February 2018

PRIIP, SFTR and BMR Update: Publication of Irish Regulations

The Central Bank has been given extensive powers relating to the enforcement of the SFTR, PRIIP and the Benchmarks Regulation regimes following the recent publication of domestic regulations.

Background

As readers will be aware, Regulation (EU) No 1286/2014 on the key information documents for packaged retail and insurance-based investment products (the "**PRIIP Regulation**") took effect on 1 January. On that date, subject to certain exceptions, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (the "**BMR Regulation**") also took effect. Regulation (EU) 2015/2365 on transparency of securities financing transactions and of re-use (the "**SFTR Regulation**") entered into force on 12 January 2016 and applied from that date, subject to certain transitional arrangements.

Publication of Irish Regulations

Last month saw the publication of three Irish regulations which give further effect to the PRIIP Regulation, the SFTR Regulation and the BMR Regulation respectively, namely the **Irish PRIIP Regulations**, **Irish SFTR Regulations** and the **Irish BMR Regulations**.

Administrative Sanctions

Under each regime, competent authorities in EU member states are required to set down the administrative and other sanctions which may be imposed for infringements of the relevant EU regulations in domestic law.

For further information on any of the issues discussed in this article please contact:

Donnacha O'Connor
DD: + 353 (0)1 673 1729
donnacha.oconnor@dilloneustace.ie

Cillian Bredin
DD: + 353 (0)1 673 1889
cillian.bredin@dilloneustace.ie

David Walsh
DD: + 1 212 792 4168
david.walsh@dilloneustace.ie

(i) Pecuniary Sanctions

The Central Bank has chosen to avail of the powers afforded to it under the PRIIP Regulation to impose higher fines than those set down in the PRIIP Regulation, with the Irish PRIIP Regulation providing for maximum fines for an infringement of Article 24 of the PRIIP Regulation[1] by a legal entity of €10 million or up to 10% of total annual turnover or up to twice the amount of the profits gained or losses avoided as a result of the infringement.

Under the SFTR regime and the BMR regime, it has chosen to mirror those minimum fines set down by the European legislators under the SFTR Regulation[2] and the BMR Regulation[3] respectively.

(ii) Other Administrative Sanctions which may be imposed by the Central Bank under the Irish Regulations

The powers afforded to the Central Bank under the Irish Regulations for a breach of the relevant regime are not restricted to the imposition of pecuniary fines.

By way of example only, under the Irish SFTR Regulations and the Irish BMR Regulations, an infringement by an in-scope firm of the SFTR Regulations or the BMR Regulations may result in the Central Bank withdrawing and suspending the authorisation of the relevant entity, issuing a public statement indicating the person responsible for the relevant infringement and the nature of the infringement concerned or, in certain circumstances, imposing a temporary ban on persons from exercising management functions.

Under the Irish PRIIP Regulations, the Central Bank has been granted the power to order the prohibition or the suspension of marketing of a PRIIP or to order the publication of a new version of a PRIIP which does not comply with the requirements of the PRIIP Regulation.

Additional powers granted to the Central Bank under the SFTR and BMR regime

The Irish SFTR Regulations and the Irish BMR Regulations grant the Central Bank some far-reaching powers in order to enable it to monitor compliance with the provisions of the SFTR Regulations and BMR Regulations respectively. These include the right of access to business premises, the power to inspect relevant records, in certain circumstances the power to question a person in order to obtain further information and the power to issue directions to in-scope firms to take or refrain from taking

[1] This includes, for example, the obligation to prepare a KID in accordance with the PRIIPS Regulations and to provide that KID to retail investors in good time before the conclusion of a contract.
[2] Article 22 (4) of the SFTR Regulation provides for (i) fines on legal entities of up to €5 million or up to 10% of their most recent total annual turnover or three times the amount of the profits gained or losses avoided as a result of the infringement for a breach of record keeping and reporting obligations and (ii) fines of legal entities of up to €5 million or up to 10% of their most recent total annual turnover or three times the amount of the profits gained or losses avoided as a result of the infringement for a breach of the rules on re-use of assets received under a collateral arrangement.
[3] Article 42 of the BMR Regulation provides for fines on legal entities of up to €1 million or 10% of their most recent total annual turnover, whichever is the higher for infringements of certain provisions of the BMR Regulation. Lower fines are imposed on natural persons.

specific actions. Under the Irish SFT Regulations, such direction may, inter alia, require (i) that person to take specific action in respect of an SFT, (ii) that person not to dispose of any assets or specified assets unless specific conditions have been complied with or (iii) a credit institution to refrain from making any payment from an account held with it by a specified person.

Whistleblowing: Obligations on affected firms

Following the trend seen in UCITS V[4], in-scope firms are now obliged to put in place whistleblowing procedures to allow employees to report actual or potential infringements of the PRIIP Regulations and the SFTR Regulations through a specific, independent and autonomous channel. Affected firms should therefore ensure that their whistleblowing policies are updated accordingly.

Conclusion

The publication of the Irish SFTR Regulations, the Irish PRIIP Regulations and the Irish BMR Regulations serve as a reminder to affected firms of the necessity of ensuring that they are in a position to comply and evidence compliance with their obligations under the relevant regime.

If you have any questions relating to SFTR, PRIIPs or the BMR, please contact your usual contact at Dillon Eustace.

Dillon Eustace
February 2018

DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

[4] Regulation 25(A) of the European Union (UCITS) Regulations 2011 as amended.