Funds Quarterly Legal and Regulatory Update

Period covered:
1 January 2014 – 31 March 2014

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Table of Contents

FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS, Non-UCITS & Hedge Funds

(i) Political Agreement on UCITS V

On 25 February 2014, the European Commission published a press release announcing that the European Parliament and Council of the EU had backed its proposals on UCITS V. This agreement enables the proposed UCITS V Directive to be adopted by the European Parliament at first reading and before it adjourns for the European Parliament elections at the end of May.

The following are the key elements of the agreement reached by the co-legislators:

- Remuneration policies for all risk takers involved in managing UCITS funds so that remuneration practises do not encourage excessive risk-taking and instead promote sound and effective risk management and enhanced transparency of remuneration practices. The UCITS V remuneration policy provisions are similar to those in the Alternative Investment Funds Directive ("**AIFMD**");
- Depositary liability has been strengthened and a list of entities that are eligible to act as a UCITS depositary has been set out;
- UCITS assets will be protected in the event of the insolvency of the depositary through clear segregation rules and safeguards provided by Member States' insolvency law; and
- The existing UCITS regime has been strengthened in order to ensure effective and harmonised administrative sanctions. The use of criminal sanctions is framed so as to ensure the cooperation between authorities and the transparency of sanctions.

It should be noted that the remuneration policy requirements may cause issues for UCITS delegates if extended to such entities (in particular non-EU investment managers) as there is a requirement to pay at least 50% of the variable part of a UCITS fund manager's remuneration in shares in the UCITS it manages (unless management of the UCITS accounts for less than half of the total portfolio managed by the UCITS manager). In addition at least 40% of the variable remuneration must be deferred for at least three years and this increases to at least 60% where the variable remuneration is extraordinarily high.

UCITS V must now be formally adopted by the European Parliament and the Council of the EU. The European Parliament is due to adopt the proposed directive during its 15-16 April 2014 plenary session and the Council of the EU has confirmed that should the European Parliament adopt its position at first reading, the Council of the EU would approve the Parliament's position.

Under the agreed text, Member States will have 18 months to transpose the UCITS V Directive into national law, and depositaries will be given an additional 24 month transition period after the transposition deadline.

ESMA is due to publish guidelines on the scope of UCITS V within the next six months, including guidelines regarding identified staff which the remuneration rules will apply to.

The agreed UCITS V text may be viewed via the following link:

http://register.consilium.europa.eu/doc/srv/ST_7411_2014_INIT_EN.pdf?l=EN&t=PDF&f=ST_7411_2014_INIT

(ii) The Central Bank Issues Consultation Paper on the new UCITS Rulebook

On 2 January 2014, the Central Bank of Ireland (the "**Central Bank**") issued Consultation Paper (CP 77) on the publication of a new UCITS Rulebook which it is intended will replace the Central Bank's existing UCITS Notices and Guidance Notes. The single consolidated Rulebook is intended to facilitate greater clarity on UCITS requirements and avoid repetition or paraphrasing of the related legislative provisions, and will distinguish between rules and guidance.

It is proposed that the UCITS Rulebook will contain all of the conditions that the Central Bank imposes on UCITS funds, their management companies and depositaries in addition to the requirements of the S.I. No. 352/2011 – European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the "**UCITS Regulations**").

The Central Bank has specifically sought stakeholders' views on the following key proposals:

- Removal of the Promoter Requirement

  The Central Bank is proposing to remove the requirement that all UCITS applications be supported by an approved fund promoter with a minimum capital of €635,000. The Central Bank proposes to instead rely on the regulatory regime for UCITS management companies/self-managed investment companies. This proposal would bring the UCITS regime in line with the approach taken with regard to Alternative Investment Funds ("**AIFs**") under AIFMD which are authorised and supervised by the Central Bank.

- Changes to approach on Regulated Markets

The Central Bank also proposes to withdraw its Guidance Note which sets out the criteria for a "regulated market" under the UCITS Regulations (UCITS Guidance Note 1/96) due to the overlap between the Guidance Note and Commission Directive 2007/116/EC on eligible assets.

The new approach proposed in CP 77 will mean that the Central Bank will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. UCITS and their depositaries will need to exercise their own judgement as to whether a particular market or exchange meets the criteria for being a "regulated market".

- Half Yearly Financial Accounts

  The Central Bank is also proposing to require UCITS management companies (including self-managed investment companies) and depositaries to submit unaudited half yearly financial accounts covering the second six months of the financial year. This requirement would be in addition to the current requirement to publish such accounts covering the first six months of the financial year and audited annual accounts.

The deadline for submissions in response to CP 77 was 28 March 2014. It is expected that the new Rulebook will come into effect later this year.

(iii) Central Bank's Implementation of ESMA Guidelines on ETFs & UCITS Issues

On 23 January 2014, the Central Bank published a memorandum of understanding ("**MoU**") concerning the implementation of ESMA Guidelines for Competent Authorities and UCITS Management Companies: Guidelines on ETFs and Other UCITS issues (the "**Guidelines**"). The MoU states a UCITS money market fund, authorised before 18 February 2013 may delay its compliance with paragraph 43(e) of the Guidelines until such time as ESMA has concluded its consultation and issued its feedback on a proposed amendment to the Guidelines which would revise the rules for the diversification of collateral received by UCITS money market funds in the context of efficient portfolio management techniques and OTC transactions. In this regard, ESMA issued its Final Report on 24 March 2014, further details of which are set out in paragraph (xiii) of this Part.

In accordance with Guideline 35(d), the Central Bank's UCITS Notice 8 requires the annual reports of UCITS to include disclosure of "*the revenues arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and the fees incurred*". The Central Bank considers it to be a reasonable interpretation of the reference to "*revenue*" – subject to any clarification by ESMA – that it is applicable only to revenue from securities lending and repurchase/reverse repurchase arrangements. Accordingly, this disclosure requirement would not apply to other forms of efficient portfolio management ("**EPM**"), such as derivatives.

The Central Bank's MoU regarding the implementation of the Guidelines is available at the following link:

https://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/MEMORANDUM%20_FINAL_23%20JAN%202014.pdf

(iv) Central Bank publishes UCITS Questions and Answers ("Q&A") – 1st edition

On 4 February 2014, the Central Bank published the first edition of a UCITS Q&A. The document sets out answers to queries deemed likely to arise in relation to UCITS and is intended to assist in limiting uncertainty. It will be updated from time to time by the Central Bank.

The Q&A includes sections entitled "Investments in open-ended non-UCITS investment funds" and "Implementation of the ESMA Guidelines on ETFs and others UCITS issues".

The following are the questions answered by the Central Bank in the Q&A:

- Who determines if a non-UCITS investment fund is an eligible investment?
- Must the non-UCITS investment fund include conforming provisions in its constitutional document in order to be eligible for investment by a UCITS or is it sufficient for the non-UCITS investment fund to operate in practice in a manner which complies with the requirements of Regulation 68(1)(e) of the UCITS Regulations?
- Guidance Note 2/03 on 'UCITS – Acceptable investments in other collective investment undertakings' lists categories of non-UCITS investment funds which are eligible for investment by UCITS. This list includes non-UCITS investment funds authorised in the US and which comply, in all material respects, with the provisions of the UCITS Notices. What category of US investment funds is being referred to?
- Does the ESMA opinion on Article 50(2)(a) of Directive 2009/65/EC (Ref. 2012/721 of 20 November 2012) relate only to investments by UCITS in open-ended non-UCITS investment funds?
- Can units in an open-ended investment fund which meet the transferable securities criteria be treated as transferable securities?
- What does a UCITS need to do if it wishes to invest in a non-UCITS investment fund?
- When does a UCITS money market fund have to comply with paragraph 43(e) of the ESMA Guidelines on ETFs and other UCITS issues?

- Is the reference to “revenue” in Guideline 35(d) of the ESMA Guidelines on ETFs and other UCITS issues applicable only to revenue from securities lending arrangements and repurchase/reverse repurchase agreements?

The complete document is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/UCITS%20QA%20NO%201_%20FINAL%204%20FEB%2014.pdf

(v) Distribution of Irish Domiciled UCITS Funds in Chile

The Irish Funds Industry Association’s (“**IFIA**”) Chilean Counsel has informed the IFIA that where an Irish domiciled UCITS fund makes an application for approval in Chile, the application will not be rejected on the basis of its Irish domicile. Although this change has not been officially communicated by the Chilean authorities, the IFIA understands that this change is now in effect. This change allows managers of Irish funds to proceed with applications under the normal conditions and procedures which exist in Chile.

This change marks a re-opening of access for Irish funds to this important South American market. It also supports the managers of Irish domiciled UCITS funds in their drive for international distribution.

Dillon Eustace can support fund managers who are interested in accessing the Chilean and other international markets.

(vi) Non-voting Shares/Units in UCITS

Historically the Central Bank has allowed CCFs to issue non-voting units as this was deemed by industry to be one of the necessary characteristics of CCFs. The Central Bank has now indicated that it will allow other UCITS legal structures to issue non-voting shares/units subject to the following requirements:

- The rationale must be fully explained upon making an application;
- Investors must make the choice to invest in the restricted class and have the option to switch to a class with voting rights without incurring a charge;
- It must be confirmed that the proposal complies with company law / trust law;
- There must be full disclosure in the prospectus and the M&A / trust deed that the decision to invest in the restricted class is made by the investors; and
- The application must set out how the investors’ interests are safeguarded.

(vii) Central Bank Letter Regarding Irish UCITS Management Company Managing Non-Irish UCITS

The Central Bank has written to industry to specify that where an Irish UCITS management company is appointed to a non-Irish UCITS fund and there is a proposal to delegate some of its functions relating to the non-Irish UCITS fund to a non-Irish depositary, the Central Bank will seek a confirmation from the home regulator of the respective UCITS that these arrangements comply with local regulatory requirements.

Moreover, the Central Bank has advised that it will consider these proposals on a case by case basis, in order to ensure that adequate arrangements are in place to ensure the separation of functions and to manage conflicts of interest.

(viii) EFAMA Creates a Performance Fee Working Group

In response to the topic of Performance Fees being raised by policy makers as a potential initiative for inclusion in UCITS VI, the European Fund and Asset Management Association ("**EFAMA**") has created a Performance Fee Working Group in order to form an industry agreed position in advance of policy makers publishing a proposal in this area.

(ix) Central Bank Clarification Regarding UCITS Management Companies Receiving Fees for Securities Lending

The Central Bank has provided Dillon Eustace with some clarification in respect of UCITS Management Companies and whether or not they can continue to receive a fee in relation to a securities lending arrangement post 18 February 2014. The ESMA Guidelines on ETFs and Other UCITS Issues (the "**Guidelines**") provide that only direct and indirect operational costs and fees arising from efficient portfolio management techniques (such as securities lending) may be deducted from the revenue delivered to the UCITS. UCITS Notice 12.7 was also revised to reflect this.

When queried as to whether UCITS Management Companies may continue to take a fee out of revenue generated from a securities lending programme after 18 February 2014 (the date from which the Guidelines apply), the Central Bank clarified that although the Guidelines do not specifically prohibit a UCITS Management Company from receiving such a fee, a UCITS Management Company, where it proposes taking such a fee, must ensure it adheres to the relevant provisions of the UCITS legislation including:

- Acting honestly and fairly in conducting its business activities in the best interests of the UCITS;

- Monitoring effectively at all times the activity of the undertaking to which a mandate is given;
- Acting in such a way as to prevent undue costs being charged to the UCITS; and
- Ensuring that the general investment policy, the investment strategies and the risk limits of the UCITS are properly and effectively implemented and complied with.

(x) Investment Entities (Amendments to IFRS 10, IFRS 12 and IAS 27)

On 21 November 2013, Commission Regulation (EC) No 1174/2013 of 20 November 2013 was published in the Official Journal of the European Union. This regulation adopts the amendments entitled Investment Entities (Amendments to IFRS 10, IFRS 12 and IAS 27) (the "**Amendments**") made by the International Accounting Standards Board ("**IASB**") in October 2012. The amendments were given an effective date of 1 January 2014.

The Amendments provide an exemption to the consolidation requirements in IFRS 10 and require investment entities to measure particular subsidiaries at fair value through profit or loss rather than consolidate them. New disclosure requirements for investment entities are also provided in IFRS 12 and IAS 27. An investment entity is an entity whose business purpose is to invest funds solely for returns from capital appreciation, investment income or both and also evaluates the performance of these investments on a fair value basis.

(xi) EFAMA Publishes Quarterly Statistical Release Showing 2013 Fund Results

On 3 March 2014, EFAMA published a report on "Trends in the European Investment Fund Industry in the Fourth Quarter of 2013 and Results for the Full Year 2013". The report displays how the European investment fund industry enjoyed a second consecutive year of strong growth in 2013. The report highlights that:

- Net sales of UCITS reached EUR 229 billion: demand for UCITS reached its highest level since 2006 and surpassed the net sales of EUR 196 billion registered in 2012;
- Sales of non-UCITS reached EUR 181 billion: net sales of non-UCITS increased in 2013, up from EUR 114 billion in 2012; and
- Money market funds suffered from increased net outflows: money market funds recorded net outflows of EUR 84 billion, marking a significant increase compared to 2012 when net outflows amounted to EUR 37 billion. Low short-term interest rates remained a challenge for the money market funds industry in 2013.

The report displays trends in the UCITS market, based on:

- Net sales by investment type;

- Net assets by investment type;
- Net sales by country of domiciliation; and
- Net assets by country of domiciliation.

The report also details trends in the non-UCITS market based on:

- Net sales and assets by investment type; and
- Net assets by country of domiciliation.

The report may be accessed via the following link:

http://www.efama.org/Publications/Statistics/Quarterly/Quarterly%20Statistical%20Reports/140303_Quarterly_Statistical_Release_%20Q4_2013.pdf.

(xii) ESMA Publishes Updated Q&A on their Guidelines on ETFs and other UCITS issues

On 24 March 2014, ESMA published an updated Q&A document on its Guidelines on ETFs and other UCITS issues ("**Q&A**").

The aim of this Q&A is to promote common supervisory approaches and practices in the application of the UCITS Directive and the Guidelines on ETFs and other UCITS issues (the "**Guidelines**"). The updated Q&A provides clarity in respect of two aspects of Financial Indices (Section XIII of the Guidelines).

The Q&A is directed at the various competent authorities ("**NCAs**") but it is also intended to help UCITS management companies by providing clarity on the requirements of the Guidelines.

Two new questions have been added to the updated Q&A:

Question 7j: *According to paragraph 55 of the guidelines, UCITS should not invest in financial indices for which the full calculation methodology to, inter alia, enable investors to replicate the financial index, is not disclosed by the index provider. Such information should be easily accessible, free of charge. What is meant by disclosed, easily accessible and free of charge in the context of the guidelines?*

Answer 7j: *The information to be disclosed and provided must be publicly available to investors and prospective investors, and published in such a way that direct access to this information is possible. Such information may be so accessed, for example, as a direct publication or via a source which directly links to a public website or other public forum which is not password protected, encrypted or in any way hinders or impedes immediate and direct access.*

***Question 7k:** Paragraph 50 of the guidelines prohibits investment by UCITS in commodity indices that do not consist of different commodities and applies a correlation factor to be considered in this regard. Can UCITS invest in a commodity index for which a particular commodity component does not have 5 years of price history available for the purposes of the correlation observation?*

***Answer 7k:** Yes, provided that a similar asset serves as an adequate proxy. The basis for such an asset being considered as an adequate proxy needs to be supported by both qualitative and quantitative data. Those qualitative and quantitative data should be documented by UCITS management companies. The proxy asset cannot constitute more than 3 years of the 5 years of data for the purposes of the calculation. The proxy must be a single commodity (rather than a component of a basket or other amalgam/hybrid product) asset, however, this asset could include a financial index which complies with section XIII of the guidelines.*

The Q&A may be accessed via the following link:

http://www.esma.europa.eu/system/files/2014-295_qa_on_guidelines_on_etfs_and_other_ucits_issues.pdf

A Dillon Eustace Update on the Q&A may be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Updated%20ESMA%20Q%20and%20A%20on%20its%20Guidelines%20on%20ETFs%20and%20other%20UCITS%20Issues.pdf.

(xiii) ESMA Publishes Final Report on Revising Provisions on Diversification of Collateral in ESMA's Guidelines on ETFs and Other UCITS Issues

On 24 March 2014, ESMA published its Final Report on revising provisions on diversification of collateral in its Guidelines on ETFs and Other UCITS Issues (the "Final Report"). The Final Report sets out ESMA's updated position on collateral management by UCITS and follows a consultation which was conducted in December 2013 on this topic. In this regard, ESMA had been asked by stakeholders on numerous occasions to reconsider its position on the requirements of collateral diversification (paragraph 43(e) of the Guidelines on ETFs and Other UCITS Issues (the "**Guidelines**") on the basis that they have a significant adverse impact on UCITS's collateral management policies. The Final Report seeks to modify the rules on collateral diversification which are set out in paragraph 43(e) of the Guidelines.

Paragraph 43(e) of the Guidelines states that no more than 20% of a UCITS fund's net asset value may be received in collateral exposed to any one issuer. However, in a very welcome development, ESMA has decided to revise the diversification rule and will now allow all UCITS to receive collateral in the form of transferable securities or money market instruments issued or guaranteed by a Member State, one or more of its local authorities, third countries or certain public international bodies without being restricted to the issuer limit of 20% of net asset value.

In order to avail of the new rules, a UCITS must receive securities from at least six different issues and no one issue should account for more than 30% of the UCITS fund's NAV. In addition, the new rules will be subject to additional disclosures in the Prospectus and in the Annual Report. The disclosure rules will be subject to a transitional period before they will apply to existing UCITS. The Prospectus disclosures will apply from 12 months from the application date of the new guidelines or earlier if the Prospectus is being updated for any other reason. The Annual Report disclosures will only apply to accounting periods that end after the application of the new guidelines. In other words, the disclosure requirements will not apply in respect of any accounting period that has ended before the application date of the new guidelines.

The new guidelines will apply two months after the publication of its translation into the official EU languages on the ESMA website. The publication of the translations will trigger a two month period during which NCAs must notify ESMA whether they comply or intend to comply with the guidelines.

The Final Report may be viewed via the following link;
http://www.esma.europa.eu/system/files/2014-294_final_report_revision_of_guidelines_etfs_and_other_ucits_issues.pdf.

(xiv) Central Bank Introduces New Resident Money Market and Investment Funds ("MMIF") Quarterly Return

The Central Bank has introduced a Resident Money Market and Investment Funds Return ("**MMIF**") for Fund Administrators. The MMIF return is set to replace the OFI1 and Funds Annual Survey of Liabilities returns from April 2014.

The MMIF fulfils the requirements prescribed under the following pieces of legislation:

- Draft Regulation on investment funds (replacing ECB Regulation No. 958/2007 (ECB/2007/08));
- Draft Regulation covering MMFs (replacing ECB Regulation No. 25/2009 (ECB/2008/32)); and
- ECB balance of payments requirements, as set out under Guideline ECB/2011/23.

We have been advised by the Central Bank that MMIF data will be reported under the Central Bank (Supervision and Enforcement) Act 2013 and that the MMIF will reduce significantly the need for future ad-hoc surveys or new reporting requirements.

From Q4 2014, the Central Bank plan to replace current reporting with monthly MMIF reporting and to abolish the monthly MMF and quarterly MMQ form.

For further information on the MMIF, please see the following link to the Central Bank's Economic Policy and Statistics page:

http://www.centralbank.ie/polstats/stats/reporting/Pages/RevisedOFIReportingMMIFQuarterlyReturn.aspx.

(xv) UCITS Investment in Loans

The Central Bank has recently advised that:

1. Any investment by UCITS in securitised loans is subject to a 10% unlisted limit; and
2. Any investment in unsecuritised loans is also subject to the 10% limit and unsecuritised loans must also be demonstrated to be a form of money market instrument.

This is position is related to ESMA's Opinion on Article 50(2)(a) of the UCITS Directive (2009/65/EC) of 20 November 2012. The Opinion may be viewed via the following link:

http://www.esma.europa.eu/system/files/2012-721.pdf.

(xvi) Central Bank Releases Q4 2013 Data on Investment Funds in Ireland

On 25 March 2014, the Central Bank issued an Information Release entitled "Central Bank Data on Investment Funds in Q4 2013". The Information Release provides that "the underlying trend of strong growth in the Irish fund industry was evident again in Q4 2013, with net asset values rising to €1,070 billion from €1,041 billion in Q3. Significantly, net investor inflows to funds accounted for around half of this increase, while equity prices drove positive revaluations".

The Information Release may be viewed via the following link:

http://www.centralbank.ie/polstats/stats/investfunds/Documents/2013q4_ie_investment_funds_information_release.pdf.

(xvii) ESMA Opinion on Good Practices for Structured Retail Product Governance

On 27 March 2014, ESMA published an Opinion entitled “Structured Retail Products - Good Practices for Product Governance Arrangements”.

Structured retail products (“**SRPs**”) are defined as compound financial instruments that have the characteristic of combining a base instrument (such as a note, fund or deposit) with an embedded derivative(s) that provides economic exposure to reference assets, indices or portfolios. In this form, they provide investors, at predetermined times, with pay-offs that are linked to the performance of reference assets, indices or other economic values.

The Opinion contains a broad set of non-exhaustive examples of good practices illustrating arrangements that firms, taking into account the nature, scale and complexity of their business, could put in place to improve their ability to deliver on investor protection regarding, in particular, (i) the complexity of the SRPs they manufacture or distribute, (ii) the nature and range of the investment services and activities undertaken in the course of that business, and (iii) the type of investors they target (“**Good Practises**”).

The Good Practices are also designed as a helpful tool for NCAs in carrying out their supervisory action. In addition, ESMA considers that the Good Practises may be a relevant reference for other types of financial instruments (such as asset-backed securities, or contingent convertible bonds), as well as when financial instruments are being sold to professional clients.

The Good Practices cover the following areas:

- General organisation of product governance arrangements;
- Product design and testing;
- Target market and distribution strategy;
- Value at the date of issuance and transparency of costs;
- Secondary market and redemption; and
- Review process.

You will find the Opinion via the following link:

http://www.esma.europa.eu/system/files/2014-332_esma_opinion__structured_retail_products_-_good_practices_for_product_governance_arrangements.pdf.

European Supervisory Authorities

(i) ESMA Launches Consolidated Registers

On 25 February 2014, ESMA published a press release announcing the launch of new consolidated registers ("**Consolidated Registers**") in accordance with Directive 2010/78/EU (the Omnibus I Directive).

The Consolidated Registers are easy-to-use tools listing the information currently published on the websites of the NCAs of 31 European Economic Area ("**EEA**") Member States.

Registers listing the following types of regulated entities are now available through the ESMA Consolidated Registers webpage:

- MiFID investment firms;
- UCITS management companies; and
- Alternative investment fund managers ("**AIFMs**").

In addition, the Consolidated Registers provide details on:

- Sanctions - administrative measures and sanctions imposed upon investment firms under Article 51 of MiFID and a list of sanctions imposed on investment firms under Article 14 of the Market Abuse Directive (2003/6/EC) ("**MAD**");
- Listing prospectuses, supplements and certificates of approval that have been approved under the Prospectus Directive (2003/741/EC).

These Consolidated Registers are aimed at enhancing investor protection by improving transparency across the EEA and providing the public with access to official information.

The Consolidated Registers may be accessed at the following link:

http://registers.esma.europa.eu/publication/start

(ii) ESMA Publishes its 2014 Regulatory Work Programme

On 12 February 2014, ESMA published its 2014 Regulatory Work Programme, which provides a detailed breakdown of the individual workstreams which include:

- MiFID II;
- The CRA III Regulation (Regulation 462/2013);

- The proposed Regulation on improving securities settlement and regulating central securities depositaries ("**CSDs**");
- The proposed reform of the Market Abuse regime; and
- Omnibus II.

ESMA's Regulatory Work Programme can be found at the following link:

http://www.esma.europa.eu/system/files/2014-172_esma_2014_regulatory_work_programme.pdf

(iii) EBA, ESMA and EIOPA Consult on Supervisory Practises for Financial Conglomerates

On 12 March 2014, the Joint Committee of the three European Supervisory Authorities – European Banking Authority ("**EBA**"), ESMA and the European Insurance and Occupational Pensions Authority ("**EIOPA**") – launched a public consultation on its draft Guidelines on the convergence of practises aimed at ensuring consistency of supervisory coordination arrangements for financial conglomerates.

These Guidelines aim to reduce the administrative burden for firms and supervisory authorities by clarifying and enhancing cooperation between NCAs of cross-border groups that have been identified as financial conglomerates.

These Guidelines focus on how authorities should cooperate in order to achieve a supplementary level of supervision on financial conglomerates.

In particular, the following areas are being focused on:

- The mapping of the financial conglomerate structures and written agreements;
- The coordination of information exchange, supervisory planning and coordination of supervisory activities in emergency situations;
- The supervisory assessment of financial conglomerates; and
- Other decision-making processes among the NCAs.

The public consultation will run until 12 June 2014. Comments may be submitted in advance of this deadline via the consultation webpage.

The Joint Committee of the three European Supervisory Authorities will hold a public hearing on the draft Guidelines at the EBA premises in London on 19 May 2014, from 14:00 to 16:00.

The publication of the final guidelines is expected in the second half of 2014.

The Joint Consultation Paper is available at the following link:

http://www.eba.europa.eu/documents/10180/624054/JC+CP+2014+02+%28Joint+CP+on+draft+Guidelines+on+supervisory+arrangements+....pdf

(iv) ESMA Publishes Guidelines on Cooperation Arrangements and Information Exchange between NCAs and ESMA

On 26 March 2014, ESMA published Guidelines on cooperation arrangements and information exchange between NCAs and ESMA ("**Guidelines**"). The Guidelines facilitate cooperation arrangements and the exchange of information between individual NCAs and between those authorities and ESMA, in the application of their responsibilities under European Union law relating to the securities and markets area. The Guidelines incorporate cooperation procedures agreed between the authorities and ESMA in the form of a new Multilateral Memorandum of Understanding ("**MMoU**") on the Exchange of Information and Surveillance of Securities Activities. The Guidelines are aimed at ensuring that NCAs make every effort to comply with the provisions of the MMoU and that ESMA is informed of any non-compliance.

The Guidelines may be accessed via the following link:

http://www.esma.europa.eu/system/files/2014-298_guidelines_on_cooperation_arrangements_and_information_exchange_0.pdf.

European Market Infrastructure Regulation ("EMIR")

(i) Treatment of FX Forwards under EMIR

The Central Bank published guidance on its website relating to the treatment of FX Forwards under EMIR earlier this year. In particular the Central Bank's website provides that;

"It is our understanding that all FX transactions with settlement beyond the Spot date are to be considered Forward contracts and therefore fall within the definition of a derivative as provided for under EMIR and will be subject to the reporting obligation.

On the basis that for the vast majority of currency pairs the market convention for settling Spot transactions is T+2, it is reasonable to treat any trade with settlement T+3 or greater as a Forward transaction (except in those rare cases where the market convention for the specific currency pair is unequivocally different form T+2)".

At the time of writing, different regulators across the European Union are treating FX Forwards differently under EMIR. The reason for these diverging approaches is the fact that a derivative under EMIR is defined by reference to Directive 2004/39/EC (the "MiFID Directive") and Member States transposed the MiFID Directive differently; i.e. different transpositions of the MiFID Directive across Member States mean that there is no single, commonly adopted definition of a derivative or a derivative contract in the European Union.

In light of these divergences, ESMA published a letter (dated 14 February 2014) which it wrote to the European Commission whereby it asked the European Commission to clarify the exact definition of what constitutes a forward for EMIR purposes, in particular for FX forwards with a settlement date up to 7 days and FX Forwards concluded for commercial purposes. In addition, ESMA invited the European Commission to adopt as a matter of urgency an implementing act under the MiFID Directive (or any other measure that the European Commission considers appropriate) to clarify the definition of derivative or derivative contract in order to bring consistency to the application of EMIR across all Member States.

On 20 March 2014, ESMA published a letter (dated 26 February 2014) which it received in response to its letter of 14 February 2014 regarding the classification of financial instruments as derivatives. The European Commission states that it shares ESMA's view in favour of a fully consistent transposition of the relevant MiFID provisions (and consequently EMIR) throughout the European Union. In its letter, the European Commission concluded that FX Forwards are in scope for the purposes of the MiFID Directive and EMIR even if concluded for commercial purposes. The European Commission acknowledged that there is a lack of clarity about the delineation between FX forward contracts and FX spot contracts under MiFID. The European Commission did not provide any additional clarity on the matter, but undertook to look into how best to provide this clarity. In this regard, the European Commission stated that they would need to carefully consider which delivery periods are appropriate in the FX Forwards market and invited ESMA to provide further insight on certain areas.

The European Commission's letter can be found here:

http://www.esma.europa.eu/system/files/ares2014513399_ec_response_on_classification_of_financial_instruments.pdf.

(ii) ISDA Reporting Delegation Agreement

On 13 January 2014, the International Swaps and Derivatives Association ("**ISDA**") and the Futures and Options Association ("**FOA**") jointly published a form of a reporting delegation agreement (the "**Agreement**"). The Agreement is designed to help market participants comply with the reporting requirements of EMIR by providing a bilateral standard form of reporting delegation agreement whereby a reporting delegate may, on a client's behalf, report relevant data to a trade repository (or indeed to ESMA if required). Therefore, the Agreement may form the basis of documenting the delegation of reporting.

The Agreement covers a range of areas including the process by which reporting errors are corrected, how trade repositories are selected, the role of third parties in reporting data and the liability of parties involved when executing the Agreement. The Agreement is available on the ISDA website.

(iii) ESMA Updates Q&A on EMIR

Since our last update ESMA has updated its Questions and Answers Document on the implementation of EMIR (the "**Q&A**") on 11 February 2014 and again on 20 March 2014. The updated Q&A clarifies, amongst other things, issues relating to reporting to trade repositories (such as how to construct and generate Unique Trade Identifiers, reporting empty or unavailable fields and the unique product identifier taxonomy), the scope of the risk mitigation measures and offers further clarity around the intragroup transaction exemptions process.

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

http://www.esma.europa.eu/system/files/2014-297_qa_vii_on_emir_implementation_20_march_14_0.pdf.

(iv) MiFID Transaction Reporting Requirements

Following the start of EMIR reporting to trade repositories on 12 February 2014, the FCA recently reminded investment firms that their MiFID transaction reporting obligations remain unchanged. Reporting to trade repositories under EMIR does not replace any transaction reporting obligation under MiFID and firms should continue to submit their transaction reports in accordance with the current transaction reporting requirements. It is understood that the position is the same in Ireland; i.e. investment firms may be required to report transactions to trade repositories under EMIR as well as being required to report similar data to the Central Bank under MiFID's transaction reporting requirements.

There is a provision in the proposed MiFID II Regulation whereby an investment firm which has reported transactions to a trade repository in accordance with EMIR shall be deemed to have satisfied the requirements to report to a NCA under MiFID II's proposed transaction reporting regime, provided that certain conditions are met. In this way, it is hoped that some relief will be provided to investment firms such that they will only need to comply with the reporting requirements of EMIR (and will not also be obliged to comply with the transaction reporting requirements of the proposed MiFID II Regulation) once the MiFID II Regulation comes into effect.

(v) Regulatory Technical Standards ("RTS") relating to Non-EU Counterparties and Delegated Regulation on Contracts Having a 'Direct, Substantial and Forseeable Effect' in the EU

EMIR provides that the clearing obligation and the obligations relating to the risk mitigation measures for non-centrally cleared trades may apply to OTC derivatives entered into between third country entities ("TCEs"). Where TCEs enter into OTC contracts, the EMIR clearing obligations and the risk mitigation measures will apply both;

(a) Where the contract has a direct, substantial and foreseeable effect within the EU; and
(b) Where such an obligation is necessary or appropriate to prevent the evasion of any provisions of EMIR.

In light of these requirements, ESMA submitted draft RTS specifying contracts that are considered to have a direct, substantial and foreseeable effect within the EU and to prevent the evasion of rules and obligations of EMIR to the European Commission on 15 November 2013. On 13 February 2014, the European Commission updated its webpage on EMIR to announce that it has adopted these RTS without modification.

The RTS clarify that EMIR's clearing and risk mitigation requirements will apply to transactions between TCEs when rules in both jurisdictions are not considered to be equivalent to EMIR and either (a) one of the two TCEs is guaranteed by an EU financial counterparty for at least €8bn of the gross notional amount of OTC derivatives entered into and for an amount of at least 5% of the OTC derivatives exposures of the EU financial counterparty; or (b) both TCEs execute the transaction via their EU branches.

In addition, the RTS provide that an OTC derivative contract will be deemed to have been designed to circumvent the application of EMIR if the way in which it has been concluded is considered, when viewed as a whole, to have as its primary purpose the avoidance of the application of any provision of EMIR. An OTC derivative contract will be considered as having for primary purpose the avoidance of any provision of EMIR if the primary purpose of an arrangement related to the contract is to defeat the "object, spirit and purpose of" any provision of EMIR that would otherwise apply including when it is part of an artificial arrangement or artificial series of arrangements. An arrangement that intrinsically lacks business rationale, commercial substance or relevant economic justification and consists of any contract, transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event shall be considered an artificial arrangement.

On 21 March 2014, the European Commission published delegated Regulation (Regulation 285/2014) supplementing EMIR with regard to RTS specifying the contracts that are considered to have a direct, substantial and foreseeable effect within the EU, and to prevent the evasion of rules and obligations (the "**Delegated Regulation**") in the Official Journal. The Delegated Regulation will enter into force 20 days after the date of its publication in the Official Journal (i.e. on 10 April 2014). However, Article 2 of the Delegated Regulation will apply until 10 October 2014.

(vi) NASDAQ OMX - First European Central Counterparty ("CCP") Re-authorised under EMIR

Nasdaq OMX became the first European CCP to be re-authorised under EMIR on 18 March 2014. In accordance with the procedure laid out under Article 5(1) of EMIR, ESMA was notified by the Swedish national competent authority (Finansinspektionen) on 18 March 2014 of Nasdaq OMX's re-authorisation and of the classes of financial instruments Nasdaq OMX was authorised to clear. Further information around Nasdaq OMX and the financial instruments it is authorised to clear was recently published by ESMA and is available on their Public Register under the post-trading section:

http://www.esma.europa.eu/page/Registries-and-Databases.

In line with the clearing obligation procedure set out in Article 5(2) of EMIR, ESMA now has up to six months from the time of the notification to decide whether to recommend a clearing obligation for any of the classes of OTC derivative cleared by Nasdaq OMX. Any recommendation to impose a clearing obligation would be subject to a public consultation by ESMA. If any clearing obligation is imposed, frontloading could apply as set out in Article 4 of EMIR depending on the minimum residual maturity of the relevant derivative contracts.

(vii) Consultation on Member States Discretions in EMIR

The Minister for Finance, Mr. Michael Noonan, T.D. invited interested parties to make submissions in relation to certain Member States discretions contained in EMIR. The consultation period closed on 14 March 2014 and requested submissions relating to;

- The treatment of certain FX Forwards and certain commodity forwards – where there is concern that the Central Bank is applying a stricter approach to what is captured than what is expected by ESMA;
- The designation of the Central Bank as the NCA;
- Statements of Compliance with EMIR;
- Skilled Persons Report; and

- Administrative Sanctions for infringements of EMIR.

It is proposed to adopt implementing regulations as soon as possible to address matters raised in the consultation process.

Alternative Investment Fund Managers Directive ("AIFMD")

(i) Central Bank Publishes Revised AIFMD Q&As and Guidance Related to AIFs and their Service Providers

On 4 February and 7 March 2014, the Central Bank published revised Q&A documents on AIFMD, the seventh and the eighth editions respectively.

In the seventh edition Q&A document the following new questions, concerning MiFID authorisations and transitional arrangements, were answered:

ID 1019
Q. Where AIFMs are authorised to provide the services set out in Article 6(4) of the AIFMD, will the Central Bank authorise AIFMs to passport Article 6(4) services across the EU or to provide such services in Ireland?

ID 1025
Q. I am an existing EU AIFM with an existing Irish AIF. Can I continue to act for this AIF until I become authorised. Can I establish new sub-funds? Can I establish a new Irish AIF?

ID 1026
Q. I am a non-Irish EU Investment Manager performing investment management functions for an Irish AIF. Can I be the designated AIFM for that Irish AIF?

The answers to the following three questions were updated in the eighth edition AIFMD Q&A. They concern AIFs in liquidation, transitional arrangements and professional investor funds:

ID 1041
Q. My AIF is in liquidation or will be in liquidation during the transitional period and I do not propose to establish new AIF. Must I seek authorisation before 22 July 2014?

ID 1046

Q. I am a non-EU AIFM marketing both EU and non-EU AIF to professional investors in Ireland. Can I continue to market these AIF and/or other AIF now that the AIFM Regulations have been implemented?

ID 1058

Q. I am a professional investor fund. When will the NU Series of Notices cease to apply to me? What rules will apply instead?

In addition, two new questions are now included in the eighth edition Q&A. They are:

ID 1069

Q. Can an AIFM be authorised under MiFID and provide investment management services to managed accounts?

ID 1070

Q. I am an AIFM who proposes to appoint a delegate investment manager and this entity is not subject to regulation. What process will apply?

The eighth edition Q&A may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/AIFMD%20QA_VERSION%208%20Final.pdf

(ii) Central Bank Recognises the Ability of Authorised AIFMs to Passport the Services under the Article 6(4) of the AIFMD

In February 2014, the Central Bank confirmed that it will recognise the ability of authorised AIFMs to passport the services provided for under Article 6(4) of AIFMD, namely:

- Providing individual portfolio management in accordance with mandates given by investors on a discretionary client by client basis; or
- Providing "non-core" activities comprising:
  - (i) investment advice;
  - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;
  - (iii) reception and transmission of orders in relation to financial instruments.

The new passporting provisions will apply on an inwards and outwards basis.

The relevant services under 6(4) of AIFMD are the so called MiFID services (that is, the services regulated under the MiFID Directive). Previously the European Commission had indicated that these MiFID type services were essentially not passportable. As outlined in our MiFID II section, the European Commission published a Memo in January of this year confirming that the European Parliament and the European Council had reached agreement in principle on MiFID II. As part of that agreement, an agreement was reached on a proposal to amend Article 33 of AIFMD so that is clear that that the right of an AIFM to passport its services extends to any services it provides including those service which are set out in Article 6(4) of AIFMD (i.e. the MiFID services). In this regard, the Central Bank issued an update AIFMD Q&A Document and in particular updated its response to question ID 1019 as follows;

In light of the agreement on 14 January 2014 to amend Article 33 of AIFMD as part of the agreement reached in principle by the European Parliament and the Council on updated rules in markets in financial instruments (MiFID II), the Central Bank agreed to;

- Accept AIFM passport notifications from other NCAs where the notification includes services set out in Article 6(4) of AIFMD; and
- Process notifications from Irish authorised AIFMSs who advise us of their intention to provide the Article 6(4) services, for which they have received an authorisation.

In addition, the answers to other questions (ID 1025 and 1026) were also updated to reflect this updated approach.

(iii) The Central Bank Publishes Revised Guidance Relating to Third Party Approval and Fund Authorisation Processes

On 7 March 2014, the Central Bank published revised Guidance Relating to Third Party and Fund Authorisation Processes.

Pursuant to the new guidance, the following investment managers or sub-investment managers will not usually be subject to an additional regulatory review process by the Central Bank:

(a) UCITS management companies authorised under the UCITS IV Directive (2009/65/EC);
(b) Investment firms authorised under MiFID (Directive 2004/39/EC) to provide portfolio management ;
(c) Credit institutions authorised under Capital Requirements Directive (2006/48/EC) to provide portfolio management under MiFID;
(d) Externally-appointed AIFMs authorised under AIFMD.

Applicants should ensure that details of the proposed investment manager and an email contact for the relevant regulatory authority are provided to the Central Bank in sufficient time to enable verification of its home Member State approval. This will be not necessary if an entity is on a relevant passport register maintained by the Central Bank.

Firms which are not included in categories (a) – (d) will only be considered where the NCA in the home jurisdiction of the investment manager has signed an MOU with the Central Bank in accordance with AIFMD. In addition, such firms will be subject to a review process which requires completion of an Investment Manager clearance form.

Where the firm is regulated in a jurisdiction not yet considered by the Central Bank, it must be demonstrate by way of a formal submission that the regulatory regime for asset management in the relevant jurisdiction is comparable to the model of prudential regulation applicable to firms included in categories (a) to (d) above. The Central Bank has accepted the following jurisdictions as having a comparable regulatory regime: Australia, Bahamas, Bermuda, Brazil, Canada, Dubai, Guernsey, Hong Kong, India, Japan, Jersey, Singapore, South Africa, Switzerland, United States.

The Central Bank will not apply an approval process to investment advisers provided that the manager/directors of the Retail Investor AIF/Qualifying Investor AIF confirm that the advisers in question will act in an advisory capacity only and will have no discretionary powers over any of the assets of the Retail Investor AIF/Qualifying Investor AIF.

Moreover, the Central Bank will not carry out a formal review of the investment advisory agreement provided that the management company/directors of the Retail Investor AIF confirm that the agreement does not:

(a) provide for any discretionary management powers; or
(b) conflict with regulations and conditions applicable to Retail Investor AIFs/Qualifying Investor AIFs

Nevertheless, a copy of the investment advisory agreement must be submitted to the Central Bank in order to facilitate the resolution of any questions that may arise.

The above information may be found at the following link:

http://www.centralbank.ie/regulation/marketsupdate/Pages/ThirdPartyApprovalandFundAuthorisationProcesses.aspx

(iv) The Central Bank Publishes a Consultation Paper on Depositary Duties under Article 36 AIFMD

On 7 March 2014, the Central Bank published a consultation paper on carrying out depositary duties in accordance with Article 36 of the AIFMD (CP 78).

Article 36 AIFMD provides that Member States may allow an authorised EU AIFM to market units of non-EU AIFs it manages to professional investors in their territory. This marketing is subject to a number of restrictions including *inter alia* a requirement that the AIFM ensures that one or more entities are appointed to carry out the duties referred to in Article 21(7) (monitoring of cash flows of the AIF), 21(8) (safe-keeping of the AIF assets) and Article 21(9) (oversight of AIF/AIFM operations).

While Article 36 AIFMD does not set out eligibility criteria for entities proposing to provide these duties, ID 1021 of the Central Bank's AIFMD Q&A deals with the question of whether an Irish authorised entity can provide these duties along with the specific authorisation requirements that apply.

By virtue of ID 1021, any entity who proposes to provide safe-keeping of assets must have authorisation to provide "custodial operations involving the safe-keeping and administration of investment instruments" under the Investment Intermediaries Act 1995 (as amended). However questions have arisen as to the authorisation requirements of an entity who only wishes to provide duties referred to in Article 21(7) (monitoring of cash flows) and Article 21(9) (oversight of AIF/AIFM operations). In particular it appears that a fund administrator could perform these duties.

CP 78 seeks to deal with the requirements which should apply to manage conflicts of interest where a fund administrator proposes to both provide administration services and perform the depositary duties set out in Articles 21(7) and 21(9), for the same non-EU AIF. The key question which the Central Bank is seeking to address is how to mitigate the conflicts of interests which arise in this instance.

In this regard, the Central Bank proposes to include the following requirement in Chapter 5 – Fund Administrator Requirements – of the AIF Rulebook:

Where a Fund Administrator provides both administration services and any of the services listed in Regulation 22(7) and/or 22(9) of the AIFM Regulations ('depositary services') to the same non-EU AIF, it shall:

1. *functionally and hierarchically separate the depository services and the administration services by carrying out the depositary services through a separate subsidiary;*

2. *require the individual responsible for managing the subsidiary to report directly to an individual at PCF level within the parent fund administrator; and*

3. *advise the Central Bank of the reporting structure which it has put in place.*

CP 78 can be viewed at the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP78%20%20-%20Consultation%20on%20carrying%20out%20depositary%20duties%20in%20accordance%20with%20Article%2036%20of%20the%20AIFMD/CP78%20Consultation%20on%20carrying%20out%20depositary%20duties%20in%20accordance%20with%20Article%2036%20of%20the%20AIFMD.pdf

The deadline for responses to CP78 is 30 May 2014.

(v) The Central Bank Publishes Notice on AIFMD Reporting Requirements

The Central Bank has published a notice providing more details on AIFMD reporting requirements, which include a matrix outlining the first reporting dates under different scenarios.

This notice provides the first reporting dates for the submission of returns in accordance with Regulation 4(3)(d) and Regulation 25 of the European Union Alternative Investment Fund Manager (AIFM) Regulations 2013. Regulation 4(3)(d) states that a registered AIFM must at regular intervals, provide the Central Bank with information on the main instruments in which it is trading and on the principal exposures and the most important concentrations of the AIFs that it manages. This is in order to enable the Central Bank to effectively monitor systemic risk. Regulation 25 concerns authorised AIFM's reporting obligations to the Central Bank.

AIFMs should note their first submission date depends on their reporting frequency (i.e quarterly; semi-annually or annually) which depends on their assets under management.

For subsequent reporting periods, the submission date is the last day of the month following the reporting period end. For example, returns with the reporting end date of 30 September 2014 must be submitted by 31 October 2014.

The returns must be filed via the Central Bank's Online Reporting System. AIFMs will have access to a test system in advance of the first submission date and further details of this will be provided to AIFMs closer to the submission date.

In addition, AIFMs authorised by the Central Bank are reminded of their obligations to file prudential returns in the notice. Details of these returns, their frequencies and submission dates are set out in the AIF Rulebook.

The Central Bank will be contacting AIFMs prior to the first submission date to notify them of their reporting requirements.

A copy of the notice can be found here:

http://www.centralbank.ie/regulation/marketsupdate/Documents/First%20Reporting%20Date%20for%20AIFMs%20_FINAL.pdf

(vi) European Parliament Requests Additional Time to Examine Delegated Regulation on Types of AIFMs

On 17 December 2013, the European Commission adopted a Delegated Regulation on regulatory technical standards ("**RTS**") determining types of AIFMs. The RTS determine whether an AIFM is an AIFM of open-ended AIF(s) and/or closed-ended AIF(s). Under AIFMD, AIFMs have to follow specific rules depending on whether or not they are AIFMs of open-ended and/or closed-AIFs.

It is intended that the RTS will enter into force on the twentieth day following its publication in the Official Journal of the European Union and will be directly applicable in all Member States. However, before the RTS can be published in the Official Journal it will need to be approved by the European Parliament. In this regard, on 10 March, 2014 the European Parliament updated its procedure file on the RTS to extend the timeframe it has for examining the RTS by three months.

The RTS is available at the following link:

http://ec.europa.eu/internal_market/investment/docs/alternative_investments/131217_delegated-regulation_en.pdf

(vii) ESMA Publishes Official Translations of AIFMD Guidelines and Key Concepts

On 31 January 2014, ESMA published on its website official translations of the Guidelines on sound remuneration policies under AIFMD (Ref: 2013/232), and on the key concepts of AIFMD (Ref: 2013/611) (the "**Guidelines**").

The publication of the translations on 31 January mean that the Guidelines have applied as of 31 March 2014.

(viii) ESMA Publishes Q&A on the Application of AIFMD

On 17 February 2014, ESMA published a Q&A paper on the application of AIFMD ("**Q&A**"), which was updated on 25 March 2014. The purpose of the Q&A is to promote common supervisory approaches and practises in the application of the AIFMD and its implementing measures. The Q&A includes responses to questions posed by the general public and NCAs in relation to the practical application of the AIFMD.

Although the document is aimed at NCAs under AIFMD, the answers are also intended to help AIFMs by providing clarity as to the content of the AIFMD rules, rather than creating an extra layer of requirements.

The questions relate to the following matters:

- Remuneration rules;
- Marketing notification of AIFs; and
- Reporting to NCAs requirements.

The Q&A provides that the remuneration rules of the Capital Requirements Directive ("**CRD**") are deemed "equally as effective" as AIFMD remuneration rules. ESMA also clarified that "Identified Staff" covered by CRD rules will be considered to be subject to regulatory requirements on remuneration that are equally as effective as those applicable under ESMA Guidelines on sound remuneration policies under the AIFMD.

ESMA intends to continually edit and update the Q&A as and when new questions are received.

The Q&A may be accessed at the following link:

http://www.esma.europa.eu/system/files/2014-esma-296_qa_on_aifmd_march_update_for_publication_clean.pdf.

(ix) ESMA Updates Table Showing State of Play of AIFMD Memoranda of Understanding ("MoUs")

On 20 February 2014, ESMA updated its table showing the state of play of MoUs signed by EU national supervisors with non-EU regulators worldwide in respect of the AIFMD.

The AIFMD MoUs are co-operation agreements that allow the exchange of information between EU and non-EU supervisors, enabling non-EU fund managers to market alternative funds within the EU. In addition, Irish AIFMs may only delegate investment management to an investment manager in a country with whom a MoU exists with the Central Bank.

The table is available at the following link:

http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities-updated

(x) IFIA Notes a Significant Uptake in Applications by Fund Managers Seeking Authorisation in Ireland under the new AIFMD

The IFIA has noted a significant uptake in applications by fund managers who seek authorisation in Ireland under AIFMD. According to information released from the Central Bank to the IFIA in March 2014, applications from 72 fund management firms were being processed, while 11 AIFMs have already been authorised by the Central Bank. The Central Bank advised that 47 applications had been received recently.

The Central Bank believes that it will exceed its initial expectations and process up to 90 applications before the deadline on 22 July 2014.

(xi) Central Bank Letter Regarding Compliance with AIFM Regulations Requirements in advance of Transitional Deadline

The Central Bank has advised on the submission of revised fund documents for existing Retail AIFs ("**RIAIFs**") and Qualified Investor AIFs ("**QIAIFs**").

Once an AIFM is authorised or, in the case of an EU AIFM, the passport procedure has been completed, the relevant AIF is subject to the AIF Rulebook. As a result, AIFs must amend their documentation, where relevant, and submit amended documentation to the Central Bank.

The Central Bank anticipates the receipt of a significant number of filings over the coming months and has advised applicants to commence making the appropriate submissions as soon as possible, with a view to having all RIAIF submissions received by 30 May 2014. The Central Bank has asked the legal advisors to QIAIF applicants to provide a list of expected submissions on behalf of clients, along with expected submission dates, in order to assist the Central Bank in planning their resources.

Finally, the Central Bank has advised that for AIFs whose AIFM is not expected to be authorised prior to 22 July 2014, revised documentation should be submitted as soon as the AIFM has been authorised.

(xii) Central Bank Publishes Feedback Statement on CP68 Consultation on Types of Alternative Investment Funds under AIFMD and Unit Trust Schemes under the Unit Trusts Act 1990 (including EUTs, REITS etc.)

The Central Bank has published its Feedback Statement on CP68 - Consultation on types of alternative investment funds under AIFMD and unit trust schemes under the Units Trusts Act 1990 (including EUTs, REITS, etc).

In addition to commenting on the responses received as part of CP68, the Central Bank issued certain guidance, which will be reflected in the Central Bank's AIFMD Q&A in due course. The Central Bank advises that while there may be exempt unit trusts ("**EUTs**") which can have only a single investor, other EUTs fall within the scope of the AIFM Regulations. For the single investor EUT to fall outside of AIFMD, the EUT must be constitutionally limited to one investor.

Guidance on the application process issued by the Central Bank is also included in the Feedback Statement. It provides that AIFs which market to retail investors in Ireland, if not authorised by the Central Bank, must be authorised by a supervisory authority and subject to an equivalent level of investor protection to that provided under Irish laws, regulations and conditions governing Retail Investor AIF. In that light:

i. From 1 May 2014, new unit trust schemes made available to beneficiaries in Ireland should seek authorisation from the Central Bank under the Unit Trusts Act 1990, where they are alternative investment funds under AIFMD, notwithstanding that they hold an exemption from tax obtained from the Revenue Commissioners, given on the basis that the investors in such trusts have a tax-exempt status as either pension vehicles or charities.

ii. As an exemption from the generality of i) above, new unit trust schemes should not seek authorisation if the eligible investors are confined to charities and/or regulated occupational pension schemes where the occupational pension scheme has multiple beneficiaries and is not a Small Self-Administered Scheme ("**SSAS**"). A unit trust scheme which has a tax exemption from the Revenue Commissioners, while allowing PRSAs, ARFs/AMRFs, PRBs and/or RAC schemes to invest, does not meet the requirements for this exemption and should seek authorisation in accordance with i) above. A unit trust scheme which is exempt from the requirement to seek an authorisation because it meets the grounds for this exemption may, nevertheless, meet the conditions for being an AIF as defined in the AIFMD. In that eventuality, the manager (alternative investment fund manager under AIFMD) must register under the EU (AIFM) Regulations 2013 or, if the AIFM exceeds the relevant AIFMD thresholds, seek authorisation.

iii. As an exemption from the generality of i), a unit trust scheme which is constitutionally confined to one ultimate beneficiary should not seek authorisation. However, where there are multiple sub-trusts, the constitutional documents for the master trust and the sub-trusts must be organised so that each sub-trust can have only one beneficiary and there is no sharing of benefits between sub-trusts. A beneficiary which is a vehicle for investment by multiple ultimate beneficiaries does not count as a single beneficiary for the purpose of calculating whether this exemption applies. Also, where an EUT could have more than one investor, but turns out only to have one, the conditions for availing of this exemption are not met as there must be a constitutional prohibition on more than one beneficiary for this exemption to be met.

iv. Unit trust schemes which are already in existence and which, had they come into existence after 1 May 2014, would have required authorisation under i) above, must apply for authorisation by 1 October 2014, unless they have, in the interim, restructured to avail of one of the exemptions listed at ii) and iii) above.

v. As an exemption to iv), unit trust schemes which are closed-ended schemes and the AIFM of which can avail of the grandfathering arrangement set out in Regulation 60(3) of the EU (AIFM) Regulations 2013 are recommended not to seek authorisation. For the purposes of Regulation 60(3) 'closed-ended schemes' can be read to include EUTs which have an appropriate formal plan in place in relation to their termination.

REITS and SPVs

CP 68 also covered other types of undertakings such as Real Estate Investment Trusts (“**REITs**”) and Special Purpose Vehicles (“**SPVs**”) as categories of undertakings which have been mentioned as possible AIFs. The Feedback Statement includes the Central Bank’s guidance in relation to SPVs which has already been issued in the AIFMD Q&A, namely -

Q. I am an SPV. Should I now seek authorisation as, or appoint, an AIFM?

A. As a transitional arrangement, entities which are either:

a) Registered Financial Vehicle Corporations within the meaning of Article 1(2) of the FVC Regulation (Regulation (EC) no 24/2009 of the European Central Bank), or

b) Financial vehicles engaged solely in activities where economic participation is by way of debt or other corresponding instruments which do not provide ownership rights in the financial vehicle as are provided by the sale of units or shares *are advised that they do not need to seek authorisation as, or appoint, an AIFM, unless the Central Bank of Ireland issues a Q&A replacing this one advising them to do so. The Central Bank of Ireland does not intend to do that at least for so long as ESMA continues its current work on this matter. If entities which believe they fall under (b) but not (a) wish to write to the Central Bank of Ireland in this regard, they may email AIFMDsecuritisation@centralbank.ie.*

With regard to REITs, the Feedback Statement provides that two of these have listed on the Irish Stock Exchange to-date, while others may be proposed, and that those that have been established have indicated that they are likely to be AIFs. The Central Bank provides that they have not encountered a REIT structure in Ireland which they do not believe to be an AIF and therefore consider that the onus remains on any REIT to demonstrate otherwise. The Central Bank also advises that this position can be reviewed in the light of future ESMA work.

The Feedback Statement may be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP68/Feedback%20Statement%20on%20CP%2068-%20FINAL%2028%20MAR%2014.pdf

The Irish Collective Asset-Management Vehicle Bill 2014

As reported in our last update, the General Scheme of the Irish Collective Asset-Management Vehicle Bill 2014 was published by the Minister for Finance on 20 December 2013. The Irish Collective Asset-management Vehicle ("**ICAV**") is a proposed new fund structure designed to streamline the way in which funds are established and operated. The ICAV proposal is intended to minimise the administrative complexity and cost of establishing and maintaining collective investment schemes in Ireland and to allow Ireland to maintain its competitive advantage as a European funds domicile. Investment funds established as ICAVs will avoid the impact of changes in European and domestic company law which are targeted at trading companies rather than investment funds. ICAVs will be available to both UCITS and AIFs as a variable capital corporate structure (allowing the ICAV to take investments and redeem them). It is proposed that variable capital companies incorporated pursuant to Part XIII of the Companies Act 1990 will be permitted to convert into ICAVs.

The Department of Finance has described the ICAV as a "priority project for the Department". It is expected that the ICAV Bill will be published shortly and, subject to the legislative process, enacted by the end of 2014.

The Volcker Rule

On 10 December 2013, the U.S.' Securities and Exchange Commission ("**SEC**") and the Commodity Futures Trading Commission ("**CFTC**"), as well as U.S. federal banking agencies adopted regulations to implement Section 619 of the Dodd Frank Act, more commonly known as "the Volcker Rule" (the "**Regulations**").

The Volcker Rule prohibits any "banking entity", as defined in the Regulations, from (i) engaging in proprietary trading and (ii) acquiring and retaining an ownership interest in, sponsoring or having certain relationships with hedge funds, private equity funds and certain other private funds, subject to certain exemptions.

However, U.S. and non-U.S. firms that are not themselves banking entities can also be impacted by the Volcker Rule. For example, a non-U.S. asset manager that manages a fund in which a U.S. or non-U.S. banking entity has invested may be impacted by the investing banking entity's need to comply with the Volcker Rule. Such banking entity investors may be required to divest their interests in such funds or request that such funds be restructured.

European Venture Capital Funds Regulation and European Social Entrepreneurship Funds Regulation

(i) ESMA Publishes Q&A on the Application of the European Venture Capital Funds Regulation and the European Social Entrepreneurship Funds Regulation

On 26 March 2014, ESMA published a questions and answers paper ("**Q&A**") on the application of the Regulation on European Venture Capital Funds ("**EuVECA Regulation**") and the Regulation on European Social Entrepreneurship Funds ("**EuSEF Regulation**").

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of the EuSEF and EuVECA Regulations. The Q&A is aimed at NCAs under EuSEF and EuVECA Regulations to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, the Q&A is also intended to help EuSEF and EuVECA managers by providing clarity as to the content of the rules of the EuSEF and EuVECA Regulations.

The Q&A contains just three questions and answers, relating to:

1) Management of EuSEF and EuVECA by AIFMs;

2) Registration of EuSEF and EuVECA managers; and
3) Management and marketing of AIFs by EuSEF and EuVECA managers.

The Q&A is intended to be continually edited and updated as and when new questions are received by ESMA. The Q&A may be accessed via the following link:

http://www.esma.europa.eu/system/files/2014-311_qa_eusef-euveca.pdf.

(ii) ESMA Publishes Draft Implementing Technical Standards

On the 20th of February 2014, ESMA published draft implementing technical standards to determine the format of notification under the following:

- Article 16 of the EuVECA Regulation concerning one regulator notifying another about the registration of a manager of a qualifying EuVECA; and
- Article 17 of the EuSEF Regulation concerning one regulator notifying another about the registration of a manager of a qualifying EuSEF.

The draft ITS have now been sent to the European Commission for approval.

The draft ITS may be viewed via the following links:

http://www.esma.europa.eu/system/files/2014-esma-160_draft_its_on_notification_-_euveca.pdf

http://www.esma.europa.eu/system/files/2014-esma-161_draft_its_on_notification_-_eusef.pdf

Proposal for a Regulation on Money Market Funds

On March 10 2014, the European Parliament's Economic and Monetary Affairs committee ("**ECON**") abandoned a vote on the European Commission's proposal for a Regulation on Money Market Funds ("**MMFs**").

ECON was split over the proposal and it was decided to postpone its consideration to the next European Parliament, which will be constituted after the European Parliament elections, to be held in May of this year.

The most controversial aspect of the proposed Regulation is the requirement for all short term money market funds with a constant net asset value ("**CNAV**") to provide for a 3% capital buffer.

This requirement amounts to a divergence from the US MMF regime, where the US SEC has focused on liquidity and transparency in order to protect investors and the market.

The European Commission's proposal may be viewed via the following link:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0615:FIN:EN:PDF.

European Long Term Investment Funds

On 6 March 2014, an Opinion of the European Economic and Social Committee ("**EESC**") on the Proposal for a Regulation on European Long Term Investment Funds ("**ELTIFs**") (the "**Opinion**") was published in the Official Journal of the European Union.

In June 2013, the European Commission published a provisional version of a legislative proposal for a Regulation on ELTIFs, which means that once finalised it will be directly applicable in the law of each Member State. Under the European Commission's proposals, ELTIFs will operate within the AIFMD regime as a new category of authorised closed-ended fund and are intended for investment in long-term assets.

In the Opinion, the EESC welcomed the proposed regulation "to establish a cross-border product framework for a long-term investment" and opined that "the Commission's proposal to introduce closed-ended funds open to both institutional and retail investors is probably the best approach especially given the likely emergence of the secondary market in units or shares in ELTIFs".

The European Commission has defined long-term investment as investment that enhances the productive capacity of the economy. This can include energy, transport and communication infrastructures, industrial and service facilities, climate change and eco-innovation technologies, as well as education and research and development.

In order to qualify as an ELTIF, funds would have to meet certain requirements, some of which are proposed to be:

(i) A requirement that managers of ELTIFs be authorised as AIFMs;

(ii) No mandatory minimum investment of €100,000, opening ELTIFs to retail investors;

(iii) A requirement that at least 70% of the ELTIF's portfolio must be composed of investments in long-term assets and not more than 30% in assets eligible for investment by a UCITS;

(iv) ELTIFs must be closed-ended with a fixed term, and the length of the fixed term is to be determined by the nature of the assets the ELTIF targets to acquire and hold.

On 21 March 2014, the Council of the EU published a compromise proposal on the proposed ELTIF Regulation. Additions and changes proposed are highlighted in the document:

http://register.consilium.europa.eu/doc/srv/ST_8046_2014_INIT_EN.pdf?l=EN&t=PDF&f=ST_8046_2014_INIT.

On 25 March 2014, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") also published proposed amendments to the European Commission's original ELTIF Regulation proposal. These are contained in a report on the proposed ELTIF Regulation, which may be viewed via the following link:

http://www.europarl.europa.eu/document/activities/cont/201403/20140324ATT81691/20140324ATT81691EN.pdf.

The Proposal for a Regulation on ELTIFs is due to be considered by the European Parliament on 15 April 2014.

MiFID

(i) Central Bank Establishes a New Authorisation Process for MiFID Firms

Following a review of the MiFID authorisation process in 2013, (which included workshops and presentations with legal firms and industry representative bodies), the Central Bank introduced a more streamlined and more efficient authorisation process for MiFID firms in January 2014. The Central Bank will now apply a risk based approach to the authorisation process which is based on the proposed investment services which the investment firm will provide and the level of risk and complexity of the investment firm. There are two different levels to the process and the application process will differ depending on whether the investment firm is a Level 1 firm or a Level 2 firm. In this regard, the Central Bank has designated specific timelines for the authorisation process depending on whether the investment firm is a Level 1 investment firm or a Level 2 investment firm.

Level 1 comprises small firms with non-complex investment strategies that have an initial capital requirement of €50,000 or €125,000 who provide any combination of the following investment services; (i) Reception and transmission of client orders; (ii) Execution of orders; (iii) Portfolio management; (iv) Investment advice and/or Placing of financial instruments without a firm commitment.

Level 2 comprises firms with complex investment strategies that have an initial capital requirement of €50,000 or €125,000 who provide any combination of the following investment services; (i) Reception and transmission of client orders; (ii) Execution of orders; (iii) Portfolio management; (iv) Investment advice and/or Placing of financial instruments without a firm commitment. In addition, Level 2 comprises all investment firms with an initial capital requirement of €730,000.

Level 1 Applicant Firms

The following process applies to the authorisation of Level 1 Applicant Firms

*Key Facts Document (“**KFD**”)*

Applicant firms must complete and submit a KFD to the Central Bank. The Central Bank will review the KFD and revert to the applicant firm within 20 working days to arrange a preliminary meeting with the applicant. If the KFD is incomplete the Central Bank will write to the applicant firm to ask it to revise and resubmit it with the appropriate level of detail.

The KFD must include the following information;

1) Brief background of the applicant firm;
2) Rationale as to why it wants to establish an operation in Ireland;
3) Business Model;
4) Client Assets;
5) Information regarding proposed clients;
6) Details regarding applicant’s structure;
7) Financial projections for the first three years.

Preliminary Meeting

The Central Bank will require each applicant to meet with it to discuss the firm’s business and the proposal to seek authorisation. The KFD will form the basis for the preliminary meeting. The applicant firm will be informed about the authorisation process and the timelines. It is expected that the Central Bank will advise the applicant of significant issues that are apparent to it at this juncture.

Submission of a Complete Application

After the preliminary meeting, the applicant firm will submit a complete application to the Central Bank. The Central Bank will return an application to an applicant firm if it is incomplete within 5 working days. It is expected that the Central Bank will set out why it regards the application as incomplete.

Acknowledgment of complete applications will issue by the Central Bank within 5 working days with any comments issuing within 20 working days. The applicant firm must respond to the Central Bank within 10 working days of receiving the first set of comments. In turn, the Central Bank will issue final comments within 10 working days of the receipt of responses from the applicant firm. The applicant firm must respond to the Central Bank within 10 working days of receiving the second set of comments. The Central Bank has stated that it will not review more than three submissions before reaching a decision on the application.

An application will not be regarded as complete unless it includes the following;

- Fully completed Application Form;
- Detailed Business Plan;
- Fully completed Individual Questionnaires ("**IQs**") for all Pre-Approval Controlled Functions ("**PCFs**") and hard copy IQs for individual qualifying shareholders;
- Shareholder information including group structure and required supporting documentation;
- Financial Projections for the first 3 years of operation (with detailed notes explaining each line item);
- National discretion/derogation requests under S.I. No. 158 of 2014;
- Client Asset Policies and Procedures (if applicable); and
- Arrangements for both the orderly and forced winding down of the firm which ensures the protection of client assets and fair treatment of clients.

A determination will be made by the Central Bank within 60 working days of receipt of a complete application.

<u>Level 2 Applicant Firms</u>

The process for Level 2 firms is the same as the process described above save that the timelines for the issue and receipt of comments are longer for Level 2 firms. In the context of a Level 2 firm the Central Bank will issue comments to an applicant firm within 40 working days from the receipt of a complete application. The applicant firm must respond to the Central Bank within 20 working days of receiving the first set of comments. In turn, the Central Bank will issue a second round of comments within 20 working days of the receipt of a response from the applicant firm. The applicant firm must respond to the Central Bank within 10 working days of receiving the second set of comments. Final comments will be issued to the applicant firm within 10 working days and the applicant must respond within 10 working days of receiving final comments. The Central Bank has stated that it will not review more than four submissions before reaching a decision on the application.

A determination will be made by the Central Bank within 120 working days of receipt of a complete application.

Stopping the Clock

The Central Bank has stated that the applicable timeframes (outlined above) will not apply where;

- Any material changes are made to the applicant's Business Plan at any time during the review process;
- There are any changes to the applicant's shareholder structure during the review process; and
- Where the applicant fails to respond to comments from the Central Bank for a period exceeding or 10 or 20 working days as the case may be.

In any of these instances, the Central Bank will at its discretion commence a new determination timeframe (i.e. 60 or 120 days as the case may be) once it is satisfied that the application can proceed.

The new MiFID Application Form is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/pages/authorisation.aspx.

A new MiFID Guidance Note may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Documents/Guidance%20Note%20for%20Authorisation%20under%20MiFID.pdf .

The Central Bank intends to carry out a review of the new process before the end of 2014.

(ii) ESMA Publishes an Opinion on MiFID Practises for Firms Selling Complex Products

On 7 February 2014, ESMA published an Opinion on practises to be observed by investment firms when selling complex financial products to investors (ESMA/2014/146). ESMA issued this Opinion to remind national supervisors and investment firms about the importance of the requirements which govern selling practises under MiFID.

The Opinion sets out ESMA's minimum expectations of investment firms when selling complex products (such as warrants, derivatives, and structured bonds) to retail investors. ESMA is concerned that compliance with MiFID selling practises may have fallen short of expected standards. The concerns mostly referred to the suitability and appropriateness of complex products.

Regarding the marketing and sale of complex financial products, especially to retail investors, ESMA wants to ensure a consistent approach to the application of the MiFID conduct of business rules. The areas covered by this Opinion relate to:

- Firms' organisation and internal controls;
- The assessment of the suitability or appropriateness of certain products;
- Disclosures and communications in relation to products; and
- Compliance monitoring of the sales functions.

The full text of the Opinion is available at the following link:

http://www.esma.europa.eu/system/files/ipisc_complex_products_-_opinion_20140105.pdf .

(iii) Remuneration Guidelines for MiFID Firms

The Central Bank has advised that it intends to comply with the "Guidelines on remuneration policies and practises (MiFID)" which were published on 11 June 2013 (Ref. ESMA/2013/606) and which apply to MiFID investment firms, credit institutions providing investment services and UCITS management companies and external AIFMs when they are providing the investment services of individual portfolio management or non-core services.

All firms within the scope of these Guidelines were expected to comply with the Guidelines from 28 January 2014 and to take the Guidelines into account when devising their remuneration arrangements (without the need of any reporting back to the Central Bank in response to this notification).

A link to the Guidelines is set out below:

http://www.esma.europa.eu/system/files/2013-606_final_report_guidelines_on_remuneration_policies_and_practices_mifid.pdf

MiFID II Update

(i) An Update on MiFID II

The Markets in Financial Instruments Directive ("**MiFID**") came into force on 1 November 2007 and was implemented in Ireland by the European Communities (Markets in Financial Instruments) Regulations, 2007 as amended (the "**MiFID Regulations**"). MiFID established a regulatory framework for the provision of investment services by investment firms and in this way established for the first time an effective single financial services market in the EEA.

The terms of MiFID made provision for a mandatory post implementation review and the European Commission published a paper consulting on amendments to MiFID in December 2010. Following that consultation period, the European Commission published draft legislative proposals in the form of

(i) A revised Directive which will be an amendment and restatement of MiFID, (the "**MiFID II Directive**") and;

(ii) A new Regulation which will set out requirements relating to trade transparency and the mandatory trading of derivatives on organised venues, (the "**MiFID II Regulation**"), (hereinafter collectively referred to as "**MiFID II**").

On 14 January 2014, after a period of protracted negotiations, the European Commission published a Memo confirming that the European Parliament and the European Council had reached an agreement in principle on MiFID II. The European Parliament is due to consider MiFID II at its 14 to 17 April 2014 plenary session with a view to finalising the texts of the MiFID II Directive and the MiFID II Regulation prior to the European Parliamentary elections in May 2014. The European Commission anticipates that MiFID II would then enter into application by the end of 2016.

The provisional texts which are due to be put before the European Parliament in April 2014 were published on 18 February 2014 (and dated 17 February 2014).

The legislative observatory page for the MiFID II Directive is:

http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?type=PROC&year=2011&number=0298.

The legislative observatory page for the MiFID II Regulation is:

http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?type=PROC&year=2011&number=0296.

Separately, ESMA has been asked to draft accompanying technical standards in a number of key areas (the "**Technical Standards**") which have not yet been published. It is expected that ESMA will issue consultation papers on these Technical Standards later this year.

(ii) ESMA speech on MiFID II implementation issues

On 25 February 2014, ESMA published a speech by Verena Ross, ESMA Executive Director, on implementing MiFID II. Amongst other things, Ms. Ross confirmed that ESMA is required to develop approximately 100 Technical Standards. In this regard, ESMA will publish a discussion paper and hold a public hearing on the key strategic elements soon after approval of the MiFID II text by the EU Parliament, with a view to publishing a formal consultation paper "later in the year/early next year". In addition, Ms. Ross gave an overview of issues relating to liquidity in the context of MiFID II which requires ESMA to set specific parameters to assess whether a financial instrument has a liquid market.

CRD IV

(i) Regulations to give effect to CRD IV signed into Irish law

CRD IV represents the European Union's implementation of Basel III and comprises of two legislative instruments:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation EU No 648/2012 (the "CRD IV Regulation"); and

(ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (the "CRD IV Directive").

The CRD IV Directive replaces Directive 2006/48/EC (as amended) and Directive 2006/49/EC (as amended) in their entirety, with effect from 1 January 2014. The CRD IV Directive requires national transposition and in this regard the Minister for Finance, Mr. Michael Noonan signed two Irish regulations into Irish law on 31 March 2014 to give effect to the CRD IV Directive. The

European Union (Capital Requirements) Regulations 2014 (the "Capital Requirements Regulation"), gives effect to the CRD IV Directive and the European Union (Capital Requirements) (No. 2) Regulations 2014, gives effect to a number of technical requirements in order that the Capital Requirements Regulation can operate effectively in Irish law.

The CRD IV Regulation is directly applicable in all Member States from 1 January 2014 and does not require national implementing measures. The CRD IV Regulation deals with the rules relating to capital, liquidity, leverage, credit operational and market risks, large exposure whereas the CRD IV Directive deals with the rules relating to access to corporate governance, remuneration policies, capital buffers and sanctions.

(ii) Commission Delegated Regulation (EU) No 183/2014/EU with regard to Regulatory Technical Standards for Specifying the Calculation of Specific and General Credit Risk Adjustments

On 27 February 2014, Commission Delegated Regulation (EU) No 183/2014/EU with regard to regulatory technical standards for specifying the calculation of specific and general credit risk adjustments was published in the Official Journal. This Regulation entered into force on 19 March 2014.

(iii) Commission Delegated Regulation with regard to Criteria to Identify Categories of Staff whose Professional Activities have a Material Impact on an Institution's Risk Profile

On 4 March 2014, the European Commission adopted RTS Commission Delegated Regulation (EU) No 183/2014/EU with regard to criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. This Regulation supplements the requirements of CRD IV and will ensure that the CRD rules on remuneration are applied consistently across the EU. The European Parliament and the European Council have one month to exercise their right of scrutiny, with the possibility to extend this period for a further two months at their initiative. Following publication in the Official Journal, the Regulation will enter into force on the twentieth day after such publication.

(iv) CRD IV Package on Capital Requirements

On 12 March 2014, the European Commission published the texts of nine delegated regulations that it has adopted containing RTS required by the CRD IV Regulation. These RTS are needed to provide detailed provisions on the ways in which NCAs and market participants must apply the rules contained in the CRD IV Regulation on a number of technical issues. The nine RTS adopted by the European Commission which supplement the CRD IV Regulation are as follows;

(a) Commission Delegated Regulation determining proxy spread and limited smaller portfolio for credit valuation adjustment risk;

(b) Commission Delegated Regulation specifying the requirements for investor, sponsor, original lenders and originator institutions relating to exposures to transferred credit risk;

(c) Commission Delegated Regulation specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration;

(d) Commission Delegated Regulation assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach;

(e) Commission Delegated Regulation specifying the information that NCAs of home and host Member States supply to one another;

(f) Commission Delegated Regulation for the definition of "market";

(g) Commission Delegated Regulation defining non-delta risk of options in the standardised market risk approach;

(h) Commission Delegated Regulation further defining material exposures and thresholds for internal approaches to specific risk in the trading book; and

(i) Commission Delegated Regulation determining what constitutes the close correspondence between the value of an institution's covered bonds and the value of the institution's assets.

The European Parliament and the European Council have one month to exercise their right of objection, with the possibility to extend this period for a further two months at their initiative. Following the end of this objection period, the RTS will be published in the Official Journal and will enter into force 20 days following that publication. Their provisions will be directly applicable in all Member States without the need for national implementation.

In addition, the European Commission adopted RTS supplementing the CRD IV Directive as follows;

(a) Commission Delegated Regulation supplementing the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration; and

(b) Commission Delegated Regulation further defining material exposures and thresholds for internal approaches to specific risk in the trading book as empowered under Article 77(4) the CRD IV Directive.

Similarly to the position outlined above, the European Parliament and the European Council have one month to exercise their right of objection with the possibility to extend this period for a further two months at their initiative. Following the end of this objection period, the RTS will be published in the Official Journal and will enter into force 20 days following their publication.

(v) Commission Delegated Regulation (EU) No 241/2014 with regard to Regulatory Technical Standards for Own Funds Requirements for Institutions

On 14 March 2014, Commission Delegated Regulation (EU) No 241/2014 with regards to regulatory technical standards for Own Funds requirements for institutions was published in the Official Journal. This Regulation enters into force 20 days after publication on 3 April 2014.

(vi) EBA Publishes Final Draft RTS on Own Funds Requirements for Investment Firms

On 29 January 2014, the EBA published its final draft Regulatory Technical Standards ("**RTS**") on own funds requirements for investment firms based on fixed overheads. These RTS harmonise the calculation of capital requirements for those investment firms that have limited authorisation to provide investment services, as well as the conditions under which NCAs can make adjustments to such requirements, in order to ensure that a consistent framework for investment firms will be implemented. The final draft RTS will be part of the EBA's Single Rulebook aimed at enhancing regulatory harmonisation in the banking sector in Europe.

For the calculation of the fixed overheads, the final draft RTS use the so-called "subtractive" approach whereby variable cost items are deducted from the total expenses as calculated according to the applicable accounting framework.

The final draft RTS also introduce special treatment for tied agents, since a tied agent exposes an investment firm to the same risk to which it is exposed when it carries out business on its own. Furthermore it is thought that there should not be incentives for firms to reduce their capital requirements through the use of these agents and, moreover, a firm should maintain a capital component for tied agents. Given the calculation of fixed overheads for tied agents in the same manner as for investment firms themselves would pose many practical problems, the use of a fixed percentage of all fees per tied agent is introduced instead. This addresses the fact that tied agents have some element of variability in some cases but probably cannot be considered a fully variable cost item.

The EBA has finalised these draft RTS taking into account the responses to the consultation that ended on 30 September 2013.

The final draft is available at the following link:

http://www.eba.europa.eu/documents/10180/561374/EBA-RTS-2014-01+%28Own+Funds+-+Fixed+Overheads%29.pdf.

(vii) EBA Publishes Final Draft RTS on Own Funds – Multiple Dividends and Differentiated Distributions (Part Four) Required under the Capital Requirements Regulation

On 27 March 2014, the EBA published its final draft RTS on own funds - multiple dividends and differentiated distributions (part four) required under the CRD IV Regulation. Article 28(5) of the CRD IV Regulation requires the EBA to develop draft RTS specifying whether and when multiple distributions would constitute a disproportionate drag on own funds and to specify the meaning of preferential dividends - namely preferential rights to payments of distributions and order of payments of distribution. In addition, the RTS deal with the consequences of not meeting the criteria provided for in the regulation in terms of (dis)qualification of instruments as CET1 capital.
The draft standards have been sent to the European Commission for their adoption and once adopted will be directly applicable throughout the EU.

(viii) EBA Publishes Guidelines on the Applicable Notional Discount Rate for Variable Remuneration

On 27 March 2014, the EBA published its final guidelines for the calculation of the discount rate for variable remuneration and clarifying how it should be applied. These guidelines will support EU Member States in the calculation of the ratio between the variable and fixed component of total remuneration from 2014 onwards. Under CRD IV, firms are required to set appropriate ratios between the fixed and variable component of total remuneration for staff whose professional activities have a material impact on the risk profile of the firm. The maximum ratio has been set at 100%, however Member States can increase this amount to 200% in certain circumstances. EU legislation allows firms to use a discount rate of 25% (or less subject to national laws) of the variable remuneration provided it is paid in instruments that are deferred over a period of not less than 5 years. Therefore the guidelines will apply in Member States which have implemented the option of applying the discount rate and to firms which make use of such rate. The guidelines will apply from 1 June 2014 for calculations of the ratio of remuneration awarded from the year 2014 onwards.

IOSCO

On 29 January 2014, the International Organization of Securities Commissions ("**IOSCO**") published the final report on "Recommendations Regarding the Protection of Client Assets" (the

"**Report**"), in order to ensure that a consistent framework for investment firms will be implemented, which seeks to help regulators improve the supervision of firms holding client assets.

The Report highlights how the client asset protection regime has been placed in the spotlight following some recent cases of global insolvencies – such as Lehman Brothers or MF Global.

The Report published by IOSCO provides guidance to regulators on how to enhance their supervision of firms holding client assets, by clarifying the roles of the firm and the regulator in protecting those assets.

The Report also outlines firm's responsibility to ensure compliance with client asset rules, including through the development of risk management systems and internal controls to monitor compliance.

The following are the eight principles set out by IOSCO in the Report:

1. A firm should maintain accurate and up-to-date records and accounts of client assets that readily establish the precise nature, amount, location and ownership status of client assets and the clients for whom the client assets are held. The records should also be maintained in such a way that they may be used as an audit trail;

2. A firm should provide a statement to each client on a regular basis detailing the client assets held for or on behalf of such client;

3. A firm should maintain appropriate arrangements to safeguard the clients' rights in client assets and minimise the risk of loss and misuse;

4. Where a firm places or deposits client assets in a foreign jurisdiction, the firm should understand and take into account the foreign regime to the extent necessary to achieve compliance with applicable domestic requirements;

5. A firm should ensure that there is clarity and transparency in the disclosure of the relevant client asset protection regime(s) and arrangements and the consequent risks involved;

6. Where the regulatory regime permits clients to waive or to modify the degree of protection applicable to client assets or otherwise to opt out of the application of the client asset protection regime, such arrangements should be subject to the following safeguards:

a) The arrangement should only take place with the client's explicit, recorded consent;

b) Before such consent is obtained, the firm should ensure that the client has been provided with a clear and understandable disclosure of the implications and risks of giving such consent; and

c) If such arrangements are limited to particular categories of clients, clear criteria delineating those clients that fall within such categories should be defined;

7. Regulators should oversee firm s' compliance with the applicable domestic requirements to safeguard client assets;
8. Where an firm places or deposits client assets in a foreign jurisdiction, the regulator should, to the extent necessary to perform its supervisory responsibilities concerning applicable domestic requirements, consider information sources that may be available to it, including information provided to it by the intermediaries it regulates and/or assistance from local regulators in the foreign jurisdiction.

The Report may be accessed via the following web link:

http://www.iosco.org/library/pubdocs/pdf/IOSCOPD436.pdf .

Prospectus Directive

(i) European Commission Publishes Draft Delegated Regulation Regarding Prospectus Supplements

On 7 March 2014, the European Commission published a draft delegated regulation specifying situations in which the publication of a supplement to the prospectus is mandatory (the "**Draft Delegated Regulation**"). The Draft Delegated Regulation supplements the Prospectus Directive, which applies to closed-ended funds only.

The Draft Delegated Regulation sets out the circumstances where:

- The publication of new annual audited financial statements;
- The publication of an amendment to a profit forecast or a profit estimate already included in the prospectus;
- A change in control;
- A new public takeover bid; and
- An issuer is seeking admission to trading on an additional regulated market in an additional Member State or is intending to make an offer to the public in an additional Member State other than the one(s) provided for in the prospectus.

will trigger an obligation to publish a supplement to the prospectus. Other situations that trigger this obligation are also specified in the Draft Delegated Regulation.

The draft will now be considered by the European Parliament and the Council. If neither body objects to the draft, it will be published in the Official Journal of the European Union and will enter into force on the twentieth day following that publication.

The Draft Delegated Regulation may be viewed via the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2014/EN/3-2014-1392-EN-F1-1.Pdf.

(ii) ESMA Publishes Updated Q&A on the Prospectus Directive

On 15 January 2014, ESMA updated its Q&A on prospectus related issues by including two new questions and answers. The newly added items concern the format of the individual summary for several securities and the applicable registration document schedule where a listed issuer proposes to issue convertible or exchangeable debt securities where the underlying securities are the issuer's shares.

The Q&A is aimed at NCAs who carry supervisory responsibility under the Prospectus Directive and aims at ensuring convergence in supervisory activities across the EU.

The updated Q&A may be accessed via the following link:

http://www.esma.europa.eu/system/files/2014-esma-35_21st_version_qa_document_prospectus_related_issues.pdf

Market Abuse

(i) Market Abuse Reform

On 4 February 2014, the European Parliament voted to adopt the proposed new Directive on criminal sanctions for market abuse ("**CSMAD**"). Once the CSMAD has been published in the Official Journal, which is expected to take place in June 2014, Member States will have two years to implement the CSMAD into national law.

The adoption of CSMAD means that:

- There will be common EU definitions of market abuse offences such as insider dealing, unlawful disclosure of information and market manipulation;
- There will be a common set of criminal sanctions including fines and imprisonment of four years for insider dealing/market manipulation and two years for unlawful disclosure of inside information;
- Legal persons (companies) will be held liable for market abuses;

- Criminal sanctions will be imposed for inciting, aiding and abetting market abuse, as well as for attempts to commit such offences;
- Member States will have to take the necessary measures to ensure that market abuse offences are subject to criminal sanctions and establish jurisdiction for these offences if they occur in their country or if the offender is a national; and
- Member States will need to ensure that judicial and law enforcement authorities dealing with market abuse offences are well trained.

Also on the 4 February 2014, the European Commission published a set of FAQs on the CSMAD. The following questions are answered in the FAQs:

- Why are criminal sanctions needed for market abuse?
- How are criminal offences defined at EU level?
- Why was the existing Market Abuse Directive ("**MAD**") reviewed?
- Why is there a separate Directive on Criminal Sanctions for Market Abuse?
- Which offences will be subject to criminal sanctions?
- What are the levels and types of criminal sanctions required?
- When would a market abuse offence be sanctioned by criminal law and when by administrative law sanctions?
- How does the market abuse legislation tackle the abuse of benchmarks, such as LIBOR?
- What are benchmarks and how are they dealt with in the CSMAD?
- Why is the manipulation of benchmarks a cause for concern?
- What are the next steps in the adoption of the proposal for a Directive?

The CSMAD FAQs may be accessed via the following link:

http://europa.eu/rapid/press-release_MEMO-14-78_en.htm.

CSMAD complements a separate proposal for a Regulation on Market Abuse ("**MAR**"), which was endorsed by the European Parliament on 10 September 2013. MAR improves the existing EU market abuse legislative framework and reinforces administrative sanctions.

The MAR will:

- Prohibit market abuse occurring across commodity and related derivative markets;
- Explicitly ban the manipulation of benchmarks, such as LIBOR;
- Reinforce the investigative and sanctioning powers of regulators; and
- Extend the scope of the market abuse rules to include all financial instruments which are traded on organised platforms and over the counter.

Final adoption of the MAR will only take place after political agreement on MiFID II has been reached, since the scope and other aspects of the MAR depend on the final MiFID II text. The date as of which the MAR will apply is to be aligned with that of MiFID II.

MAR and CSMAD will replace the Market Abuse Directive (2003/6/EC).

(ii) Central Bank Issues Recommendations Arising out of Themed Review on the Monitoring and Reporting of Suspicious Transactions

On 7 January 2014, the Central Bank issued an Industry Letter, setting out observations and recommendations ("**Recommendations**") arising from its 2013 themed review of firms on the monitoring and reporting of suspicious transactions (the "**Themed Review**").

The Central Bank observed in their Themed Review that firms' Compliance Departments are generally familiar with market abuse legislation, but that key front-line staff may not be paying sufficient attention to the regulatory requirements in relation to the filing of Suspicious Transaction Reports ("**STRs**"), noting that the number of STRs being submitted to the Central Bank is low.

The Recommendations are as follows:

Monitoring

1. Compliance Departments should monitor telephone interaction between staff and clients and this should include testing around price-sensitive announcements;
2. Firms should refine parameters used for electronic market monitoring systems to ensure that these are adapted appropriately to the trading patterns and characteristics of individual stocks;
3. Firms should specify in writing and communicate to staff, their evaluation policy, process and record-keeping requirements with regard to alerts generated by automated detection systems;
4. In line with ESMA guidelines on monitoring of automated trading, compliance personnel that are responsible for assessing alerts generated by automated systems should be sufficiently knowledgeable of trading patterns and strategies so that they can independently evaluate explanations provided by front-line staff and by Direct Market Access clients;
5. Firms should ensure, as part of their standard procedures, that potentially suspicious incidents identified by staff are made known to their Compliance Departments;
6. Firms should ensure that all telephone orders are placed by clients directly to the firm's offices on its recorded lines;

Training

7. Firms should be in a position to demonstrate that dedicated market abuse training is delivered to all relevant staff on an annual basis. This training should cover, inter alia, (a) specific guidance on the purpose of the Market Abuse (Directive 2003/6/EC) Regulations 2005, (b) how to spot possible incidents of market abuse and (c) internal procedures in relation to follow-up on suspicious transaction reports;

Investigation Process and Record Keeping

8. Firms should specify format and content for records of all internal investigations and maintain these (in accordance with ESMA guidelines and recommendations);

Policy Review/Sign-off

9. Policy and procedure documents should show the creation date and the date of most recent revision, together with approval signatures. A maximum review interval of eighteen months is recommended, however any relevant changes in legislation should be incorporated and recorded in the policy and procedure document when they occur.

The Central Bank has stated that it expects firms to adopt these Recommendations as a matter of good practice.

Transparency Directive

ESMA has published a consultation paper on Draft Regulatory Technical Standards ("**RTS**") on major shareholdings and an indicative list of financial instruments subject to notification requirements under the revised Transparency Directive. The revised Transparency Directive (2013/50/EC) was published in the Official Journal of the European Union on 6 November 2013 and entered into force on 27 November 2013.

The consultation paper covers two main subjects, namely 1) the RTSs on major shareholdings; and 2) the establishment of an indicative list of financial instruments which are subject to the notification requirements laid down in Article 9 of the Transparency Directive.

ESMA has invited comments on all matters in the consultation paper and in particular on the specific questions summarised in Annex I. ESMA will consider all comments received by 30 May 2014.

The consultation paper may be viewed via the following link:

http://www.esma.europa.eu/system/files/esma-2014-300_consultation_paper_on_draft_rts_on_major_shareholdings.pdf.

Central Bank

(i) Central Bank Updates Guidance Note on Regulatory Reporting Requirements of Irish Authorised Investment Funds

On 14 February 2014, the Central Bank published Volume 2.4 of its "Regulatory Reporting Requirements of Irish Authorised Investment Funds" Guidance Note (the "**Guidance Note**"). The purpose of the Guidance Note is to provide information and direction to investment funds' Board of Directors / Management Company / General Partner, as appropriate, on the reporting requirements relating to the extension of the Central Bank's Online Reporting System ("**ONR System**") to investment funds. In addition, the Guidance Note covers returns relevant to Depositaries and Independent Statutory Auditors reporting on behalf investment funds.

The updated Guidance Note contains a new section on the Naming Convention. It also provides that a UCITS or a new UCITS sub-fund authorised/approved in the previous calendar year is not required to file an annual KIID update on the basis that there is no revised presentation of past performance, and that updates can be submitted where there has been a material change to the KIID.

The Guidance Note is periodically updated by the Central Bank. The most up-to-date version of the Guidance Note is available on the Central Bank's website at:

http://www.centralbank.ie/regulation/industry-sectors/funds/Pages/default.aspx

(ii) Central Bank Publishes Regulatory Transactions Review

On 19 February 2014, the Central Bank published issue 8 of its Regulatory Transactions Review. The Regulatory Transactions Review informs that the Central Bank has recently published its Service Standards for processing Individual Questionnaire applications and that all target turnaround times for 2013 were met.

The Regulatory Transactions Review also provides information to assist regulated entities who did not file a submission listing in situ PCF roles as at 1 December 2011 with regard to the PCF Annual Confirmation Return.

The Regulatory Transactions Review may be accessed via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Regulatory%20Transactions%20Review%20Issue%208.pdf.

(iii) Central Bank Publishes Acquiring Transaction Form for IIA Firms

The Central Bank has issued an Acquiring Transaction Form for firms authorised under the Investment Intermediaries Act, 1995 (as amended) ("**IIA**"). In future, the Central Bank will only accept notifications of changes in control in respect of IIA Firms via this Acquiring Transaction Form, available via the following link:

http://www.centralbank.ie/regulation/industry-sectors/retailintermediaries/intermediaries-newsletters/Documents/for%20website%20-%20application%20form%202013%20Final%20Version%2020.01.14%20amended.pdf.

(iv) The Central Bank Publishes its Plans for Themed Reviews, Inspections and Enforcement Priorities for 2014

On 25 February 2014, the Central Bank published its planned series of Themed Reviews and Inspections for 2014, as well as its 2014 Enforcement Priorities. The publication of these lists by the Central Bank provides an opportunity for regulated entities to assess and raise compliance standards, where necessary, in "key risk areas" referred to on these lists.

It should be noted that themed reviews and inspections may form the basis for future regulatory or enforcement actions where breaches are identified. During 2013, the Central Bank entered into 16 enforcement settlement agreements with regulated entities, with fines totalling €6,348,215 being imposed.

Please follow the following link in order to see a Dillon Eustace update setting out the 2014 themes:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Central%20Bank%20Themed%20Reviews%20and%20Enforcement%20Actions%2010%20March%202014.PDF

(v) Central Bank Publishes Consultation Paper on the Handling of Protected Disclosures (CP 79)

On 19 March 2014, the Central Bank published a consultation paper on the handling of protected disclosures by the Central Bank. The Central Bank (Supervision and Enforcement) Act 2013 (the "**Act**") introduced new provisions in relation to the making of reports to the Central Bank regarding alleged breaches of financial services legislation, which has led the Central Bank to introduce new arrangements for the receipt and handling of certain protected disclosures (i.e. reports by whistleblowers and mandatory reporting by PCFs).

The consultation paper proposes:

- The establishment of a central 'Whistleblower Desk' to deal with protected disclosures reported to the Central Bank. The desk will serve as the primary point of contact for whistleblowers wishing to make a disclosure and is seen as the most efficient and effective use of resources to adequately address the requirements of the Act and provide a robust method of managing protected disclosures;
- The Central Bank will accept anonymous disclosures, however it encourages any person making a report to provide their name and contact details;
- The Central Bank does not intend to inform whistleblowers of what action, if any, has been taken as a result of their disclosure to protect the rights of all parties in line with statutory requirements;
- Although a complaint by a consumer may sometimes fall within the definition of a protected disclosure under legislation, the Whistleblower Desk will not ordinarily treat such complaints as whistleblowing or deal with such complaints;
- The Central Bank will record all telephone calls on the dedicated whistleblower telephone line.

Submissions are invited on all aspects of the proposed policies and procedures set out in CP79. The closing date for submissions is 19 June 2014. It is intended that submissions will be published on the Central Bank website.

CP79 may 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/CP79%20Handling%20of%20Protected%20Disclosures%20by%20the%20Central%20Bank%20of%20Ireland.pdf.

Data Protection

On 12 March 2014, the European Parliament voted in favour of the the European Commission's legislative package to improve data protection rights within the EU, (the "**Data Protection Reform Package**"). The plenary vote means the position of the European Parliament has been confirmed and will not change, even if the composition of the European Parliament changes following the European elections in May.

In order to become law however, the Data Protection Reform Package must also be adopted by the Council of the EU. Once the Council of the EU finalises its position on the Data Protection Reform Package, negotiations on the proposed reforms will be able to commence between the Council of the EU, the European Commission and the European Parliament.

The proposed Data Protection Reform Package comprises of a major overhaul of current EU data protection rules. The European Commission presented its legislative package to improve data protection rights within the EU in January 2012. The Data Protection Reform Package comprises a draft Directive and a draft Regulation, the key points of which were outlined in our previous update covering the period 1 October to 31 December 2013.

EU Member States in the European Council are yet to reach an agreement on the proposed reforms. The next meeting of EU Justice Ministers on the proposed Data Protection Reform Package will take place in June 2014.

Once adopted, Member States would have 2 years to bring the Regulation into effect and to transpose the Directive into their national laws. Despite the delays, the European Commission and the European Parliament, along with members of the European Council, aim to have the Data Protection Reform Package in place before the end of 2014, in which case the reforms would come into effect in 2016.

A Q&A on the proposed EU data protection reform published by the European Parliament and the European Commission respectively may be accessed by following the links below:

http://www.europarl.europa.eu/news/en/news-room/content/20130502BKG07917/html/QA-on-EU-data-protection-reform

http://europa.eu/rapid/press-release_MEMO-14-186_en.htm.

Anti-Money Laundering/Counter-Terrorism Financing

(i) The Fourth Money Laundering Directive

On 11 March 2014 the European Parliament voted in favour of a legislative resolution on the proposed directive to amend and replace the Third Money Laundering Directive (2005/60/EC), known as "**MLD4**" and a draft Regulation on information accompanying transfers of funds (the "**draft Regulation**") , which aims to improve the traceability of payers and payees and their assets.

This was done in order to consolidate the work done by the European Parliament so far on MLD4 and the draft Regulation, prior to handing it over to the next European Parliament. It ensures that the MEPs newly elected in May can decide to build on work done during the current term of the European Parliament.

Under MLD4, as amended by the European Parliament:

- A public central register in each EU country would list information on the ultimate beneficial owners of legal entities such as companies, foundations, holdings and trusts. The registers would be publicly available and interconnected across the EU;
- Banks, financial institutions, auditors, lawyers, accountants, tax advisors and real estate agents, among others, would be required to be more vigilant about suspicious transactions;
- An increased emphasis is placed on adopting a risk-based approach;
- The rules on politically-exposed persons ("**PEPs**") would be extended to "domestic" PEPs.
- Additional measures should be put in place, e.g. to establish the source of wealth and source of funds involved in the case of high-risk business relationships with PEPs.

The European Parliament will begin negotiating the legislation with the European Commission and the Council of the EU in the second half of 2014. The European Parliament's press release can be found at the link below:

http://www.europarl.europa.eu/news/en/news-room/content/20140307IPR38110/html/Parliament-toughens-up-anti-money-laundering-rules

On 3 March 2014, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") and its Committee on Civil Liberties, Justice and Home Affairs ("**LIBE"**) had suggested that the following changes be made to MLD4:

- Improvement with regard to the management of business registers in Member States so that they include beneficial ownership information which would help identify those who actually gain from the business transactions;
- A clarification of money laundering risk evaluation at EU level;
- Require Member States to lay down the rules on effective, proportionate and dissuasive penalties for natural or legal persons applicable to infringements of the national provisions adopted pursuant to the Directive.

A summary of the report can be viewed under the following link:

http://www.europarl.europa.eu/oeil/popups/summary.do?id=1340126&t=e&l=ento

(ii) Trust & Company Service Providers

On 3 March 2014, the Criminal Justice Act (Money Laundering and Terrorist Financing) Act 2010 (Competent Authority) Regulations (S.I No. 79 of 2014) (the "**Regulations**") transferred the power to authorise certain 'Trust & Company Service Providers' ("**TCSPs**") for anti-money laundering purposes from the Minister of Justice and Equality to the Central Bank. The Regulations will only apply to TCSPs which are 'designated persons' and subsidiaries of a credit institution or a financial institution. TCSPs which do not fulfil these criteria will continue to be authorised by the Department of Justice and Equality.

Further information regarding the TCSP authorisation can be found via the following link:

http://www.centralbank.ie/regulation/processes/anti-money-laundering/tcsp/Pages/Introduction.aspx

Whistle-blower Protection

As stated in our previous update for the period 1 October to December 31 2013, the Protected Disclosures Bill 2013 (the "**Bill**") was published in July 2013. This Bill proposes to provide for whistle-blower protection in all sectors of the economy. 'Workers' are defined broadly to include employees, contractors, agency staff, trainees and home workers. It is proposed that 'workers' are to be provided with employment and other protections from penalisation for making' protected disclosures' to certain persons.

The Bill has now passed through the Seanad (i.e. one of the two houses of Parliament in Ireland) successfully and is currently being considered by the Dáil (i.e. the other house of Parliament). It is expected that the legislation may be enacted by June 2014.

Companies Bill 2012 Update

The Companies Bill 2012 (the "**Companies Bill**") was published in December 2012 and is currently going through the Dáil's legislative process. The Committee Stage was completed on 6 November 2013 and the next stage, the Report Stage, began on 25 March 2014. The Report Stage allowed the Department of Jobs, Enterprise and Innovation to propose further amendments to the Companies Bill, before the Seanad begins its consideration of the Companies Bill.

Enactment of the Companies Bill is expected sometime this year and private companies limited by shares will be given an 18 month transitional period to take certain action as a result of the introduction of the Act. The Minister for Jobs, Enterprise and Innovation may choose to extend this by a further 12 months. The transitional period will give directors and shareholders the time to decide between registering as a new-form company ("**CLS**") and registering as a designated activity company ("**DAC**"). Where a company takes no action, it will be deemed to have become a CLS on the expiry of the transition period. It is to be noted that many of the compliance changes will, however, come into effect immediately.

Competition and Consumer Protection Bill 2014

On 31 March 2014, the Competition and Consumer Protection Bill 2014 (the "**Bill**") was published. The Bill proposes to merge the National Consumer Agency and the Competition Authority and create a stronger competition and consumer watchdog, the Competition and Consumer Protection Commission ("**CPCC**"). New criminal investigation functions are proposed to be given to the CPCC to assist it in investigating serious competition offences. These include:

- New powers for the CPCC to apply to court for an order to require any person with relevant information to produce documents, answer questions and provide information for the purposes of the investigation of relevant offences;
- Changes to the law regarding detention periods;
- Measures aimed at reducing delays that occur when large volumes of documents are produced involving the organisation and categorisation of the documents;
- New measures to enable the CCPC to take away material despite legal privilege being

claimed over it. The material would be required to be kept confidential, before being reviewed by the High Court to determine whether privilege exists;

- The Section 19 Criminal Justice Act 2011 offence of failure to report information.

The Bill also proposes to:

- Require telephone and internet service providers to retain details of internet and call data for up to two years; and
- Allow authorised taped witness interviews in Garda stations to be introduced as evidence in court in certain circumstances.

The Bill also contains provisions to regulate certain practises in the grocery goods sector and update and modernise the law on media mergers.

The Bill and its Explanatory Memorandum may be found via the following links:

http://www.djei.ie/publications/commerce/2014/compconprotbill2014.pdf;

http://www.djei.ie/publications/commerce/2014/compconprotbill2014memo.pdf.

Irish Taxation Update

(i) S891C Reporting

Under new reporting regulations introduced in 2013, certain investment undertakings are required to make an annual return to Revenue containing details of the values of investments held by certain unit holders ("**S891C Reporting**"). The IFIA Transfer Agency Domestic Tax Reporting sub-group, following discussions with the Revenue Commissioners, has produced an Information Update designed to assist members in preparing for the Section 891C Reporting.

The annual return for 2013 was due to be submitted to Revenue by 31 March 2014.

This additional information, used in conjunction with the Revenue Guidance Notes, should assist in preparing reports. The Regulations, Guidance Notes and File Specification for the S891C reporting can be found on the Revenue website at www.revenue.ie.

(ii) Savings Directive

The Council of the European Union formally adopted on 24 March 2014 a directive amending the EU Savings Directive (2003/48/EC). The main aim of the amended directive is to broaden the scope of the current rules and enable Member States to better prevent tax evasion.

The amended directive will include new types of savings income, and products that generate interest or equivalent income. This would include life insurance contracts, as well as a broader coverage of investment funds. Furthermore, tax authorities using a "look-through" approach would be required to take steps to identify who is benefiting from interest payments.

The Member States will have until January 2016 to adopt the national legislation necessary to comply with the directive and implementation is expected from 2017.

FATCA Update

As noted in the previous update, on 3 May 2013 Revenue released the Draft Financial Accounts Reporting Regulations 2013 together with supporting Draft Guidance Notes. Revised draft Regulations and Guidance Notes were issued on 16 January 2014 with comments welcomed from the various industry working groups in line with the on-going consultation process between the Revenue Commissioners and those industry sectors.

FATCA Time Line – A General Overview

1st July 2014 - New account opening procedures must be in place with all accounts maintained as of 30 June 2014 being classified as “Pre-existing Accounts”.

1st January 2015 - Starting date by which reporting Irish Financial Institutions will be required to produce a Global Intermediary Identification Number (“**GIIN**”), meaning that registration needs to take place by the end of 2014.

30th June 2015 - Reporting Irish Financial Institutions to report details of their U.S. account holders to the Revenue Commissioners in respect of the 2014 calendar year. The Revenue Commissioners are then required to exchange this information with the IRS by 30 September 2015. However, the IRS intends to publish the first Foreign Financial Institution List by 2 June 2014 (to be updated on a monthly basis thereafter). To be included on the 2 June 2014 list an FFI must register for a GIIN by 5 May 2014.

Dillon Eustace

This Funds Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 March 2014, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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