



Breakfast Briefing 29 May 2019

Funds Legal and Regulatory Update

29 May 2019

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Agenda

- ▣ *ESG - legislative developments*

Cillian Bredin – Partner, Asset Management and Investment Funds

- ▣ *ESG – the manager’s perspective*

Sandra Rockett – Director of International Business at Irish Life Investment Managers Ltd

- ▣ *Beneficial Ownership Regulations*

Keith Waine – Partner and Head of Financial Regulation

- ▣ *Fitness & Probity update*

Emmet Quish – Partner, Asset Management and Investment Funds

General Update

- ▣ Shareholder Rights Directive II (Directive (EU) 2017/828) (“SRD II”)
 - ▣ Asset Managers (UCITS management companies, AIFM (presumed only ones that are EU authorised), SMICs and MIFID firms) are subject to SRD II if they invest (on behalf of funds under management, managed accounts etc.) in EEA companies whose shares are listed on an EEA regulated market.
 - ▣ *Timing*
 - ▣ Irish legislation scheduled to be transposed by 10 June, 2019 – no suggestion that the obligations commence later than that
 - ▣ *Summary of the obligations*
 - ▣ Publish Shareholder Engagement Policy or publish clear and reasonable explanation why it is not doing so
 - ▣ Publish annual statement regarding the implementation of the Shareholder Engagement Policy if it has one
 - ▣ Provision of additional information on engagement with investee companies to “institutional investors”
 - ▣ *Next steps*
 - ▣ Review the Asset Manager’s investment universe to determine whether it invests in in scope EEA listed companies
 - ▣ Determine whether it is appropriate to prepare a Shareholder Engagement Policy
 - ▣ If relevant, consider the form that the Shareholder Engagement Policy may take in light of any delegation arrangements in place with EU MiFID regulated investment firms or any existing group policy which addresses the area of stewardship
 - ▣ Determine whether any of the in scope investors constitute “institutional investors” ((i) occupational pension schemes which fall within the scope of IORP II (unless exempt under national laws); and (ii) EU life insurers)
 - ▣ If yes, put procedures in place to allow the Asset Manager to comply with its obligation to institutional investors under SRD II
 - ▣ If the Asset Manager will be relying on a delegate investment manager to assist with complying with its obligations under SRD II, reflect any such delegation in a revised investment management agreement/revised SLA/letter of instruction



ESG – Legislative Developments

European Developments

- ▣ On 24 May 2018 the European Commission presented a package of measures as a follow-up to its Sustainable Action Finance Plan. The package including 3 proposals (in form of draft regulations) aimed at:
 1. establishing a unified EU classification system of sustainable economic activities ('**taxonomy**')
 2. improving **disclosure** requirements on financial market participants integrate environmental, social and governance (ESG) factors in their investment decision making process
 3. creating a new category of benchmarks which will help investors compare the carbon footprint of their investments.

Taxonomy Regulations

- ▣ The proposed regulation *on the establishment of a framework to facilitate sustainable investment* (the “**Taxonomy Regulations**”) imposes obligations on “*financial participants offering financial products as environmentally sustainable investments or as investments having similar characteristics*”.
- ▣ The proposal was designed with an **aim to prevent “greenwashing”**, or the marketing of financial products, which do not meet basic environmental / sustainability standards, in order to obtain a competitive advantage over other products.
- ▣ The aim of the Commission’s proposal is to develop a classification system can be used with respect to labels, standards and benchmarks recognising compliance with environmental standards across the EU. The proposal applies to financial participants (which includes **UCITS ManCos** and **AIFMs**) offering financial products (including UCITS and AIFs) as environmentally sustainable investments or as investments having similar characteristics.

Disclosure Regulations

- ▣ The proposed regulation *on disclosures relating to sustainable investments and sustainability risks* (the “**Disclosure Regulations**”) will also apply to “financial market participants” which will include **AIFMs and UCITS management companies**.
- ▣ Contains important definitions:
 - Sustainability Risks as “*an environmental, social or governance event or condition that, if it occurs, could cause an actual or a potential material negative impact on the value of the investment arising from and adverse sustainability impact*”; and
 - Sustainability Factors as “*environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters*”

Disclosure Regulations

- ▣ Impact on Financial Market Participants
 - website publication of:
 - information of their policies as to how sustainability risks are incorporated into investment decision-making processes;
 - Consideration of principal adverse impacts of investment decisions on sustainability factors, a due diligence policies with respect to these principal adverse impacts;
 - how their remuneration policies are consistent with the integration of sustainability risks.
 - pre-contractual disclosures on the various elements of sustainability risks in including how they are integrated and the impact of sustainability risks on returns of any financial product; and
 - where marketed as sustainable investments, website disclosures of the sustainable investment target and the methodologies used to measure the impact of the investment, together with the provision of periodic reports detailing the sustainability-related impact of the financial product

Low Carbon/Positive Carbon Impact Benchmarks

- Politically agreed on 25 February 2019 by the European Parliament and EU Member States.

- Two new categories of benchmarks:
 - 1) a climate-transition benchmark (low carbon benchmark); and
 - 2) a specialised benchmark which brings investment portfolios in line with the Paris Agreement goal to limit the global temperature increase to 1.5° above pre-industrial levels (positive carbon impact).

- The new labels are designed to give additional assurances to avoid “greenwashing”, i.e. that investors are deceived by misleading or unsubstantiated claims about the environmental benefits of a benchmark.

ESMA Final report

- ▣ Following a formal request from the European Commission, on 19 December, 2018, the European Securities and Markets Authority (ESMA) launched a public consultation on the integration of sustainability risks and factors into the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings in Collective Investment in Transferable Securities (UCITS) Directive (investment funds).

- ▣ ESMA published its final report on **30 April, 2018**.

▣ **Changes are proposed in the following areas of the UCITS and AIFMD framework:**

➤ *General organisational requirements*

➤ *Operational Matters*

➤ *Risk management*

ESMA Final Report Key Points

- ESG criteria should be integrated via a high-level principles based approach, similar to the approach already used to integrate other risks into the UCITS Directive and AIFMD rather than a prescriptive approach.
- Cross references to the Disclosure Regulations means there will be consistent terminology used e.g. sustainability risks and sustainability factors.
- Materiality and proportionality are to be applied.
- Timing is to align with the Disclosure Regulations to *inter alia* reduce cost of compliance.
- A specific appointment of a person being in charge of the integration of sustainability risk is not required.
- Recognise the challenge this presents from an expertise/resourcing perspective.

ESMA Final Report - Organisational Requirements

- ▣ The Final Report proposes changes in relation to (i) organisational requirements (ii) operating conditions and (iii) risk management as follows.

- ▣ **Proposed updates to Commission Directive 2010/43/EU (the “UCITS Directive”):**
 - Article 4 on “General Requirements on Procedures and Organisation”
 - Article 5 on “Resources”
 - Article 9 on “Control by Senior Management and Supervisory Function”

- ▣ **Proposed updates to Commission Delegated Regulation (EU) 231/2013 (the AIFMD Level 2 Regulations”):**
 - Article 22 on “Resources”
 - Article 57 on “General Requirements”
 - Article 60 on “Control by the Governing Body, Senior Management and Supervisory Function”

*Please see []

ESMA Final Report - Organisational Requirements – UCITS example

- ▣ Article 4 of the UCITS Directive on “General Requirements on Procedures and Organisation” to be amended as follows:
 1. *Member States shall require management companies to comply with the following requirements:*

...
Member States shall ensure that management companies take into account sustainability risks when complying with the requirements laid down in the first subparagraph.

- ▣ Article 5 of the UCITS Directive on “Resources” to be amended as follows:

Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies take into account the necessary resources and expertise for the effective integration of sustainability risks.

- ▣ Article 9 of the UCITS Directive on “Control by Senior Management and Supervisory Function” to be amended as follows:

The management company shall ensure that its senior management:

.....is responsible for the integration of sustainability risks.

- ▣ **Proposed updates to the UCITS Directive:**
 - Article 23 of the UCITS Directive on “Due Diligence Requirements”

- ▣ **Proposed updates to the AIFMD Level 2 Regulations:**
 - Article 18 of the AIFMD Level 2 Regulations on “Due Diligence”

ESMA Final Report - Operating Conditions - UCITS

- ▣ New recital 17 (in relation to conflicts of interest) to be added to UCITS Directive as follows:

“When identifying the types of conflicts of interest whose existence may damage the interests of a UCITS, management companies and self-managed UCITS investment companies should include those that may arise in relation to the integration of sustainability risks. The identification process should include, for example, conflicts arising from remuneration or personal transactions of relevant staff as well as any sources of conflicts that could give rise to greenwashing, misselling, misrepresentation of investment strategies or churning. Consideration should also be given to conflicting interests between funds with different investment strategies managed by the same UCITS management company as well as situations where there are other business-relationships with investee companies, conflicting group interests, investments in entities with close links or similar circumstances.”

- ▣ Article 23 of the UCITS Directive on “Due Diligence Requirements” to be amended as follows:

“Member States shall require that management companies take into account sustainability risks and, where applicable, the principal adverse impact of Investment decisions on sustainability factors when complying with the requirements set out in paragraphs 1 to 4. Where applicable, management companies shall develop engagement strategies including for the exercise of voting rights, where available, with a view to reducing the principal adverse impact of investee companies on sustainability factors.”

- ▣ **Proposed Updates to the UCITS Directive:**

- Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy”

- ▣ **Proposed Updates to the AIFMD Level 2 Regulations:**

- Article 40 on “Risk Management Policy”

▣ **Article 38 of the Commission Directive 2010/43/EU on “Risk Management Policy” to be amended as follows:**

- 1) *Member States shall require management companies to establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.*
- 2) *The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity, **sustainability** and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.*

Action Needed?

- Status of legislative changes
- Expected Central Bank approach
- Board Actions
- ESG is already here – Shareholders Rights Directive 2
- What are the next steps for Asset Managers?



Irish Life

Irish Life's approach to Responsible Investment

May 2019



Our access to global experience and expertise means we blend local knowledge with international experience.

AA (Fitch)
financial strength

Established in
1939



€77bn
assets



1.3m
customers



3,000
employees



Retail

- Market Leaders
- 30% Market Share
- Individual Pensions, Protection and Investments
- 700,000 Customers

Corporate

- Market Leaders
- 32% Market share
- Group Pension Administration, (DB & DC) Protection & Pay-out annuities
- 638,000 Customers

Investment

- Market Leaders
- 48% Market Share
- 40% international clients
- Institutional Asset Managers – €70bn (ILIM) and €7bn (Setanta)

Health

- **#3 Market**
- Individual and Group Private Health Insurance
- 425,000 customers
- Established in 2016 (acquisition of Aviva Health and GLO Health).

Affiliates

- Cornmarket (Affinity Broker 100%)
- IPSI (third-party Administration 100%)

Members of Great-West Lifeco since 2013





MULTI ASSET SOLUTIONS

- Expertise in designing multi-asset solutions
- Delivering scalable and tailored client solutions for third-party distributors on a white labelled basis
- Delivering efficient asset servicing capabilities for life companies and fund managers



QUANTITATIVE SOLUTIONS

- 20 years' experience
- Experienced multi-factor research & investment team
- c.€9bn under advisement - active and risk control processes
- Reputation for innovation and risk control

Expertise in LDI, Infrastructure and Property



INDEXATION

- 20 years' experience
- "A" rated by International Consultancies
- Over €45bn under management
- Reputation for flexibility, tailoring and tight tracking errors



PARTNERSHIP

- Established for long-term mutual benefit
- Specific and unique
- Founded on alignment of interests and collaboration
- Proven track record of long-term successful partnerships
- Best-in-class service agreements tailored to client needs

OUR RESPONSIBLE INVESTMENT JOURNEY TO DATE



2010

Signed up to UNPRI



2015
2016

Established Responsible Investment Policy
Commenced Enhanced Active Ownership Approach
Founding Member of SIF Ireland



2013

Commenced managing funds with exclusions



2017
2018

A Rated Active Ownership Approach
Commenced Integration into Property portfolios (Signed up to GRESB)
Commenced Research into Integration in Equity Strategies
Launched Responsible Investment Strategy

Opportunity



Evolving Customer Needs

Responsible investments are a key macro trend with 12% AUM growth p.a.

In Ireland, it could be a key competitive and reputational advantage for Irish Life



Investment Conviction

Integrating ESG criteria into investment processes mitigates risk and supports long term sustainable investment returns.

Responsibility



Core to our Purpose

“Your future matters.
We invest to make it better”

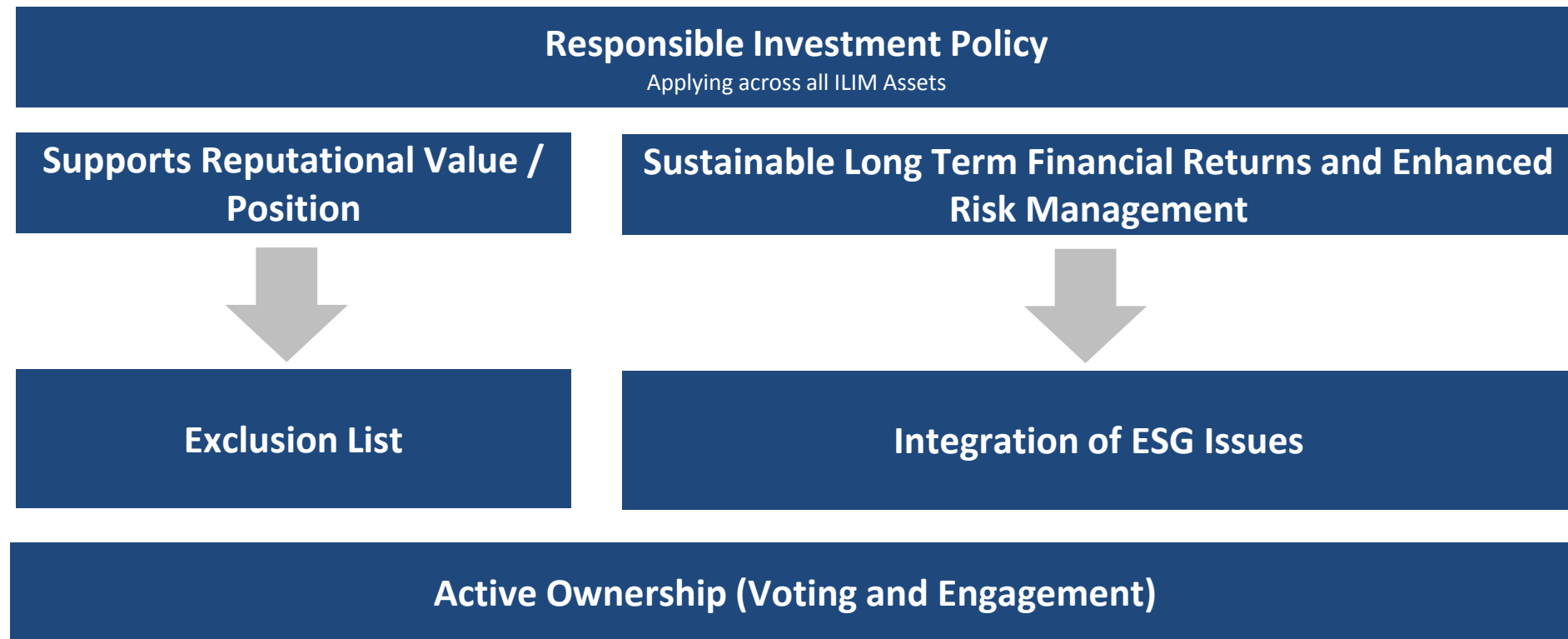
“Building better Futures”



Regulatory Change

Regulation sets minimum standards currently but anticipated changes will affect both our clients and Irish Life / ILIM equally

To fulfil our vision we will embed ESG analysis and considerations **throughout our discretionary portfolios** and will offer a **range of responsible investment options** for all our Customers



1. Familiarise ourselves with legislation

- identify and assess financially material Sustainability/ESG Risks
- determine how best to integrate these risks into our Investment process
- determine how best to disclose our approach and our performance

2. Enhance our knowledge of the relevance and potential impact of Sustainability/ESG risks across our Investment Portfolios

- differs by asset class
- differs by investment style

3. Undertake research into how best to integrate ESG into Portfolios

- determine service providers/data providers
- develop and deliver research plan

4. Engage with corporate and other stakeholders to secure support and financial commitment

5. Plan and Resource

- **Client Demand / Expectations**
- **ESG research and consistency of data**
- **Need for both Integration and Active Ownership**
- **Internal Expertise/Service Providers**
- **Time to Implement**
- **Reporting and Impact**
- **Costs**

Corporate Support

Governance and Oversight

Training

Resourcing

Research and Development

Industry Collaboration

Reporting and Impact

Risk	Description	Mitigation
Increased market focus on Irish Life’s own ESG policies	Public commentary could draw greater focus on internal corporate policies and/or greater expectation from customers	Ensure alignment between approach taken on client assets and internal policies (e.g. D&I strategy, Board diversity etc.) Control Messaging to market
Conflicts of interest – exclusions	By engaging in an exclusionary policy, there is a client sensitivity to the extent that we are excusing public companies who are also clients of the Group	Review exclusion list against corporate clients – Accept Risk
Conflicts of interest - engagement	By engaging in an engagement programme focussed on Irish companies, there is a client sensitivity to the extent we are engaging with companies who are also clients of the Group	Adopt collaborative engagement approach – in place
Immaturity of standards	There is no clear or definitive view of what is the “best” approach to ESG. The industry will evolve to set a standard over the coming years	We will be measured in our adoption of ESG at the outset with recognition of the need to be agile to adapt to the changing standards which will emerge.

THANK YOU

Irish Life Investment Managers Limited is regulated by the Central Bank of Ireland

Irish Life Assurance plc. is regulated by the Central Bank of Ireland

Past performance, forecasts and simulated performance may not be a reliable guide to future performance

Investments may fall as well as rise

Changes in currency exchange rates may have an adverse effect on the value, price or income of the product

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Maintaining a Beneficial Ownership Register - Practical Issues for Funds

Hidden treasure



Following the money ... until it disappears



The international response

- ▣ 2012 Financial Action Task Force recommendation:

“Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.”

- ▣ Recital 14 of the 4th EU Anti-money Laundering Directive:

“The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure.”

The Irish regulations

- ▣ European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019
- ▣ European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019
- ▣ Implemented requirements of the 4th EU Directive

Who is a beneficial owner?

- ▣ Any natural person(s) who:
 - a) ultimately owns or controls the entity, and/or
 - b) on whose behalf a transaction or activity is conducted

- ▣ A shareholding or ownership interest of a corporate entity greater than 25% will be an indication of beneficial ownership

- ▣ In case of trusts includes the settlor(s), the trustee(s), the protector(s) and the beneficiaries or, where not yet determined, the class of persons

- ▣ Control via other means needs to be considered

Who can access the central registers?

- ▣ Register for corporates will be accessible to any member of the general public
- ▣ Register for trusts will be accessible by anyone who can demonstrate a legitimate interest
- ▣ Corporates required to file with the CRO by 22 November 2019
- ▣ Responsibility for ICAV register still unclear
- ▣ Revenue will maintain Trusts register - filing dates yet to be determined

What's involved?

- ▣ Must take “all reasonable steps” to obtain and maintain “adequate, accurate and current information” regarding their beneficial ownership
 - i.e. name, address, DOB, nationality, nature of interest, date acquired, PPSN
- ▣ Obligated to serve notices on suspected beneficial owners
- ▣ Individuals have a duty to confirm their status
- ▣ Must keep the register up-to-date
- ▣ Designated persons required to notify the Registrar of discrepancies
- ▣ Failure to comply is a criminal offence

How can a Fund comply with the Regulations?

- ▣ Ongoing obligation to keep internal and central registers up-to-date
- ▣ Even where ownership changing on a daily or hourly basis
- ▣ No percentage threshold for Unit Trusts
- ▣ Huge administrative burden for Funds
- ▣ And for the relevant authorities
- ▣ Future exceptions?



What happens if the beneficial owners cannot be identified?

- ▣ Must first exhaust “*all possible means*” to identify beneficial owners
- ▣ If unable then corporates/ICAVs must enter the directors’ details on the register
- ▣ Must keep a record of the actions taken
- ▣ No equivalent provision in the Trusts regulations
- ▣ But the depositary and manager of a trust are included within the definition of beneficial owner - so include the directors of both on the register?

Who should maintain the register and make the filings?

- ▣ Where the Fund is a Company/ICAV
 - Responsibility of the Board of Directors
 - May be delegated – to MLRO?

- ▣ Where the Fund is a Unit Trust
 - Obligation is on the trustee and the “*manager or operator*” of the Fund
 - i.e. the Depositary (where it acts as trustee) and the ManCo/AIFM

- ▣ Reliance on Transfer Agent

Nominee Investors

- ▣ Overlap with CDD requirements - underlying investors of a nominee control the investment, i.e. they are beneficial owners
- ▣ In low risk situations no need to perform CDD on the nominee's clients provided the nominee:
 - is supervised for equivalent AML requirements
 - applies its own robust CDD measures
 - confirms that it will provide the CDD information on its clients upon request
- ▣ Will complying with ESA Guidelines on CDD satisfy the requirement to “*take all reasonable steps*” to obtain beneficial ownership information?

Personal Public Service Numbers (PPSNs)

- ▣ Requirement to obtain PPSNs of beneficial owners
- ▣ PPSNs used by Registrar to verify information provided to it
- ▣ Not included on the central register
- ▣ Not disclosed to anyone – only a “hashed” version retained by Registrar
- ▣ The CRO have suggested that non-Irish beneficial owners/investors will be obliged to obtain a PPSN

Some practical tips

- ▣ Decide who will maintain beneficial ownership register
- ▣ Maintain a record of steps taken to identify beneficial ownership
- ▣ Include directors details on register where unable to identify beneficial owners
- ▣ Ensure PLCs/ICAVs file with the CRO by 22 November 2019
- ▣ Watch out for filing requirements for Trusts in regulations expected later this year
- ▣ Review CDD arrangements for Nominees for compliance with ESA Guidelines
- ▣ Watch out for the Irish Funds guidance



Fitness and Probity Update

Fitness and Probity (“F&P”) Regime – Overview

- ▣ F&P Regime introduced by CBI under the Central Bank Reform Act 2010 (the “2010 Act”)
 - ▣ 2010 Act applies to
 - persons in senior positions within regulated financial service providers (“RFSPs”)
 - controlled functions (“CFs”) and
 - pre-approval controlled functions (“PCFs”)

 - RFSPs must ensure that:
 - their senior personnel comply with the F&P Regime; and
 - they conduct adequate due diligence on CFs/PCFs prior to appointment
 - ▣ S21 of 2010 Act - RFSP shall not permit a person to perform a CF/PCF unless:
 - it’s satisfied on “reasonable grounds” that the CF/PCF complies with any standard of F&P in a code issued by the CBI under section 50; and
 - the person has agreed to abide by such standard
 - ▣ S23 of 2010 Act - Prior written approval of the Central Bank required to appoint a PCF
-

Fitness and Probity – Codes issued under section 50

- ▣ 2 codes issued under Section 50:
 - Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Act 2010) (the “Standards”)
 - Minimum Competency Code 2017 (“2017 Code”)

- ▣ The Standards require a person to be:
 - competent and capable
 - honest, ethical and act with integrity
 - financially sound

- ▣ 2017 Code specifies the minimum competency standards which must be complied with

- ▣ Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 – imposes requirements on RFSPs to ensure that in-scope persons comply with the 2017 Code

Fitness and Probity – due diligence

- ▣ Guidance on Fitness and Probity Standards – sets out CBI’s expectations around due diligence to be carried out by a RFSP on a PCF/CF
 - evidence of compliance with Minimum Competency Code, where relevant
 - evidence of professional qualifications, where relevant
 - evidence of CPD, where relevant
 - record of interview and application, if applicable
 - references
 - record of previous experience
 - record of experience gained outside the State
 - concurrent responsibilities
 - confirm from person whether any of the circumstances set out in section 4.1(a)-(k) and section 5.2(a)-(e) of the Standards apply to them

- ▣ For CF1, CF2 and PCFs additional due diligence required
 - Regulatory sanctions check, CRO check, check re 4.1(j) Standards and judgment searches

Fitness and Probity – due diligence

- ▣ CBI expects
 - RFSPs to consider the specific PCF/CF and to determine the specific competencies and level of probity that should be expected of person performing that

- ▣ In order to meet the requirements of the F&P Regime RFSPs should:
 - determine and document whether a new hire is to perform a CF/PCF and, if so, which one
 - maintain a record of due diligence undertaken in respect of all CFs/PCFs
 - obtain confirmation from CF/PCF that they are aware of the Standards and 2017 Code (if applies) and will adhere to it/them
 - maintain a record of all persons who are performing CFs/PCFs within the RFSP

Fitness and Probity – Ongoing obligations (RFSPs)

- ▣ RFSPs are responsible for ensuring that individuals performing CFs/PCFs meet the Standards - *prior to appointment and on an on-going basis*

- ▣ Guidance recommends:
 - carrying out an annual audit of persons performing CFs/PCFs
 - asking persons performing CFs/PCFs to undertake to notify the RFSP of any material changes in respect of the initial due diligence carried out

- ▣ RFSP should
 - investigate any concerns regarding the F&P of a person performing a CF/PCF;
 - take appropriate action without delay; and
 - notify the CBI of such action

- ▣ Annual PCF Confirmation Return - filed in respect of each PCF holder within the RFSP confirming that they comply with the Standards

Fitness and Probity – Ongoing obligations (PCFs)

- ▣ **PCFs** should be aware of the following declaration contained in the IQ:

*“I will **promptly notify** the Central Bank of Ireland of any **material changes** in the information which I have provided and confirm that I will notify the Central Bank of Ireland in writing of the details of such changes and **any other relevant/material information** of which I may become aware at any time after the date of this declaration.”*

- ▣ **RFSPs** should also be aware of the following statement/declaration which is contained in the Proposer’s Declaration in the IQ:

➤ *“Please confirm the proposing entity will notify the Central Bank of Ireland **without delay** of any **material change in circumstances** that would render the information contained in this application out of date/inaccurate.”*

➤ *“I am aware that it may be an offence...and/or grounds for the Central Bank of Ireland to commence an administrative sanctions procedure against both myself and/or the proposing entity to **knowingly or recklessly...fail to inform** and/or withhold from the Central Bank of Ireland details of any material change in circumstances/new information which is relevant to the proposed approved person.”*

Reporting obligations – PCFs

- ▣ Section 38(2) of the Central Bank (Supervision and Enforcement) Act 2013
- ▣ PCFs “*shall, as soon as practicable to do so*” disclose the following information to the Central Bank where they believe it will be of “*material assistance*” to the Central Bank:
 - an offence under any provision of financial services legislation may have been/is being committed
 - that a “*prescribed contravention*” may have been/is being committed
 - that any other provision of financial services legislation may have been/is being breached
 - that evidence concerning the above matters has been/is being/is likely to be deliberately destroyed
- ▣ Not obliged to report if “*reasonable excuse*” not to report
- ▣ Failure to make a report under S38(2) can be grounds for a fitness and probity investigation

Fitness and Probity – Investigations

- ▣ Section 25 of 2010 Act - CFs/PCFs may be investigated if CBI has “*reason to suspect*” their F&P on the following grounds for investigation (non-exhaustive):
 - inadequate experience, qualifications or skills to effectively perform
 - does not satisfy the Standards or 2017 Code
 - participation in serious misconduct in relation to a RFSPs business
 - PCF failed to make a disclosure under S38(2) or made disclosure which knew was false or misleading
 - has directly/indirectly provided information to the CBI which knew was false/misleading
 - failure to comply with an evidentiary notice or requesting a person/RFSP to not comply
 - conviction of an offence involving AML/CTF, dishonesty or breach of trust

Breach of Part 3 of the 2010 Act is a “prescribed contravention”

CF/PCF may be suspended during investigation (max 6 months) - Prohibition Notice may issue

Recent high profile examples of fines for, inter alia, deficiencies in F&P compliance

Latest Developments in F&P, Individual Accountability

- ▣ Heightened focus on these areas by the CBI in recent months:
 - Two speeches made by the CBI to the financial services industry in August 2018 and May 2019 covering the topics of F&P and Individual Accountability for RFSPs.
 - Four proposals highlighted:
 - Extending the scope of Standards to all those who work in financial services and adding further Standards;
 - Introduction of Senior Executive Accountability Regime (“SEAR”);
 - Enhancements to the current F&P Regime; and
 - Unified Enforcement Process that would apply to all breaches by firms/individuals of financial services legislation and pursuit by the CBI of individuals directly

There will be an opportunity for public consultation on the above proposals regarding the SEAR

Latest Developments in F&P, Individual Accountability

- Issuance of a “Dear CEO” letter to all RFSPs in April 2019
 - Reminder of existing F&P obligations for RFSPs and shortcomings noted by the CBI e.g. failure by RFSPs to report to the CBI how any issues encountered with an individual performing a control function were addressed, individuals carrying out PCF roles without CBI approval.
 - Due diligence for senior positions – where there is uncertainty in how to answer a question in an IQ, as much information as possible should be provided, it is for the CBI to determine whether a fact is material to a PCF application or not, not the applicant.
 - Interviews – individuals applying for PCFs in low and medium impact Firms may be subject to interview, while PCFs in high and medium high impact Firms, will be subject to interview as a matter of course – number of interviews increasing

Fitness and Probity – Next Steps

- ▣ Renewed focus as a result of the “Dear CEO” letter and recent speeches:
 - Individuals carrying out PCFs and CFs must notify their RFSPs of any changes in circumstances affecting their F&P;
 - Notifications to the CBI of any F&P concerns of an individual carrying out a PCF/CF role;
 - Annual certification by CFs on abiding by the Standards;
 - Properly assess if an individual still satisfies their obligations under the Standards – Review and Refresh compliance and records;
 - Implementation/Update of the F&P policies, procedures, practices and address shortcomings; and
 - Must be able to demonstrate how the issues in the “Dear CEO” letter have been considered and to explain and evidence any remedial actions taken
 - Written F&P policies – F&P Criteria, Register of PCF/CF, Due Diligence, Internal Investigations process, procedures for consequences for failures, record keeping

Any questions?



Dillon Eustace Contact Details

Donnacha O'Connor

Donnacha.Oconnor@dilloneustace.ie

Cillian Bredin

Cillian.Bredin@dilloneustace.ie

Keith Waine

Keith.Waine@dilloneustace.ie

Emmet Quish

Emmet.Quish@dilloneustace.ie

DILLON EUSTACE

33-34 Sir John Rogerson's Quay,
Dublin 2,
Ireland.

Telephone +353 1 66 700 22

Fax +353 1 66 700 42

www.dilloneustace.com

DUBLIN • CAYMAN ISLANDS • NEW YORK • TOKYO