuSEF and EuVECA Regulations

On 11 December 2014, ESMA published advice (2014/SMSG/051) given to it by its securities and markets stakeholder group ("**SMSG**") relating to ESMA's technical advice on the implementing measures under the European Social Entrepreneurship Funds Regulation (*Regulation 346/2013*) ("**EuSEF Regulation**") and the European Venture Capital Funds Regulation (*Regulation 345/2013*) ("**EuVECA Regulation**") (the "**Regulations**").

SMSG supports a principle-based approach for all of the level 2 implementing measures. It considers that examples provided should be viewed as examples only and ideally annexed for ease of ongoing update, leaving sufficient flexibility for the market to find its own "level" in terms of how these funds are constituted and how they constitute their portfolios. In addition, the SMSG agrees with ESMA that proportionality is important, since the majority of the small managers concerned do not have the option of opting into full authorisation under AIFMD in order to obtain the EU marketing passport, due to the resources required and costs involved.

The advices can be viewed via the following link;

http://www.esma.europa.eu/system/files/2014-051-smsg_advice_on_eusef_euveca.pdf

On 16 December 2014, ESMA published the responses it has received to its consultation on technical advice to the European Commission on implementing measures under the Regulations.

Respondents included the European Private Equity and Venture Capital Association (EVCA).

These responses can be viewed via the following link;

http://www.esma.europa.eu/consultation/Consultation-implementing-measures-Regulations-EuSEF-and-EuVECA%20

ESMA consulted on its technical advice in September 2014 It is required to provide the advice to the European Commission by 30 April 2015.

Money Market Fund Regulation

(i) European Committee on Economic and Monetary Affairs ("ECON") Draft Report & Council of the EU Compromise Proposal

On the 17 November, 2014, ECON published a draft report on the proposed Regulation on Money Market Funds (the "**MMF Regulation**"). This report details proposed amendments to the draft Proposal for a Regulation of the European Parliament and of the Council on Money Market Funds previously released by the European Commission on the 4 September, 2013.

From initial review, the most noteworthy amendment proposed concerns MMFs operating with a constant net asset value ("**CNAV**"). Under the proposal all such funds, marketed or managed in the EU, shall be under a duty to convert to variable net asset value MMFs within five years of the ratification of the MMF Regulation. A number of the other main proposals are detailed below;

- There is still necessity for improvement relating to liquidity and maturity transformation and in making MMFs more stable. Both CNAV and variable net asset value ("**VNAV**") MMFs must be addressed and that stricter regulation shall be applied;
- A new category of EU government CNAV MMFs should be established. These would invest a majority of assets into EU government debt; and
- The issue of transparency is a top priority. The actual NAV of CNAVs to be disclosed on a daily basis, including publication on websites. Stress tests should take place on a quarterly basis and there should be stronger investor warnings.

ECON is due to consider the draft report in December 2014 and January 2015.

On 28 November 2014, the Presidency of the Council of the EU published a compromise proposal (16185/14) (dated 27 November 2014) relating to the MMF Regulation. This is an updated version referring to the Council's compromise proposal on the MMF Regulation dated 10 November 2014. There are various additions to the text set out in bold underlined font and deletions are struck through.

The Proposal comprises of Chapters I – IX, encompassing the below;

- I - General Provisions
- II - Obligations regarding the Investment Policies of MMFs

- III - Obligations concerning risk management of MMFs
- IV- Valuation Rules
- V - Specific Requirements for small professional CNAV MMFs
- VI – External Support
- VII – Transparency Requirements
- VIII – Supervision
- IX – Final Provisions

The proposal can be viewed via the following link:

http://data.consilium.europa.eu/doc/document/ST-16185-2014-INIT/en/pdf

On 18 December 2014, the Presidency of the Council of the EU published its third compromise proposal (17008/14) relating to the MMF Regulation, which is an update to the proposal released on the 27 November, 2014.

The Council has also published a progress report (17007/14) (dated 17 December 2014) from the Presidency to Delegations on the current status of the MMF Regulation. The MMF Regulation was examined by the working party on financial services at six meetings (most recently on 1 December 2014).

There appears to be a consensus amongst Member States that the intent of the European Commission's proposal is to create a regulatory structure for MMFs which fosters co-ordination of rules and investor protection. However, there are a number of provisions that have been met with "strong reservations", particularly those regarding the handling of CNAV MMFs.

The Presidency asks the working party to:

- Take note of the progress achieved with regard to the MMF Regulation;
- Take note of the latest (third) compromise text published on 18 December 2014;
- Invite the incoming Latvian Presidency to continue work on the basis of the third compromise text to reach an agreement on a general approach in the near future.

The Parliament is scheduled to consider the MMF Regulation at its plenary session on March 25, 2015.

(ii) Peer review on MMF Regulation: Report of Key Preliminary Findings to the G20 Leaders' Summit

With the increased prevalence of MMFs during the recent financial crisis, the G20 were keen to impose increased regulatory requirements to ensure no ill effects on the broader financial system. The Board of the International Organisation of Securities Commission ("**IOSCO**") were requested by the Financial Stability Board ("**FSB**") to commence a thorough review of any prospective reforms in order to solidify the oversight and regulation of the shadow banking system and to carry out the G20 endorsed objective to mitigate the vulnerability of MMFs to runs and other systemic risks ("**G20 Objective**").

The review was conducted by circulating a questionnaire to all IOSCO members from both FSB and non-FSB jurisdictions. The questionnaire was circulated on 25 August 2014 with a submission date of 19 September 2014.

The report sets out the key preliminary findings of the review by the IOSCO of the progress in adopting legislation, regulation and other policies in relation to MMFs in the following areas:

- Scope of the regulatory reform - explicit definition of MMFs in regulation and appropriate inclusion of other investment products presenting features and investment objectives similar to MMFs;
- Limitations to the types of assets of, and risks taken by, MMFs;
- Valuation practices of MMFs - addressing specific valuation issues for MMFs and their portfolios;
- Liquidity management for MMFs - aimed at ensuring MMFs maintain adequate liquidity resources in normal business conditions as well as in stressed market conditions;
- MMFs that offer a stable Net Asset Value - addressing the risks and issues which may affect the stability of MMFs that offer a stable NAV;
- Use of ratings by the MMF industry;
- Disclosure to investors; and
- Repos - MMF practices in relation to repurchase agreement transactions.

Participation in the review consisted of twenty three FSB members and seven non-FSB members comprising 98% of MMF markets worldwide. For most, self-assessments indicated that measures have been implemented before 1 October 2012 in at least one Reform Area, however, for eight FSB jurisdictions, self-assessments indicated measures have been implemented in all Reform Areas.

The review can be viewed via the following link;

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD463.pdf

Short Selling

(i) European Commission adopts Delegated Regulation on Notification of Significant Net Short Positions in Sovereign Debt

On 17 October 2014, the European Commission published a Delegated Regulation (the "**Delegated Regulation**") it adopted which offers legal certainty in respect of the notification of important net short positions in sovereign debt.

The Delegated Regulation amends Article 13(3) of Delegated Regulation 918/2012 which supplements Regulation 236/2012; the Short Selling Regulation.

The correction guarantees that Article 13(3) of Delegated Regulation 918/2012 explicitly refers to the threshold for the notification to competent authorities of significant net short positions in sovereign debt, and not just to significant net short positions in shares. This will offer legal clarity to the market on the method of calculating positions for legal entities within a group that have long or short positions in relation to a particular issuer.

The Delegated Regulation will come into force 20 days after its publication in the OJ. The Council has decided not to object to the Delegated Regulation of 17 October 2014. Unless the European Parliament objects within the specified time, the Delegated Regulation can be published in the OJ.

Payment Services Directive

(i) Council of European Union Agrees General Approach on PSD2

On 5 December 2014, the Council of the European Union published a press release reporting that the Committee of the Permanent Representatives of the Governments of the Member States to the European Union ("**COREPER**") has agreed, on the Council's behalf, a general approach on the proposed Directive on payment services in the internal market ("**PSD2**").

The agreement enables negotiations with the European Parliament to start, with the aim of adopting PSD2 at first reading. Under the Council's general approach, Member States will have two years to transpose the PSD2 into national laws and regulations.

The Council had published a compromise proposal on PSD2 and a report approving a negotiating mandate earlier in December 2014.

The press release can be viewed via the following link:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/146078.pdf

Market Abuse

(i) Council of EU Presidency Compromise Proposal on the Benchmark Regulation

On 25 November 2014, the presidency of the Council of the EU published a compromise proposal dated 21 November 2014, in respect of the proposed Regulation concerning indices used as benchmarks in financial instruments and financial contracts (the "**Benchmark Regulation**"). The proposal for the Benchmark proposal was first made in June 2013 by the European Commission and sets out that the manipulation of benchmarks should be made a market abuse offence and be met by strict administrative fines by offenders.

The compromise proposal can be viewed via the following link:

http://data.consilium.europa.eu/doc/document/ST-15936-2014-INIT/en/pdf

(ii) ESMA Securities and Markets Stakeholder Group Publishes Response to Consultations Issued by ESMA on Draft Technical Standards and Technical Advice on the Market Abuse Regulation ("MAR")

On 10 October 2014, the Securities and Markets Stakeholder Group (the "**SMSG**") responded to a consultation published by ESMA in July 2014 regarding draft regulatory technical standards and implementing technical standards ("**ITS**") on MAR and draft technical advice on possible delegated acts concerning MAR. SMSG outlined four points as being the main issues;

- Market Soundings – SMSG considers that although their approach appears flexible with regards to procedures and keeping records in relation to MAR, some of these processes are too complex and may lead to discouragement in the market. The MAR recognises that market soundings are vital for the correct functioning of financial markets. Therefore they shouldn't be regarding as market abuse in themselves;
- Insider Lists – ESMA have stressed the importance of insider lists when NCA's are investigating market abuse. SMSG, although they agree with the necessity for them, have raised concerns regarding the vast amount of information insiders are required to provide to ESMA;

- Investment Recommendations – SMSG have supported ESMA with regards to providing stricter rules in this area. i.e. Conflicts of interest and disclosing financial interests;
- Manager Transactions – SMSG has concerns regarding ESMAs proposal of the respective obligations of managers and believe it is not coherent in relation to MAR disclosure regimes.

In addition to the above points SMSG has said that there is some ambiguity with regards to different language versions of the text of MAR. In order to ensure that there are no inaccuracies, SMSG suggests that the European Commission or ESMA should call upon national authorities to proof the texts by analysing them and then provide ESMA with an error list. SMSG has commended ESMA on its flexible approach, given the risks involved in implementing such thorough requirements.

SMSG's response can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-smsg-047.pdf

Transparency Directive

(i) ESMA publishes Consultation Papers on draft Regulatory Technical Standards under the Revised Transparency Directive relating to the Notification of Major Shareholdings

On 29 September 2014, ESMA published its final draft regulatory technical standards under the revised Transparency Directive in respect of the notification of major shareholdings.

The regulatory technical standards support the aims of the revised Transparency Directive by harmonising transparency requirements in respect of the aggregation of holdings of shares and financial instruments, the calculation of notification thresholds and the exemptions from notification requirements.

The regime is intended to improve transparency regarding the ownership structure of an issuer, to improve legal certainty and reduce the administrative burden for cross-border investors. The revised Transparency Directive also deals with the issue of the disclosure regime for new types of financial instruments that expose investors to an economic risk similar to when holding shares.

The issues addressed in the regulatory technical standards on major shareholding notifications include the following:

- Method of calculation of 5% threshold exemption regarding trading books and market makers;
- Calculation method regarding a basket of shares or an index;
- Methods for determining the 'delta' for calculating voting rights; and
- Financial intermediaries' notification regime of financial instruments.

An outline of the responses from the public consultation and the amendments to the regulatory technical standards and the indicative list which ESMA proposes based on this feedback is also provided in the regulatory technical standards.

The regulatory technical standards can be viewed via the following link:

http://www.esma.europa.eu/content/draft-Regulatory-Technical-Standards-major-shareholdings-and-indicative-list-financial-ins-0

On 17 December 2014, the European Commission published a draft delegated regulation relating to certain regulatory technical standards on the notification of major holdings under the amended Transparency Directive. While slight amendments have been made, the draft delegated regulation is largely unchanged from the draft regulatory technical standards published by ESMA in its final report on 29 September 2014

The European Parliament and the Council will now consider the draft and if neither object to the draft, it will be published in the OJ. It is anticipated that the regulation will enter into force on the twentieth day following publication in the OJ and will apply from 26 November 2015.

(ii) ESMA Consultation on European Access Point

On 19 December 2014, ESMA published a consultation paper on draft Regulatory Technical Standards ("**RTS**") on a European Electronic Access Point (the "**Consultation Paper**").

The draft RTS set out ESMA's proposals for technical requirements regarding access to regulated information at Union level and includes the following:

- Central access point for the search for regulated information;
- Communication technologies used by national storage mechanisms;
- Unique identifier for each issuer;
- Common format for the delivery of regulated information; and
- Common classification of regulated information.

The consultation closes on 30 March 2015. ESMA is required to submit the draft RTS to the European Commission for endorsement by 27 November 2015.

The Consultation Paper can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1566_consultation_paper_on_the_draft_rts_on_the_eeap.pdf

Prospectus Directive

(i) ESMA publishes Version 22 of its Prospectuses: Questions and Answers

On 22 October 2014, ESMA published version 22 of its Prospectuses: Questions and Answers on Prospectus issues (the "**Q&A**"). Three new questions have been incorporated since the previous version addressing the following areas:

- Presentation of selected key financial information in the summary;
- Minimum information required in section D of Annex XXII of the Prospectus Regulation;
- Inclusion of extra information in individual summaries.

In addition, certain questions concerning prospectus summaries in the proportionate disclosure regime and the format of the individual summary relating to several securities were amended.

The purpose of the Q&A is to promote common supervisory approached and practices in relation to the implementation of the Prospectus Directive. Version 22 of ESMA's Prospectuses: Questions and Answers can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1279_22nd_version_qa_document_prospectus_related_issues.pdf

(ii) Prospectus Handbook – A Guide to Prospectus Approval in Ireland – 76

On 19 November 2014, the Central Bank published the latest version of the Prospectus Handbook. The Prospectus Handbook (the "**Handbook**") is relevant for issuers of transferable securities which are subject to Directive 2003/71/EC (the "**Prospectus Directive**") and certain law firms, listing agents, stockbrokers and investment banks who act as service providers to those issuers.

The purpose of the Prospectus Handbook is to provide market participants with an overview of the necessary information regarding the requirements for prospectuses and the

procedures required in order to have a prospectus approved and published in Ireland, passported into Ireland or passported out of Ireland. In addition, the Prospectus Handbook aims to facilitate the efficiency of the market and uniformity of approach within the prospectus review, approval and publication process.

Changes made include inserting links to information that is set out on the Central Bank website such as template emails and Prospectus Regulation Annexes Checklists.

The Prospectus Handbook can be viewed via the following link:

http://www.centralbank.ie/regulation/securities-markets/prospectus/Documents/Prospectus%20Handbook%202014%20PDF.pdf

Shareholders Rights Directive

(i) EFAMA's views on European Commission's legislative proposal for Directive amending Directive Regarding Encouragement of Long-Term Shareholders Engagement and Directive in respect of Certain Elements of the Corporate Governance Statement

EFAMA has welcomed the European Commission's revision of the Shareholders' Rights Directive, published on 9 April 2014. It has stated that fostering good corporate governance of listed companies and encouraging shareholder engagement is an essential part of the European economy's long-term financing. EFAMA agrees with the European Commission that alignment of interests between asset managers, investors and companies is crucial in securing long-term strategies, which in turn will encourage long-term financing and growth in the EU.

EFAMA's views can be viewed via the following link:

http://www.efama.org/Publications/Public/Corporate_Governance/14-4068_FinalPositionPaperSRDII_290914.pdf

Directive on Disclosure of Non-Financial and Diversity Information

(i) Directive on disclosure of non-financial and diversity information by large companies and groups addressing environmental, social and governance issues was published in the Official Journal of the EU

The Directive on disclosure of non-financial and diversity information by large companies and groups addressing environmental, social and governance issues was published in the Official Journal of the EU on 15 November 2014, (the "**Directive**"). The Directive entered into force 20 days later; i.e. on 6 December 2014. Member States have to transpose the Directive into national law by 6 December 2016. The provisions of the Directive have to be applied to all undertakings within scope for the financial year starting 1 January 2017.

The Directive will require certain companies to disclose information in their management report on policies, risks and results on matters such as respect for human rights, environmental matters, diversity, social and employee related issues, anticorruption and bribery issues and diversity on boards of directors. The Directive amends Directive2013/34/EU, which addresses the disclosure of non-financial information but which in that respect has proved to be unclear and ineffective and applied in different ways in different Member States.

The objective of the new proposed Directive is to increase companies' transparency on environmental and social matters and therefore, to contribute to long term economic growth and employment. The European Commission believes that transparent companies perform better over time, have lower financing costs, have better employee retention levels and are more successful in the long run.

The Directive will apply to large public-interest entities with more than 500 employees. Public interest entities include listed companies and some unlisted companies, such as banks, insurance companies and other companies that are designated as such by Member States because of their activities, size or number of employees.

Statutory Audit Directive and Regulation

(i) Public Consultation on Member State Options under the Audit Regulation (EU) No 537/2014 and Audit Directive 2014/56/EU

The Department of Jobs, Enterprise and Innovation have issued a public consultation on Member State Options under the Audit Regulation (EU) No 537/2014 and Audit Directive 2014/56/EU. The deadline for submissions was 21 November 2014.

As previously advised, the amended Statutory Audit Directive 2014/56/EU (amending Directive 2006/43/EC) (the '**Directive**') and the new Audit Regulation (EU) No 537/2014 (the '**Regulation**') were published in the Official Journal of the EU on 27 May 2014. The Directive and the Regulation largely deal with the registration and oversight of audit firms, but there are a number of provisions that apply directly to EU incorporated issuers listed on the Main Securities Market. While both pieces of legislation entered into force on June 2014, they will not apply until 17 June 2016.

The Department's consultation is seeking views of interested parties on:

- the specific options that Member States may avail of in the Regulation/Directive;
- cost/benefits of the options or any other provision of the Regulation/Directive;
- difficulties of legal interpretation;
- practical operability issues; and
- any other aspect of the Regulation/Directive that stakeholders may wish to raise.

Anti-Money Laundering/Counter-Terrorism Financing

(i) Financial Action Task Force ("FATF") Guidance on Transparency and Beneficial Ownership

The FATF has published Guidance on Transparency and Beneficial Ownership (the "**Guidance**") that will assist countries to design and implement measures that will deter and prevent the misuse of corporate vehicles, such as companies, trusts and other types of legal persons and arrangements – for money laundering, terrorist financing and other illicit purposes. The latest guidance is an update from the FATF recommendations set out in 2012.

The idea of Beneficial Ownership is welcomed by the ever increasing number of advocacy groups and law enforcement agencies who are pushing for greater transparency in corporate agencies. However, there is a concern that some nations may find it difficult to implement the Guidance.

The FATF have suggested 3 possible strategies to make the gathering of the information of actual or beneficial owners behind legal entities less difficult:

- Require Companies to retain their own information;
- Create a database of company registers; or
- Rely on currently available information

In relation to the three strategies above, it is proposed that the first recommendation of requiring companies to collect their own information is probably the most reliable and strongest option. The reporting systems are also putting pressure on institutions to identify the natural persons behind their legal entity customers. So far 51 jurisdictions have formalised their commitment to share data.

The FATF Guidance can be viewed via the following link:

http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

(ii) Notification for attention of the Central Bank Regarding Funds or Economic Resources Frozen in Accordance with Requirements of EU Financial Sanctions Regulations

A notification has been released by the Central Bank stating that any entity, person or body which has undertaken freezing measures in accordance with EU Financial Sanctions Regulations is required to report said measures to the Central Bank as soon as possible. Information about who implements the freezing is to be reported, alongside the details of whom or what entity is being frozen must also be reported and why they are being frozen.

The Central Bank's notification can be viewed via the following link:

http://www.centralbank.ie/Pages/SearchResults.aspx?k=frozen

(iii) Political Agreement Reached on MLD4 and Revised Wire Transfer Regulation

On 17 December 2014, the presidency of the Council of the EU announced agreement with the European Parliament on the Forth Money Laundering Directive ("**MLD4**") which will replace the Third Money Laundering Directive (2005/60/EC) ("**MLD3**") and the proposed Regulation to amend and replace Regulation (EC) 1781/2006 regarding information on the payer accompanying transfers of funds. This is known as the revised Wire Transfer Regulation ("**WTR**"). The approved texts, which are not yet available to the public, represent a key achievement in relation to AML, as they implement the FATF recommendations.

In relation to MLD4, EU Member States for the first time will be obliged to maintain registers with information on the beneficial owners of both corporate and legal entities as well as trusts. Competent authorities will have access to these registers without any restrictions. Other notable changes proposed under MLD4 include:

- The extension of the Politically Exposed Person (PEP) regime to cover domestic PEPs and persons entrusted with a prominent function by an international organisation;
- The removal of the automatic entitlement to apply Simplified Customer Due Diligence ("**Simplified CDD**") when dealing with specified customers and product;
- An increased range of sanctions which may be imposed for breaches by Designated Persons of their AML and CTF obligations;
- The introduction of risk assessments at EU and national level. It is proposed that these risk assessments will be shared with Designated Persons to assist them in preparing their own risk assessment of their business and customers.

The agreed texts of MLD4 and WTR will now require endorsement by the Committee of the Permanent Representatives of the Governments of the Member States to the European Union ("**COREPER**") and by the Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs Committees before being put to a vote by the full Parliament in 2015.

Joint Committee of European Supervisory Authorities ("ESAs")

(i) Guidelines for cross-selling practices in the financial sector

On 22 December 2014, the Joint Committee of the European Supervisory Authorities (**"ESAs"**) (that is, the EBA, ESMA and EIOPA), published a joint consultation on draft guidelines for regulating cross-selling practices in the financial sector across the EU.

The draft guidelines establish a coherent and effective approach in supervising firms that offer cross-selling options, so as to enhance the protection of EU customers. Generally, cross-selling is the practice whereby firms group, and sell, two or more separately identifiable products or services in a 'package'.

The draft guidelines aim to indicate to EU competent authorities, through high-level principles and practical examples, ways to ensure that firms can comply with the general conduct of business standards towards customers that are expected of firms in the context of cross-selling practices.

In particular, the guidelines provide an approach for supervising firms valid across the EU and give more scope for EU customers to make better informed purchasing decisions.

The guidelines apply irrespective of the sales channel used. They aim to:

- Improve the content of disclosure on price, costs and other non-price features when different products are cross-sold with one another;
- Require that all relevant information is communicated in a timely and prominent manner;
- Improve customer understanding of whether the purchase of individual products is possible;
- Improve the assessment of the customers' individual demands and needs, or suitability/appropriateness of the cross-sold package;
- Address training and remuneration issues; and
- Clarify the application of any post-sale cancellation rights attached to the purchase of one of the products.

The guidelines apply in relation to cross-selling practices involving selling a package of financial products or services falling with the scope of the directives listed below and are addressed to competent authorities with supervisory oversight of such firms -

- Markets in Financial Instruments Directive and its recast (**"MiFID and MiFID II"**);
- Insurance Mediation Directive (**"IMD"**);
- Directive on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive (**"MCD"**), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
- Undertakings for collective investment in transferable securities (**"UCITS Directive"**);
- Capital Requirements Directive (**"CRD"**) and Capital Requirements Regulation (**"CRR"**);
- Payment Accounts Directive (**"PAD"**), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
- Solvency II Directive;
- Payment Services Directive (**"PSD**");
- Electronic Money Directive (**"EMD"**); and
- Alternative Investment Fund Manager Directive (**"AIFMD"**).

The consultation closes on 22 March 2014. The ESAs intend to publish a final report, together with the final guidelines, in the fourth quarter of 2015.

A copy of the consultation on the draft guidelines is available at the link below –

http://www.eba.europa.eu/documents/10180/936747/JC+CP+2014+05+%28Consultation+Paper+on+Cross+Selling%29.pdf

(ii) Guidelines on consistency of supervisory practices for financial conglomerates

On 22 December 2014, the ESAs published its final guidelines on the convergence of supervisory practices relating to the consistency of supervisory co-ordination arrangements for financial conglomerates, which will apply from 23 February 2015.

The guidelines aim to clarify and enhance co-operation between national competent authorities on cross-border groups that have been identified as financial conglomerates.

They focus on how authorities should co-operate to achieve a supplementary level of supervision of financial conglomerates and are intended to serve the purpose of addressing loopholes in present legislation, as prescribed by the Financial Conglomerates Directive (2002/87/EC).

Areas covered by the guidelines include:

- The mapping of the financial conglomerate structure and written agreements.
- The co-ordination of information exchange.
- Supervisory planning and co-ordination of supervisory activities in going concern and emergency situations.
- The supervisory assessment of financial conglomerates.
- Decision-making processes among the competent authorities.

A copy of the final guidelines is available at the following link –

http://www.eba.europa.eu/documents/10180/936042/JC+GL+2014+01+%28Joint+Guidelines+on+coordination+arrangements+for+financi....pdf

Data Protection

(i) Government Announces New Data Protection Plans

The government has announced its intention to implement a "data protection roadmap" in order to tackle data protection issues. In an effort to achieve the goal in making Ireland the "best in class" with regards to data protection plans, three suggestions have been proposed by the government in order to raise the standards of Irish data protection laws;

- Allowing the office of the Data Protection Commission to have it owns vote;
- The formation of an office of the Data Protection Commission in Dublin as well as the office in Portarlington; and

- The establishment of an Interdepartmental Committee on Data and Technology Issues in a bid to encourage a wider scope in the area.

The reason for the update to the data protection plans is due to the need for a wider reform of data protection legislation across the European Union. The evolution of new technologies, in particular the expansion of social networks and the effort made in a bid to protect personal data and how it is sought, processed and kept remains a continuous challenge for the Data Protection Commissioner.

(ii) The European Fund and Asset Management Association ("EFAMA") along with Fund and User groups calls upon the EU Anti-Trust Commission in a bid for a Higher Standard of Data Protection in relation to ISIN users

EFAMA along with leading investment fund and information user associations have requested the EU Antitrust Commission to improve its protection of European International Securities Identification Numbers ("**ISINs**") data users as it considers that Standard and Poors ("**S&P**") have not met their EU obligations in respect of ISINs.

EFAMA maintains that the use of the global securities identifier ISIN should not only be free but also license (contract) free around the world as the applicable ISO 6166 standard does not require ISIN end-user agreements. The S&P model agreements limit ISIN usage considerably by creating unnecessary legal risks and liabilities as well as administrative burden.

It has been requested of S&P to find a resolution due to its failure to meet EU obligations with regards to ISINs and ISIN users. EFAMA has called on S&P, as the US National Numbering Agency ("**US NNA**") for the ISIN, to provide the market with a fair solution that reflects the approach of other National Numbering Agencies worldwide, which would meet the following minimum requirements:

- Acknowledgement that S&P will allow the free usage of all S&P issued US-ISINs in the normal course of business, without any contractual commitment of the end user which is independent of the dissemination channel of the data and without any reference to the US Committee on Uniform Securities Identification Procedures ("**CUSIP**") identification code;
- Assurance that S&P will not pursue end users based on any proclaimed IP, copyrights and data basing rights, in order to establish legal certainty on free ISIN usage in the entire financial market including that S&P will respect their customers rights conferred under local data laws;

- Limitations on the definition of Information Service Providers in order to ensure that financial services firm reporting activities in the normal course of their business are not considered a licensable "ISP" activity;
- The free use of US ISIN needs to be a global solution and must cover at a minimum all European financial services companies activities outside the EEA territory in order to deal with “follow the trade around the clock situations” and in line with the efforts of the Financial Stability Board and the G 20 to overall reduce risk in the global financial market place.

(iii) European Data Protection Supervisor Guidelines on Data Protection in EU Financial Services

Guidelines regarding data protection in EU financial services were published by the European Data Protection Supervisor (“**EDPS**”) on 25 November 2014. The guidelines were published in a bid to set out that although financial markets are to be monitored closely, the right to privacy and data protection must be adhered to. The guidelines set out the following main points:

- The right to privacy and protection of personal data under EU rights;
- The steps that are required to assess data protection;
- Setting out the ways in which data protection rules are applied in relation to financial services regulation;
- Sets out how the EDPS intends to work with policy and lawmakers in the financial services regulation area.

(iv) Council releases Latest Draft of New Law

On 19 December 2014, the Council of the European Union published the latest version of the Data Protection Regulation (the “**Data Protection Regulation**”).

This latest version shows that both EU institutions and various Member States still have certain concerns in respect of a number of areas of the Data Protection Regulation. By way of example, the UK government has sought to revert to the definition of consent in Article 2(h) of the Data Protection Directive, which would remove the requirement that 'unambiguous' consent is given, thereby watering down the meaning of 'consent' which is currently proposed by the Working Group.

The latest version of the Data Protection Regulation can be viewed via the following link:

http://pdp.ie/docs/regulation-council.pdf

Whistleblowing

(i) The Central Bank publishes Feedback Statement on CP79 regarding Consultation on Handling of Protected Disclosures by the Central Bank

In November 2014, the Central Bank published a Feedback Statement on Consultation Paper 79 – Handling of Protected Disclosures by the Central Bank ("**CP79**"). CP79 outlined the Central Bank's proposed approach to dealing with protected disclosures regarding alleged breaches of financial services legislation and the operation of a Whistleblower Desk within the Central Bank to handle protected disclosures.

The Central Bank (Supervision and Enforcement) Act 2013 (the "**Supervision and Enforcement Act**") has necessitated the Central Bank to put in place new procedures regarding the receipt and handling of certain protected disclosures. CP79 outlined the proposed policy and procedures that the Central Bank intends to put in place in response to the legislation.

Section 2 of the Feedback Statement on CP79 provides an overview of the main submissions received and the Central Bank's responses to same. A number of the submissions requested that the Central Bank provide guidelines on what is a disclosure that will or will not be protected, together with possible examples and guidance to assist whistleblowers in making disclosures. The Central Bank has responded that it has no role in assessing whether or not a disclosure is a protected disclosure as this is a matter of law to be assessed by a Rights Commissioner, the Labour Courts or Courts. The Central Bank also advises that it cannot give any legal guidance on material disclosures but that it will publish a frequently asked questions sheet on its website which will be updated on a regular basis.

The Feedback Statement on CP79 can be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP79%20Handling%20of%20Protected%20Disclosures%20by%20the%20Central%20Bank%20of%20Ireland/Feedback%20Statement%20CP79.pdf

(ii) Central Bank Letter setting out further Information regarding Protected Disclosures

The Central Bank has recently sent a letter to all regulated financial service providers reminding them of their obligations under the Supervision and Enforcement Act. The letter also refers to the Protected Disclosures Act 2014 which came into operation on 15 July 2014 and which provides protections to cover workers in all sectors.

Part 5 of the Supervision and Enforcement Act was enacted on 1 August 2013. This introduced new provisions providing protection for persons who, in good faith, make a disclosure to the Central Bank regarding a possible or actual contravention of financial services legislation. The Supervision and Enforcement Act places a mandatory obligation on those performing pre-approval controlled functions ("**PCFs"**) to report a prescribed contravention that may be, or may have been, committed.

Generally, where a person makes a disclosure in good faith to the Central Bank or one of its employees, and the person making the disclosure has reasonable grounds for believing that the disclosure will show that there has been a breach of, or offence under, financial services legislation or the concealment or destruction of evidence relating to such an offence or breach, the disclosure is a protected disclosure provided the person provides their name. Disclosures made anonymously will not qualify as a protected disclosure.

Where a person wishes to disclose to the Central Bank an alleged offence, breach of financial services legislation or concealment or destruction of evidence of such, they may make the disclosure through the following channel:

E-mail:	confidential@centralbank.ie
Telephone:	1890 130014
Post:	Whistleblowing Desk Central Bank of Ireland P.O. Box 559 Dame Street Dublin 2

Section 38 (2) of the Supervision and Enforcement Act places an obligation on PCF's to report breaches of financial services legislation. A PCF 38(2) disclosure form is available to be downloaded from the Central Bank website. Persons holding PCF roles who need to make a disclosure under the Supervision and Enforcement Act should make the disclosure by completing this form and submitting it either by e-mail or post to the following addresses.

E-mail:	Protecteddisclosures@centralbank.ie
Telephone:	1890 130015 (for general queries only)
Post:	PCF Disclosure Desk Central Bank of Ireland P.O. Box 559 Dame Street Dublin 2

A copy of this letter can be accessed via the following link:

http://www.centralbank.ie/regulation/processes/protected-disclosures/Documents/Industry%20Letter.pdf

Fitness and Probity

(i) Updated Fitness and Probity Standards

On 1 October 2010, Part 3 of the Central Bank Reform Act 2010 created for the first time in Irish law a harmonised statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions ("**CFs**") or pre-approval controlled functions ("**PCFs**") in regulated financial service providers, with the exception of credit unions. This new regime was fully implemented by 1 December 2012. On 3 November 2014, the Fitness and Probity Standards were updated and published to reflect the introduction of the Single Supervisory Mechanism which came into effect on 4 November 2014.

The Central Bank has published updated non-statutory guidance to assist regulated financial service providers in complying with their obligations under Section 21 of the Central Bank Reform Act 2010 in relation to the Fitness and Probity Standards. The guidance outlines the steps which the Central Bank expects regulated financial service providers to take in order to satisfy themselves on reasonable grounds that individuals performing CFs, including PCFs, are in compliance with the Fitness and Probity Standards.

The Central Bank has also published a Frequently Asked Questions document in relation to the operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010.

The updated Fitness and Probity Guidelines, the Guidance and the Frequently Asked Questions can be viewed at the following links respectively:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Fitness%20and%20Probity%20Standards%202014.pdf

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance%20on%20Fitness%20and%20Probity%202014.pdf

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Fitness%20and%20Probity%20-%20FAQs%202014.pdf

Central Bank of Ireland (the "Central Bank")

(i) Central Bank Publish Latest Central Bank Inquiry Guidelines and Administrative Sanctions Outline

Part IIIC of the Central Bank Act 1942, as amended, (the "**Act**") provides the Central Bank with the power to administer sanctions in respect of the commission of prescribed contraventions by regulated financial service providers and the participation in the prescribed contraventions by persons concerned in their management.

Where a concern arises that a prescribed contravention has been or is being committed, the Central Bank may investigate. Following an investigation an Inquiry may be held where there are reasonable grounds to suspect that a prescribed contravention has been or is being committed. The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions. The decision of the Inquiry may be appealed to the Irish Financial Services Tribunal.

The Administrative Sanctions Procedure provides that, any time before the conclusion of an Inquiry, the matter may be resolved by entering into a settlement agreement. This is a written agreement which binds the Central Bank and the regulated financial service provider and/or person concerned in its management.

The latest Central Bank Inquiry Guidelines and Administrative Sanctions Outline are applicable as of 4 November 2014, and can be viewed respectively via the following links:

http://www.centralbank.ie/regulation/processes/Enfl/asp/Documents/Inquiry%20Guidelines%202014.pdf

http://www.centralbank.ie/regulation/processes/Enfl/asp/Documents/Outline%20of%20Administrative%20Sanctions%20Procedure%202014.pdf

(ii) Central Bank Publish "Skilled Persons' Reporting – Statement of Proposed Use

On 19 November 2014, the Central Bank published a Skilled Persons' Reporting – Statement of Proposed Use. Part 2 of the Central Bank (Supervision and Enforcement) Act, 2013 provides the Central Bank with the power, for the purposes of the proper and effective regulation of financial service providers, to require a regulated financial services provider or a related undertaking of a regulated financial services provider to produce a report on such matters as the Central Bank may specify.

The Statement applies to all firms regulated by the Central Bank and sets out the Central Bank's policy and expectations when using the Skilled Persons' Reporting Powers as a supervisory tool. The Statement covers:

- Use of the Skilled Persons' Reporting Powers;
- Preparation of the Skilled Persons' Report;
- Expectations in respect of a Skilled Person, and
- Confidentiality.

The Central Bank's Statement can be accessed via the following link:

http://www.centralbank.ie/press-area/press-releases/Documents/Skilled%20Persons%27%20Reporting%20-%20Statement%20of%20proposed%20use.pdf

(iii) Central Bank publishes Issue 8 of 2014 of its Markets Update

On 17 December 2014, the Central Bank published Issue 8 of 2014 of its Markets Update. The Markets Update advises interested parties of recent policy developments related to the way the Central Bank supervises financial markets, investment funds and their service providers and MiFID firms. Items such as recent speeches are also included. The Markets Update is published as required, rather than on a regular periodic basis. Previous publications are also available on the Central Bank website.

The Markets Update can be viewed via the following link:

http://www.centralbank.ie/regulation/marketsupdate/Pages/WhatsNew.aspx?ListID=8203d31c-0d29-473d-9e27-b998cfcaf6bc&ListItemID=

Companies Bill Update

(i) Enactment of the Companies Bill 2012

The Companies Bill 2012 was signed by the President of Ireland on 23 December 2014 and has been enacted as the Companies Act 2014 (Act No. 38 of 2014)(the "**Companies Act**"). The Companies Act will be commenced by Statutory Instrument and is expected to be effective from 1 June 2015 with a transition period of 18 months for certain elements.

The Companies Act represents a significant reform of Ireland's company law regime by consolidating, reforming and amending existing company law legislation. With about 1,500 sections, it is the largest piece of legislation ever enacted by the Oireachtas.

The Companies Act impacts every Irish company together with all directors and shareholders.

Please see our website (http://www.dilloneustace.ie/) for updates on the key innovations of the Companies Act.

The Companies Registration Office has yet to finalise and introduce over 159 new CRO forms. Also, the Rules Committee of the District and High Court will need to consider the new statutory provisions which will permit new applications in the District and High Court under the new provisions of the Companies Act 2014.

Taxation Update

(i) FATCA Update

FATCA is now fully operational with relevant Irish financial institutions being required to have registered with the IRS before 31 December 2014. The first FATCA reports are due to be filed with the Irish Revenue Commissioners by 30 June 2015 and will be in respect of the 2014 reporting year.

(ii) Finance Act 2014

Non-Irish AIFs and UCITSs

Finance Act 2014 (the **"Act"**) has introduced beneficial amendments to ensure that non-Irish alternative investment funds (**"AIFs"**) should not be chargeable to Irish tax solely by virtue of the AIF in question being managed by an Irish authorised alternative investment fund manager (**"AIFM"**) or by an Irish branch/agency of an AIFM authorised under the laws of another EEA State.

Similar provisions were previously introduced for non-Irish UCITSs managed by an Irish authorised management company.

Notwithstanding the above, it should be noted that if the non-Irish AIF or UCITS in question is within the charge to Irish tax by virtue of an entitlement to Irish source income, the above provisions will not be applicable and the income may therefore be chargeable to Irish tax.

The Standard for Automatic Exchange of Financial Account Information

The Standard for Automatic Exchange of Financial Account Information (**"the Standard"**) was approved on 15 July 2014. The Common Reporting Standard (**"CRS"**) is part of this Standard and is the component that contains the reporting and due diligence standard that underpins the automatic exchange of financial account information.

In summary, from an Irish perspective, the Standard should ensure that Irish financial institutions collect and report certain information in relation to financial accounts maintained by them that are held by persons not resident in Ireland. This information will be reported to the Irish Revenue Commissioners who will then exchange same with the tax authorities of the jurisdiction in which the account holder is resident.

Fundamentally, the information that should be collected and reported is likely to be similar to the information that financial institutions should already be collecting for FATCA purposes. However, as will be appreciated the Standard will have much further reaching significant as it will not just require collection and reporting of information regarding certain US account holders.

The Act has introduced legislation to allow the Irish Revenue Commissioners to make regulations to comply with the Standard and to effectively introduce the Standard into Irish law.

It is currently envisaged that for early adopters (which includes Ireland) that the effective start date of the CRS will be 1 January 2016 (new account opening procedures will be required to be in place by 1 January 2016 with pre-existing accounts being those open on 31 December 2015). The first exchange of information is currently targeted to take place by the end of September 2017.

Offshore Funds

The Act makes provision to increase the income tax rate applying to disposals of material interests in offshore funds that are categorised as personal portfolio investment undertakings to 80% (from 60%) in cases where the details of the disposal are not correctly included in the taxpayer's income tax return.

Real Estate Investment Trusts ("REITS")

The REIT tax regime has been amended to introduce, amongst other items, legislation to prevent the avoidance of capital gains tax on intra-group transfers of Irish real estate to a REIT.

Amendments to Irish Residency Rules for Companies

Due to the recent concerns raised in relation to the “Double Irish” structure, the Act has amended the residency rules for companies incorporated on or after 1 January 2015. These new residency rules will ensure that companies incorporated in Ireland and also companies not so incorporated but that are managed and controlled in Ireland, will be tax resident in Ireland except to the extent that the company in question is, by virtue of a double taxation treaty between Ireland and another country, regarded as resident in a territory other than Ireland (and thus not resident in Ireland). For companies incorporated before this date these new rules will not come into effect until 1 January 2021 (except in limited circumstances).

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