

Funds Quarterly Legal and Regulatory Update

Period covered:
1 July 2019 - 30 September 2019

TABLE OF CONTENTS

1	UNDERTAKINGS IN COLLECTIVE INVESTMENTS AND TRANSFERABLE SECURITIES (“UCITS”)	3
2	ALTERNATIVE INVESTMENT FUND MANAGEMENT DIRECTIVE (“AIFMD”)	6
3	LIQUIDITY MANAGEMENT / STRESS TESTING REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES	7
4	CROSS-BORDER DISTRIBUTION OF COLLECTIVE INVESTMENT FUNDS	8
5	MONEY MARKET FUNDS REGULATION (“MMF REGULATION”)	9
6	PACKAGED RETAIL INSURANCE-BASED INVESTMENT PRODUCTS (“PRIIPS”)	9
7	EUROPEAN MARKETS INFRASTRUCTURE REGULATION (“EMIR”)	10
8	SECURITISATION REGULATION	13
9	BENCHMARKS REGULATION	13
10	EUROPEAN FUND AND ASSET MANAGEMENT ASSOCIATION (“EFAMA”)	14
11	EUROPEAN SECURITIES AND MARKETS AUTHORITY (“ESMA”)	14
12	MARKET ABUSE REGULATION (“MAR”)	15
13	TRANSPARENCY DIRECTIVE	15
14	PROSPECTUS REGULATION	15
15	CENTRAL BANK OF IRELAND	16
16	ANTI-MONEY LAUNDERING (“AML”) / COUNTER-TERRORIST FINANCING (“CTF”)	17
17	DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (“GDPR”) / CYBER SECURITY	21
18	BREXIT	23
19	SUSTAINABLE FINANCE	25
20	FOREIGN INVESTMENTS	25
21	INVESTMENT LIMITED PARTNERSHIPS (AMENDMENT) BILL 2019	26

FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

1 UNDERTAKINGS IN COLLECTIVE INVESTMENTS AND TRANSFERABLE SECURITIES (“UCITS”)

1.1 Central Bank publishes twenty-seventh edition of UCITS Q&As

On 15 July 2019, the Central Bank of Ireland (the “**Central Bank**”) published the twenty-seventh edition of its “UCITS – Questions and Answers” (the “**UCITS Q&As**”). The updated UCITS Q&As make the following changes:

- Q&A ID 1070 & 1072 - These Q&As have been removed (which previously provided clarification on filing requirements for Man Co/Depositaries annual and semi-annual reports and which are now redundant by virtue of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019, S.I. No. 230 of 2019 (the “**Central Bank UCITS Regulations**”);
- Q&A ID 1071 - This Q&A has been revised to update cross-references to the Central Bank UCITS Regulations; and
- Q&A ID 1087 – This Q&A has been updated to reflect the changes made by Regulation (EU) 2019/1156 (the “**Cross Border Distribution Regulation**”) so that a UCITS will not be required to prepare a PRIIP KID under Regulation (EU) 1286/2014 (the “**PRIIPs Regulation**”) until 31 December 2021.

The updated UCITS Q&As can be accessed [here](#).

1.2 ESMA publishes consultation paper on performance fees in UCITS

On 16 July 2019, the European Securities and Markets Authority (“**ESMA**”) published a consultation paper on draft guidelines on performance fees in UCITS (the “**Guidelines**”). The aim of the Guidelines is to ensure supervisory convergence by national competent authorities (“**NCAs**”) in relation to the circumstances in which performance fees can be paid and performance fee structures.

The Guidelines are divided into the following sections:

- General principles on performance fee calculation methods;
- Consistency between the performance fee model and the fund's investment objectives, strategy and policy;
- Frequency for the performance fee crystallisation and payment;
- Circumstances where a performance fee should be payable; and
- Disclosure of performance fee model.

The guidelines are based on IOSCO's 2016 report on good practice for fees and expenses of collective investment schemes.

ESMA is welcoming comments on the consultation paper until 31 October 2019. ESMA will consider the feedback received and is expected to publish finalised guidelines in 2020.

The consultation paper can be accessed [here](#).

1.3 Central Bank publishes findings from closet-index review of UCITS funds

On 18 July 2019, the Central Bank of Ireland published its findings from a review into closet-indexing in UCITS funds. In a letter issued to all Irish domiciled UCITS management companies and self-managed UCITS funds (“**Man Cos**”), the Central Bank sets out the steps it expects these firms to take to mitigate against such practices.

The Central Bank requires Man Cos to review existing disclosures relating to the use of benchmark indices in their prospectus and key investor information documents (“**KIIDs**”) and make any necessary changes to these documents no later than 31 March 2020 to ensure investors are receiving sufficient and accurate information about the UCITS’s investment strategy.

Man Cos should now implement a review process to: (i) ensure that UCITS prospectuses and KIIDs satisfy the requirements; and (ii) where they have not already done so, incorporate the additional disclosures into the KIIDs as required under Section II of the ESMA UCITS Q&A (June 2019).

In particular, the points addressed in the Central Bank’s letter include:

- The use made by a UCITS of the relevant benchmark;
- Consistency across all fund documentation;
- Assessment of performance of the UCITS;
- Approval and oversight of UCITS funds;
- Review of management fees where the UCITS is managed with a performance target; and
- Multi-manager UCITS funds.

The Central Bank’s findings can be accessed [here](#).

1.4 Central Bank publishes revised guidance on the use of financial indices by UCITS funds

On 23 July 2019, the Central Bank published revised guidance on the use of financial indices by UCITS funds. The updated guidance amends the certification regime applicable to UCITS using financial indices.

The updated guidance clarifies that the Central Bank requires UCITS management companies to provide a certification that the financial index complies with the UCITS Regulations 2011, the Central Bank UCITS Regulations 2019 and the Central Bank’s Guidance on UCITS Financial Indices in the following two circumstances:

- **Indices based on eligible assets** – An index certification is required where it would not be possible for a UCITS to invest directly in the index without transgressing the risk-spreading limits of the UCITS Regulations.
- **Indices based on ineligible assets** – An index certification is required where the index is comprised of ineligible assets, which are those assets that a UCITS fund cannot invest in directly under the UCITS Rules.

Where a UCITS intends to invest in a financial index not falling within the two circumstances above, no such certification letter is required. However, it remains the case that the responsible person should assess each index that the UCITS intends to use, in order to determine whether the index meets all of the regulatory requirements.

The revised guidance can be accessed [here](#).

1.5 Central Bank issues updated application forms for UCITS

On 5 August 2019, the Central Bank issued updated application forms for UCITS funds in relation to: (i) prospectus applications; and (ii) sub-fund supplement applications. The updates relate to a change in the certification regime for the use of financial indices for a UCITS.

The updated application forms can be accessed [here](#).

1.6 European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2019 (S.I. No. 430 of 2019)

On 13 August 2019, the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2019 (S.I. No. 430 of 2019) (the “**Amending Regulations**”) were enacted to amend the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 as amended (the “**UCITS Regulations**”).

Regulation 33 of the UCITS Regulations has been revised by the Amending Regulations to incorporate provisions confirming that the assets of an investment company belong exclusively to the investment company and that such assets will be segregated from the assets of the depositary/its agents and cannot be used to discharge such entities’ liabilities. This mirrors the existing wording in Regulation 37 of the UCITS Regulations relating to the ownership of assets of a unit trust and common contractual fund.

Regulation 37 of the UCITS Regulations has been revised by the Amending Regulations to extend the obligations of a depositary which holds cash assets of a UCITS fund in the event of insolvency.

Certain other minor updating amendments have also been implemented.

The Amending Regulations can be accessed [here](#).

1.7 ESMA conducts study on use of derivatives by UCITS equity funds

On 30 September 2019, ESMA conducted a study on the use of derivatives by UCITS equity funds in collaboration with researchers from the Technical University of Munich (“TUM”).

The study provides insight into the type of derivatives that are traded by UCITS equity funds, why some of them use trade derivatives whilst others do not, what makes some more active traders and to what extend the trading in derivatives is a reaction to daily changes in the market.

The study conducted by ESMA can be accessed [here](#).

2 ALTERNATIVE INVESTMENT FUND MANAGEMENT DIRECTIVE (“AIFMD”)

2.1 European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2019 (S.I. No. 428 of 2019)

On 13 August 2019, the European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2019 (S.I. No. 428 of 2019) (the “**Amending Regulations**”) were enacted to amend the European Communities (Alternative Investment Fund Managers) Regulations 2013 as amended (the “**Irish AIFM Regulations**”).

Regulation 22 of the Irish AIFM Regulations has been revised by the Amending Regulations to incorporate provisions confirming that the assets of an investment company belong exclusively to the investment company and that such assets will be segregated from the assets of the depositary/its agents and cannot be used to discharge such entities’ liabilities.

Regulation 23 of the Irish AIFM Regulations has been revised by the Amending Regulations to impose an obligation on the auditor of any Irish authorised AIF who has reason to believe that any fact or decision of the AIF is liable to: (i) constitute a material breach of the laws/regulations governing the AIF; (ii) affect the continuous functioning of the AIF; or (iii) lead to a qualified auditors report or a refusal of the auditor to certify the accounts of the auditor, to report the matter to the Central Bank without delay.

Regulation 34 of the Irish AIFM Regulations has been revised by the Amending Regulations to clarify that an Irish AIFM can provide Article 6(4) services (i.e. portfolio management services and “non-core” services) in other Member States either directly or through the provision of a branch, thus reflecting the provisions of Article 33 of AIFMD.

Certain other minor updating amendments have also been implemented.

The Amending Regulations can be accessed [here](#).

3 LIQUIDITY MANAGEMENT / STRESS TESTING REQUIREMENTS FOR COLLECTIVE INVESTMENT SCHEMES

3.1 IOSCO issue statement on IOSCO liquidity risk management recommendations for investment funds

On 18 July 2019, IOSCO issued a statement on the IOSCO liquidity risk management recommendations for investment funds, which were published in February 2018 (the “**Recommendations**”). The statement issued by IOSCO discusses the manner in which the Recommendations provide a comprehensive framework for regulators to deal with liquidity risks in investment funds.

The statement recommends that securities regulators should ensure that the Recommendations are effectively implemented. IOSCO aims to conduct a robust assessment of the practical implementation of the Recommendations in 2020.

The European Fund and Asset Management Association (“**EFAMA**”) has welcomed the statement and supports IOSCO’s approach in seeking regulatory convergence and addressing regulators’ concerns efficiently. EFAMA notes that it is critical to ensure a consistent implementation of the Recommendations and to avoid diverging national regimes on liquidity risk management.

The statement by IOSCO can be accessed [here](#) and EFAMA’s response can be accessed [here](#).

3.2 Central Bank publishes industry letter on fund liquidity management

On 7 August 2019, the Central Bank published an industry letter to fund management companies as part of its ongoing work with industry on Brexit preparedness, in order to highlight the importance of ongoing, effective liquidity management and ensuring compliance with relevant legislation and regulatory obligations for UCITS and AIFs.

The industry letter discusses the importance of executing a liquidity risk management framework for each fund under management and that such should be appropriately calibrated to take into account dealing frequency, investment strategy, portfolio composition and investor profile on an ongoing basis. The Central Bank also stresses that the responsibility to ensure compliance with all legislative and regulatory obligations in relation to the liquidity of each fund under management lies with the board of the fund management company, the individual directors and the relevant designated persons.

The Central Bank letter follows the publication by IOSCO of a statement on liquidity risk management recommendations for investment funds on 18 July 2019.

The industry letter can be accessed [here](#).

3.3 ESMA publishes guidelines on liquidity stress testing in UCITS and AIFs

On 2 September 2019, ESMA published its final report on guidelines on liquidity stress testing (the “**Guidelines**”) which set down minimum standards for liquidity stress testing (“**LST**”) in EU domiciled UCITS and AIF funds.

The Guidelines supplement the existing legislative provisions to set down a common framework for LST carried out on EU domiciled funds and are intended to increase the standard, consistency and frequency of liquidity stress testing by management companies and to promote convergence in the way in which national competent authorities supervise fund liquidity stress testing across the EU. The Guidelines apply to fund managers, depositaries and national competent authorities.

Given the diverse range of fund types, the Guidelines set down a principle-based approach to LST in order to allow management companies to tailor their LST framework taking into account the nature, scale and complexity of the fund(s) under management. Furthermore, the Guidelines provide that LST should be adapted appropriately for each fund.

The Guidelines will take effect from 30 September 2020 and can be accessed [here](#).

4 CROSS-BORDER DISTRIBUTION OF COLLECTIVE INVESTMENT FUNDS

4.1 Regulation and Directive on cross-border distribution of collective investment funds published in Official Journal

On 12 July 2019, Directive (EU) 2019/1160 (the “**Directive**”) and Regulation (EU) 2019/1156 (the “**Regulation**”) were published in the Official Journal of the European Union. Both the Directive and the Regulation make changes to the cross-border distribution of collective investment funds.

The European Parliament adopted the Directive and Regulation in April 2019 while the Council of the European Union adopted the Directive and Regulation in June 2019.

Member States are required to apply measures implementing the Directive from 2 August 2021. The majority of the Regulations will come into effect on 1 August 2019 apart from the following which will not apply until 2 August 2021:

- UCITS managers will no longer be obliged to maintain a physical presence in the host Member State in which a UCITS is registered to market;
- the introduction of disclosure requirements for UCITS and AIF marketing communications;
- the codification of a European Union framework for AIFMs marketing AIFs to retail investors;
- the ability for UCITS managers and AIFMs, who wish to discontinue marketing in a Member State, to withdraw notifications made to that Member State; and
- the ability for AIFMs to undertake "pre-marketing" of established or not yet established AIFs.

The Directive can be accessed [here](#) and the Regulation can be accessed [here](#).

5 MONEY MARKET FUNDS REGULATION (“MMF REGULATION”)

5.1 ESMA publishes final version of guidelines on reporting to competent authorities under the MMF Regulation

On 19 July 2019, ESMA published its final report on guidelines (the “**Guidelines**”) on reporting to national competent authorities (“**NCAs**”) under Regulation (EU) 2017/1131 (the “**Money Market Fund Regulation**” or “**MMF Regulation**”). The Guidelines provide guidance on completing the reporting template on money market funds (“**MMFs**”) that MMF managers are required to submit to relevant NCAs.

Guidance on the reporting template has already been introduced through information in Commission Implementing Regulation (EU) 2018/708, and so the Guidelines are intended as complimentary guidance. ESMA has confirmed that there is no need to retroactively provide historical data for any period prior to the starting date of reporting.

The Guidelines will be applicable two months after the official European Union language versions of the Guidelines have been published on ESMA’s website. It is expected that the first reports from MMF managers to NCAs will be at the end of the first quarter of 2020.

The final report of the Guidelines can be accessed [here](#).

5.2 ESMA publishes final version of guidelines on stress testing scenarios under the MMF Regulation

On 19 July 2019, ESMA published a final report on guidelines on stress test scenarios produced under the MMF Regulation (the “**Guidelines**”). The Guidelines aim at establishing common reference parameters that MMFs or MMF managers should include in their stress scenarios.

The Guidelines are an updated version of the guidelines on stress test scenarios for MMFs originally published in March 2018. The updated parts of the Guidelines will be applicable two months after ESMA publishes the official European Union language versions of the Guidelines on their website.

ESMA intends on updating these Guidelines at least every year to take into account the latest market developments.

The final report of the Guidelines can be accessed [here](#).

6 PACKAGED RETAIL INSURANCE-BASED INVESTMENT PRODUCTS (“PRIIPS”)

6.1 European Commission adopts Delegated Regulation to align transitional arrangements

On 3 July 2019, the European Commission adopted a Delegated Regulation (the “**Delegated Regulation**”) which amends the Commission Delegated Regulation (EU) 2017/653 (the “**PRIIPs Delegated Regulation**”). The purpose of the Delegated Regulation is to align the transitional arrangements for PRIIP manufacturers offering units of UCITS and non-UCITS funds referred to in Regulation (EU) 1286/2014 (the “**PRIIPs Regulation**”) as

underlying investment options with the prolonged exemption period under the PRIIPs Regulation.

The Delegated Regulation will extend the transitional arrangements by two years until 31 December 2021. The Delegated Regulation will be considered by the Council of the European Union and the European Parliament. It will enter into force 20 days after its publication in the Official Journal of the European Union.

The Delegated Regulation can be accessed [here](#).

6.2 ESAs respond to the European Commission on the exclusion of performance scenarios options from PRIIPs consumer testing exercise

On 30 July 2019, the European Supervisory Authorities (the “**ESAs**”) wrote to the European Commission concerning the exclusion of certain performance scenarios options that were proposed by the ESAs to be tested during a consumer testing exercise conducted by the European Commission under the Level 2 review of the PRIIPs Regulation. On 19 July 2019, the European Commission had informed the ESAs that three of the proposed options would be excluded.

The ESAs noted in their response that consumer testing can bring the best insights if a wide range of different approaches and options are first put on the table. The response stated that an exclusion of different options on the basis of their conformity with the existing regulation could excessively limit the value of the feedback from the testing.

The European Commission letter can be accessed [here](#) and the ESA response can be accessed [here](#).

7 EUROPEAN MARKETS INFRASTRUCTURE REGULATION (“EMIR”)

7.1 ESMA publishes updated EMIR Q&As

On 15 July 2019, ESMA published an updated version of its questions and answers on the implementation of Regulation (EU) 648/2012 (“**EMIR**”) (the “**Q&As**”). The update comes as a result of Regulation (EU) 2019/834 (the “**EMIR Refit Regulation**”) entering into force on 17 June 2019.

The following changes have been made to the Q&As:

- **General Question 1:** This Q&A is amended to clarify that fund managers will be legally responsible for reporting to Trade Repositories on behalf of the funds (applicable from 18 June 2020);
- **Q&A 7 on Trade Repositories:** This Q&A relates to reporting by CCPs and the duplication of reporting to Trade Repositories;
- **Q&A 13 on Trade Repositories:** This Q&A relates to the reporting of intragroup transactions;
- **Q&A 39 on Trade Repositories:** This Q&A relates to block trades and allocations;
- **Q&A 44 on Trade Repositories:** This Q&A relates to the transition to the revised technical standards on reporting; and

- **Q&A 52 on Trade Repositories:** This is a new Q&A which clarifies the notional amount field for credit index derivatives.

In addition, Q&As relating to frontloading or backloading (which are no longer relevant following the EMIR Refit Regulation) have been removed.

On 2 October 2019, ESMA published a further updated version of its Q&As on the implementation of EMIR.

The following changes have been made to the Q&As:

- **Q&A 2 on OTC:** This Q&A is amended to clarify when counterparties that start taking positions in over the counter (“OTC”) derivatives need to notify the relevant national competent authorities and ESMA that they have exceeded the clearing thresholds for the first time;
- **Q&A 4 on OTC:** This Q&A is amended to clarify whether counterparties not subject to the clearing obligation should obtain representation from their counterparties;
- **Q&A 12 on OTC:** This Q&A is amended to clarify the status of entities established in a third country;
- **Q&A 14 on Trade Repositories:** This Q&A is amended to clarify whether all transactions within the same legal entity should be reported;
- **Q&A 17 on Trade Repositories:** This Q&A is amended to clarify position level reporting; and
- **Q&A 53 on Trade Repositories:** This is a new Q&A which clarifies the reporting of reference rates not included in Regulation (EU) 2017/105.

The updated Q&As can be accessed [here](#).

7.2 ESMA issues public statement addressing derivatives trading obligation

On 12 July 2019, EMSA issued a public statement addressing concerns in relation to the scope of counterparties subject to the EMIR clearing obligation and the MiFIR derivatives trading obligation.

Regulation (EU) 2019/834 (the “**EMIR Refit Regulation**”), which came into force on 17 June 2019, provides for an exemption from the clearing obligation for small financial counterparties and certain non-financial counterparties, while still being subject to the trading obligation. ESMA addresses the challenges that this misalignment may create for counterparties which are exempt from the clearing obligation.

The statement provides that national competent authorities should not prioritise their supervisory actions in relation to the derivatives trading obligation towards counterparties exempted from the clearing obligation following the entry into force of the EMIR Refit Regulation.

The statement also clarifies the application date of the derivatives trading obligation for counterparties impacted by the modified application date of the clearing obligation under the

EMIR Refit Regulation. The date of application of the derivatives trading obligation should correspond with the new date of application of the clearing obligation as amended by the EMIR Refit Regulation. This date of application should therefore be four months following the notification from financial counterparties to ESMA and national competent authorities as required under the EMIR Refit Regulation, rather than 21 June 2019.

ESMA's statement can be accessed [here](#).

7.3 BCBS and IOSCO agree to one-year extension of the final implementation phase of the initial margin requirements for non-centrally cleared derivatives

On 23 July 2019, the Basel Committee on Banking Supervision ("BCBS") and the International Organisation of Securities Commissions ("IOSCO") agreed to extend the final implementation of the initial margin requirements by one year. The extension will result in the final implementation phase taking place on 1 September 2021.

Covered entities with an aggregate average notional amount ("AANA") of non-centrally cleared derivatives greater than €8 billion will be subject to the initial margin requirements on 1 September 2021. To facilitate the extension, the BCBS and IOSCO have introduced an additional implementation phase whereby as of 1 September 2020, covered entities with an AANA of non-centrally cleared derivatives greater than €50 billion will be subject to the initial margin requirements.

The BCBS and IOSCO have concluded that this extension will support the smooth implementation of the margin requirements and will avoid any market fragmentation. Covered entities are expected to comply with the requirements by the revised timeline and the BCBS and IOSCO strongly encourage market participants to make all relevant arrangements in a timely manner.

The updated version of the margin requirements reflects the extension to the implementation timeline. The BCBS and IOSCO will continue to monitor the progress in this area to ensure consistent implementation across products, jurisdictions and market participants.

7.4 FIA, ISDA and AFME publish joint response to ESMA Consultation Paper on aspects of Article 25 of EMIR

On 29 July 2019, FIA, ISDA and AFME (the "Associations") published a joint response to ESMA Consultation Paper on aspects of Article 25 of EMIR. According to Article 25(2) of EMIR, ESMA may only recognise a third country central counterparty ("TC-CCP") where certain conditions have been satisfied.

The Association's response can be accessed [here](#).

8 SECURITISATION REGULATION

8.1 ESMA publishes updated Q&As, XML schema and validation rules to assist with securitisation reporting

On 17 July 2019, ESMA published several additional resources, namely, updated Q&As, XML schema and validation rules, to assist market participants with the implementation of ESMA's draft technical standards on disclosure requirements under Regulation (EU) 2017/2402 (the "**Securitisation Regulation**").

The additional resources can be accessed [here](#).

8.2 EBA updates Single Rulebook and Q&A tools to include Securitisation Regulation

On 2 September 2019, the European Banking Authority ("EBA") announced the update of its Interactive Single Rulebook and Q&A tools to include the "simple, transparent and standardised" ("STS") Securitisation Regulation.

The inclusion of the Securitisation Regulation allows users to view the EBA's final Technical Standards and Guidelines associated with the Securitisation Regulation. In addition, it allows users to submit any questions regarding the application of the Securitisation Regulation and the EBA's work related to it.

The Interactive Single Rulebook can be accessed [here](#) and the Q&A tools can be accessed [here](#).

9 BENCHMARKS REGULATION

9.1 EMMI publish benchmark statement for administration of EURIBOR

On 17 July 2019, the European Money Markets Institute ("EMMI") published the benchmark statement for the administration of EURIBOR under Regulation (EU) 2016/1011 (the "**Benchmarks Regulation**").

The press release for the authorisation of EMMI can be accessed [here](#) and the benchmark statement can be accessed [here](#).

9.2 ESMA updates its Q&As on Benchmarks Regulation

During the period 1 July to 30 September 2019, ESMA published an updated version of its "Q&As on the Benchmarks Regulation". The update can be summarised as follows:

- **Question 4.2:** This Q&A clarifies whether the short-term rate is based on contributions of input data as defined in Article 3(1)(8) of the Benchmarks Regulation;
- **Question 5.3:** This Q&A clarifies whether a calculation agent is to be considered a user of benchmarks if it is appointed by an issuer of securities;
- **Question 5.11:** This Q&A clarifies whether reference to an index in a bilateral agreement on interest to be paid on exchanged collateral under various over the counter ("OTC") derivatives amounts to "use of a benchmark"; and

- **Question 5.14:** This Q&A clarifies the scope of the definition of commodity benchmarks in the Benchmarks Regulation compared with the scope of that definition under MiFID II.

The updated Q&As can be accessed [here](#).

10 EUROPEAN FUND AND ASSET MANAGEMENT ASSOCIATION (“EFAMA”)

10.1 EFAMA publishes comment paper on counterparty and liquidity risks in exchange-traded funds

On 18 June 2019, EFAMA published a comment paper on counterparty and liquidity risks in exchange-traded funds (“ETFs”).

The comment paper responds to the ECB’s “special feature” study on counterparty and liquidity risks in ETFs, contained in the ECB’s semi-annual Financial Stability Review, and addresses concerns related to these risks in light of evidence from recent episodes of market volatility.

The comment paper can be accessed [here](#).

11 EUROPEAN SECURITIES AND MARKETS AUTHORITY (“ESMA”)

11.1 ESMA publishes responses to survey on short-termism in the financial sector

On 5 September 2019, ESMA published the responses it received to a call for evidence on potential short-term pressures on corporations stemming from the financial sector.

ESMA is considering the impact of short-termism as part of its work on sustainable finance. The responses received by ESMA contribute to the analysis of potential sources of undue short-termism on corporations with an aim to identify areas in which existing rules may contribute to mitigating undue short-termism and areas where the rules may exacerbate short-term pressures.

ESMA aims to deliver a report to the European Commission by December 2019 based on its findings.

The response received by ESMA can be accessed [here](#).

11.2 ESMA publishes study on the exposure of the EU fund industry to CLOs

On 24 September 2019, ESMA published a study on the exposure of the European Union fund industry to collateralised loan obligations (“CLOs”). Following the significant increase in the issuance of leveraged loans and CLOs in the United States and the European Union, supervisors have expressed concerns about the potential risk to investors.

The study looks at the exposure of investment funds to this market and finds that the European Union’s fund industry exposure remains limited at this stage. ESMA has stated that it will review the quality of the rating process methodologies for CLOs to ensure these are robust.

The study carried out by ESMA can be accessed [here](#).

12 MARKET ABUSE REGULATION (“MAR”)

12.1 Central Bank publishes updated guidance on Market Abuse Regulatory Framework

On 22 July 2019, the Central Bank of Ireland published updated guidance on the Market Abuse Regulatory Framework (the “**Guidance**”).

The Guidance modifies the guidance issued by the Central Bank in July 2016 and reflects the entry into force of the Central Bank (Investment Market Conduct) Rules (S.I. No. 366 of 2019) (the “**Investment Market Conduct Rules**”) on 21 July 2019. Part 3 of the Investment Market Conduct Rules sets out market abuse related requirements imposed by the Central Bank.

The Guidance can be accessed [here](#).

13 TRANSPARENCY DIRECTIVE

13.1 Central Bank publishes Requirements, Guidance and Q&As for the Transparency Directive and Regulations

On 21 July 2019, the Investment Market Conduct Rules came into force. Part 2 of the Investment Market Conduct Rules sets out transparency requirements imposed by the Central Bank.

On 22 July 2019, the Central Bank issued guidance on the Transparency Regulatory Framework (the “**Guidance**”). The Guidance modifies earlier guidance issued by the Central Bank and reflects the entry into force of the Investment Market Conduct Rules.

In addition, the Central Bank published questions and answers (the “**Q&As**”) relating to queries which may arise in relation to the Transparency (Directive 2004/409/EC) Regulations 2007 (the “**Transparency Regulations**”) and the Investment Market Conduct Rules.

The Investment Market Conduct Rules can be accessed [here](#).

The Guidance can be accessed [here](#) and the Q&As can be accessed [here](#).

14 PROSPECTUS REGULATION

14.1 ESMA publishes consultation paper on draft guidelines for disclosure requirements under the Prospectus Regulation

On 12 July 2019 ESMA published a consultation paper on the draft guidelines on disclosure requirements (the “**Guidelines**”) under Regulation (EU) 2017/1129 (the “**Prospectus Regulation**”). This comes as a result of the Prospectus Regulation becoming fully applicable on 21 July 2019.

ESMA is welcoming feedback from concerned parties until 4 October 2019. ESMA expects to publish a final report containing a summary of all consultation responses and a final version of the guidelines in the second quarter of 2020.

The consultation paper can be accessed [here](#)

14.2 ESMA publishes updated Q&As on the Prospectus Regulation

On 12 July 2019 ESMA published updated questions and answers (“Q&As”) on the new Prospectus Regulation. The updated version of the Q&As includes 25 new Q&As. The update of the Q&As relate to:

- The application of Article 23(3) of the Prospectus Regulation in relation to issuers that qualify as financial intermediaries;
- Permitting an offer that was initially made using a base prospectus approved under the Prospectus Directive after the entry into application of the Prospectus Regulation; and
- Adding Q&As that originally had been published under the Prospectus Directive.

The updated Q&As can be accessed [here](#).

14.3 The Minister for Finance signs the European Union (Prospectus) Regulations 2019 into law

On 19 July 2019, the Minister for Finance signed the European Union (Prospectus) Regulations 2019 (S.I. No. 380 of 2019) (the “**Irish Regulations**”) into law. The Irish Regulations seek to modify the Irish prospectus framework to comply with the Prospectus Regulation.

A copy of the Department of Finance press release can be found [here](#).

A copy of the Irish Regulations can be found [here](#).

14.4 Central Bank publishes guidance on Prospectus Regulation

On 22 July 2019, the Central Bank issued Guidance on the Prospectus Regulatory Framework (the “**Guidance**”).

The Guidance modifies earlier guidance issued by the Central Bank and reflects the entry into force of the Investment Market Conduct Rules.

The Guidance can be accessed [here](#).

15 CENTRAL BANK OF IRELAND

15.1 Central Bank of Ireland issues consultation paper on errors in investment funds

On 9 September 2019, the Central Bank published its Consultation Paper 130 on the regulatory framework that it proposes to establish regarding rules and guidance on the treatment, correction and redress of errors in investment funds (“**CP130**”).

CP130 sets down a regulatory framework intended to ensure that where a fund error occurs, that error is identified, assessed and corrected and the relevant fund and/or investor is “Appropriately Rectified”, whereby the fund/investor is restored to a position that it/they would have been in had the relevant error or breach not arisen (the “**Framework**”). It is proposed that the Framework will differentiate how an error is “Appropriately Rectified” based on the type of error.

Please see the Dillon Eustace briefing paper entitled “Central Bank of Ireland issues Consultation Paper on errors in investment funds” (11 September 2019) which can be accessed [here](#).

The Consultation Paper can be accessed [here](#).

15.2 Central Bank of Ireland issues end of year deadlines for Fund Authorisations

On 13 September 2019, the Central Bank issued a letter to industry outlining its deadlines for receipt of fund applications from Irish funds seeking a pre-Christmas or pre-year-end effective date.

The Central Bank letter can be accessed [here](#).

15.3 Central Bank commences desktop review under CP86

In August 2019, the Central Bank commenced a desktop review of compliance with its new rules relating to fund management company effectiveness (“**CP86**”). The Central Bank initiated a review of the implementation of its CP86 Guidance on 21 June 2019 and issued a Questionnaire to all fund management companies for completion by 5 July 2019.

As part of its desktop review, the Central Bank has requested certain information related to the managerial functions of a number of fund management companies. Following the review, selected fund management companies will be formally contacted by the Central Bank for further onsite inspections.

15.4 Central Bank issues Prohibition Notice for failure to disclose information as part of the IQ process

On 27 September 2019, the Central Bank issued a Prohibition Notice prohibiting a gentleman performing a pre-approval controlled function (“**PCF**”) from performing any controlled function in all regulated financial service providers for a period of 2 years. This is due to a failure by the PCF in question to provide full disclosure to the Central Bank in an individual questionnaire (“**IQ**”) about the circumstances in which his previous employment had ceased.

The press release issued by the Central Bank can be accessed [here](#).

16 ANTI-MONEY LAUNDERING (“AML”) / COUNTER-TERRORIST FINANCING (“CTF”)

16.1 FATF publish Terrorist Financing Risk Assessment Guidance

On 5 July 2019, the Financial Action Task Force (“**FATF**”) published its Terrorist Financing Risk Assessment Guidance (the “**Guidance**”). The Guidance aims to provide relevant information sources, practical examples and good approaches for concerned parties to consider when assessing terrorist financing risk at the jurisdiction level.

The main areas covered by the Guidance include:

- Examples of information sources when identifying TF threats and vulnerabilities;

- Key considerations when determining the relevant governance and scope of a risk assessment;
- Considerations for different country contexts such as lower capacity jurisdictions;
- Relevant information sources for concerned parties when identifying terrorist financing risks within high-risk sectors such as investments; and
- Practical examples to overcome information sharing challenges.

The Guidance can be accessed [here](#).

16.2 European Parliament and European Commission make statements on final text of Directive (EU) 2019/1153

On 11 July 2019, the European Parliament and the European Commission made statements that were published in the Official Journal of the European Union on the final text of Directive (EU) 2019/1153 (the “**Directive**”) laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences. The Directive came into effect on 10 July 2019.

In their statement, the European Parliament highlighted their disappointment that Article 9 of the Directive does not include rules on precise deadlines and IT channels for the exchange of information between Financial Intelligence Units of separate Member States. Similarly the European Parliament regrets that the scope of this article was limited to crimes related to terrorism and not all serious criminal offences. The European Commission also stated their disappointment of these issues in their statement.

The statements can be accessed [here](#) and the Directive can be accessed [here](#).

16.3 EBA publishes opinion inviting prudential supervisors to communicate with firms on AML and CTF risks

On 24 July 2019, the EBA published an opinion addressed to prudential supervisors to enhance communication with supervised firms about AML and CTF risks in prudential supervision.

The EBA invites prudential supervisors to exchange information with the management of supervised firms to ensure that prudential supervisors consider AML and CTF issues throughout the prudential supervisory process, while co-operating closely with AML and CTF supervisors.

The communication to firms should explain that money laundering and terrorist financing can have a significant adverse impact on a firm's safety and soundness. Prudential supervisors should be aware of, and act on, AML and CTF risks, which may pose prudential risks to the firms they supervise.

The EBA recommends that prudential supervisors alert supervised firms to the fact that the AML and CTF risks will be considered during the prudential supervisory process and in particular, but not solely as follows:

- At authorisation or when assessing the proposed acquisitions of qualifying holdings;
- As part of the ongoing supervision of a firm;
- In the context of the supervisory review and evaluation process; and
- When taking any administrative measures, imposing penalties or proceeding to a withdrawal of authorisation process, to address any potential weaknesses from a prudential perspective.

Prudential supervisors are invited to note in their communications the ongoing need for closer co-operation and increased information exchange between prudential supervisors and AML and CTF competent authorities, at home and abroad.

A copy of the opinion can be found [here](#).

16.4 European Commission publishes package of materials assessing the European Union's AML and CMT framework

On 24 July 2019, the European Commission published a package of materials assessing the European Union's AML and CTF framework. The materials, addressed to the European Parliament and the Council of the European Union, aim to support the European Union and national authorities to better address money laundering and terrorist financing risks.

The Commission notes that the materials will serve as a basis for future policy choices on how to further strengthen AML and CTF framework of the European Union. The Commission will continue to support member states in this area, while seeking to address the remaining structural challenges.

The package of materials contains the following:

- [Communication](#) towards better implementation of the European Union's AML and CTF framework;
- [Supranational risk assessment](#) of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities;
- [Report](#) assessing recent alleged money laundering cases involving European Union credit institutions;
- [Report](#) assessing the framework for cooperation between Financial Intelligence Units;
- [Report](#) on the interconnection of national central bank account registries; and
- Related [Q&As](#).

16.5 European Commission publishes staff working document supplementing the supranational risk assessment under MDL4

On 24 July 2019, the European Commission published a staff working document which supplements the recently published supranational risk assessment of money laundering and terrorist financing risks affecting the European Union and relating to cross-border activities under Directive (EU) 2015/849 (“MLD4”).

The supranational risk assessment is designed to help member states address money laundering and terrorist financing risks related to specific products and services. The staff working document provides an overview of the methodology followed by the Commission to assess the money laundering and terrorist financing risks in the supranational risk assessment. It also provides additional information on the Commission's risk analysis for each of the sectors and products identified as potentially vulnerable to money laundering and terrorist financing risk.

The staff working document can be accessed [here](#).

16.6 Establishment of the Central Register of Beneficial Ownership

On 29 July 2019, the Central Register of Beneficial Ownership of Companies and Industrial and Provident Societies (the “RBO”) was established. Irish incorporated companies now have until 22 November 2019 to submit information on their beneficial owners to the RBO.

Every Irish company is required to maintain an internal register recording accurate and up-to-date information on its ultimate beneficial owners. The European Union (Anti-Money Laundering Beneficial Ownership of Corporate Entities) Regulations 2019 (the “Regulations”) provided for the establishment of the RBO and imposed a duty on companies to submit information on their beneficial ownership to the RBO.

The RBO is now open and all filings must be made online by companies (including investment funds established as public limited companies) by 22 November 2019. Newly incorporated companies are required to register their beneficial ownership details within five months of incorporation. Access to most of the data maintained on the central register will be made available to the general public.

Irish Collective Asset-management Vehicles (“ICAVs”) are subject to the same requirements as Irish companies to maintain a beneficial ownership register and to file that information on a central register. However, a central register has not yet been established for ICAVs. Further regulations are required in order to establish the central register for trusts.

The RBO can be accessed [here](#).

16.7 Central Bank publishes AML Guidelines

On 6 September 2019, the Central Bank published the final version of its Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the Financial Sector (the “Guidelines”). The Guidelines are designed to assist credit and financial institutions in understanding their obligations in relation to AML and CTF, following the implementation in Ireland of MLD4.

The Guidelines are largely consistent with the draft guidelines issued in December 2018 as part of the Central Bank's Consultation Paper CP128, with the majority of changes being for the purposes of clarification. The more material changes relate to the timing of customer due diligence, the approval of politically exposed persons and the training required to be put in place by firms.

The Guidelines can be accessed [here](#).

In addition, please see the Dillon Eustace briefing paper entitled "Central Bank publishes AML Guidelines" (9 September 2019) which can be accessed [here](#) for further information.

16.8 FATF publishes new consolidated assessment ratings

For the period 1 July 2019 to 30 September 2019, the FATF updated the consolidated assessment ratings which provide a summary of: (1) the technical compliance; and (2) the effectiveness of the compliance, of the assessed parties against the 2012 FATF Recommendations on combating money laundering and the financing of terrorism & proliferation. FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed [here](#) and the full set of reports for each country can be accessed [here](#).

17 DATA PROTECTION / GENERAL DATA PROTECTION REGULATION ("GDPR") / CYBER SECURITY

17.1 EDPB holds twelfth plenary session

On 9 and 10 July 2019, the European Data Protection Board ("EDPB") held its twelfth plenary session. Following this session the following were published:

- Recommendation 01/2019 on the draft list of the European Data Protection Supervisor ("EDPS") regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed [here](#);
- Opinion 8/2019 on the competence of a supervisory authority in case of a change in circumstances relating to the main or single establishment, which can be accessed [here](#);
- Opinion 9/2019 on the Austrian data protection supervisory authority draft accreditation requirements for a code of conduct monitoring body pursuant to article 41 GDPR, which can be accessed [here](#);
- Opinion 10/2019 on the draft list of the competent supervisory authority of Cyprus regarding the processing operations subject to the requirement of a data protection impact assessment, which can be accessed [here](#);
- Opinion 11/2019 on the draft list of the competent supervisory authority of the Czech Republic regarding the processing operations exempt from the requirement of a data protection impact assessment which can be accessed [here](#);

- Opinion 12/2019 on the draft list of the competent supervisory authority of Spain regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed [here](#);
- Opinion 13/2019 on the draft list of the competent supervisory authority of France regarding the processing operations exempt from the requirement of a data protection impact assessment, which can be accessed [here](#); and
- Opinion 14/2019 on the draft Standard Contractual Clauses submitted by the supervisory authority of Denmark, which can be accessed [here](#).

17.2 EDPB publishes annual report for 2018

On 16 July 2019, the EDPB published its annual report for 2018. The report, which covers the period from 25 May to 31 December 2018, provides an outline of the activities of the EDPB during this period, along with setting out its main objectives for 2019.

The annual report provides key statistics reflecting matters and proceedings initiated during this period in EEA countries, such as cross-border cases, one-stop-shop procedures, joint operations and binding decisions.

The EDPB endorsed and adopted twenty Guidelines which are contained in the annual report. In addition, 13 sub-groups have been established to assist the EDPB's performance.

The annual report can be accessed [here](#).

17.3 Data Protection Commission publishes guidance note on GDPR breach notification requirements

On 12 August 2019, the Data Protection Commission (“DPC”) published a guidance note on GDPR breach notifications to assist controllers in understanding and complying with their obligations regarding notification and communication requirements.

The guidance note covers two primary obligations of controllers:

- the notification of a personal data breach to the DPC; and
- the communication of that data breach to data subjects, where applicable.

The guidance note also highlights the accountability principle set out in GDPR and states that controllers must document any and all personal data breaches so as to demonstrate compliance with the data breach notification regime to the DPC.

The guidance note can be accessed [here](#).

17.4 Data Protection Commission publishes guidance note on Data Protection Impact Assessments

On 26 September 2019, the Data Protection Commission published a guidance note on Data Protection Impact Assessments (“DPIAs”). The guidance note is designed to assist data controllers and data processors whose business activities may require them to carry out a DPIA.

The guidance note discusses when a DPIA is required and the benefits of conducting a DPIA. It also provides an overview of the steps involved in carrying out a DPIA.

The guidance note can be accessed [here](#).

18 BREXIT

18.1 The Government of Ireland publishes a Contingency Action Plan update to prepare for the withdrawal of the United Kingdom from the European Union

On 9 July 2019, the Government of Ireland published an update on its Brexit Contingency Action Plan. The update expands on the Government's Action Plan published in December 2019 and outlines key preparations for the withdrawal of the United Kingdom from the European Union in the context of the extension of the Brexit Article 50 process to 31 October 2019.

The Government address the significant risk of a no-deal Brexit and the substantial challenges across various industry sectors that flow from this. The update provides a review of the extensive Irish and EU level work already done in this regard, and addresses the contingency measures still to be taken before 31 October.

The updated Action Plan can be accessed [here](#).

18.2 The Government of Ireland approves draft legislation to facilitate transition of the Irish securities market

On 17 July 2019, the Government of Ireland approved draft legislation to facilitate the transition of the Irish securities market from its current settlement system based in the UK to the industry selected settlement system operated in Belgium. The approval of the draft bill is part of the longer term Government response to Brexit.

Brexit means that the Irish market will no longer be able to access the current UK settlement system. The Irish market selected Euroclear Bank in Belgium as its preferred long term solution and the migration of securities from the UK system must be completed and fully operational by March 2021.

The Government's press release can be accessed [here](#).

18.3 ISDA publishes updated Brexit FAQs

On 18 July 2019, the International Swaps and Derivatives Association ("ISDA") published an updated version of its Brexit frequently asked questions ("FAQs"). The FAQs aim to address possible outcomes for the derivatives market post-Brexit. The FAQs have been updated to reflect developments as at 30 June 2019 and deal with topics including the publication of a withdrawal agreement that is not yet ratified and the publication of final and draft UK legislation to cater for Brexit.

The FAQs can be accessed [here](#).

18.4 European Commission publishes Communication on preparations for “no-deal” Brexit

On 4 September 2019, the European Commission published its sixth Communication on finalising preparations for the withdrawal of the UK from the European Union on 1 November 2019.

The Communication is accompanied by five legislative proposals. In the area of financial services, the Commission strongly encourages insurance firms and other financial service operators that have not yet done so to finalise their preparatory measures by 31 October 2019.

The Communication can be accessed [here](#).

18.5 FCA publishes update to the UK Temporary Permission Regime

On 24 May 2019, the UK’s Financial Conduct Authority (“FCA”) published an update to the UK Temporary Permissions Regime (“TPR”). In the event of a no-deal Brexit, all asset managers and AIFMs who intend to market UCITS and AIF funds into the UK post-Brexit, should be aware of certain deadlines. Any authorised UCITS sub-funds or AIFs which do not register for the TPR in advance of 31 October 2019 will not be permitted to market into the UK post-Brexit.

The relevant deadlines are:

- 16 October 2019: management companies are required to notify the FCA of the intention to update an existing application, with the update to be finalised before 30 October 2019.
- 30 October 2019: the deadline for new TPR applications.

Please see the Dillon Eustace briefing paper entitled “TPR Update – October Deadlines” (18 September 2019) which can be accessed [here](#) for further information.

18.6 Central Bank reminds ManCos of deadlines regarding Brexit Plans

The Central Bank has reminded all management companies that they are responsible for making necessary changes to fund documentation to ensure that each fund under management is appropriately prepared for the impact of a hard Brexit. It has also confirmed the deadlines for receipt of Brexit-related changes to fund documentation, as set out below:

- 30 September: amendments to UCITS and RIAIF Prospectuses;
- 30 October 2019 at 3pm: amendments to QIAIF Prospectuses (not involving change of AIFM/continuing use of UK AIFM);
- 1 October 2019: amendments to QIAIF Prospectuses (relating to change of AIM/continuing use of UK AIFM); and
- 1 October 2019: COSP filing for change of AIFM.

In addition, Boards and investment managers should also be mindful of certain operational challenges that may materialise in the event of a hard Brexit such as the following:

- Adjustments to investment portfolios to ensure compliance with EU investment restrictions;
- Liquidity management and valuation tools;
- Share trading obligations;
- Implications for EMIR reporting where the trade repository currently used is a UK entity;
- Transfer of personal data to the UK; and
- The FCA's Temporary Permissions Regime.

For further information on Brexit contingency planning, please see the Dillon Eustace briefing entitled "Contingency Planning for a Hard Brexit" (23 September 2019) which can be accessed [here](#).

19 SUSTAINABLE FINANCE

19.1 European Commission technical expert group announces call for feedback on taxonomy for sustainable economic activities

On 4 July 2019, the European Commission announced that its technical expert group ("TEG") on sustainable finance has launched a call for feedback on taxonomy for environmentally-sustainable economic activities.

The TEG's technical report on taxonomy was published by the European Commission on 18 June 2019. The European Commission has asked stakeholders to comment on the proposed climate change mitigation activities, the climate change adaptation principles and criteria, the usability of the proposed taxonomy and its future development.

Submissions closed on 13 September 2019.

The call for feedback can be accessed [here](#).

20 FOREIGN INVESTMENTS

20.1 China Abolishes Restrictions on the Investment Quota of Qualified Foreign Investors

On 10 September 2019, mainland China's foreign exchange regulator, the State Administration of Foreign Exchange ("SAFE"), confirmed that existing restrictions on both the Qualified Foreign Institutional Investor ("QFII") and RMB Qualified Foreign Institutional Investor ("RQFII") schemes have been abolished.

It is expected that Irish domiciled funds will become increasingly interested in the greater allocations to the Chinese bond and stock market through these channels, in conjunction with other existing channels such as Shenzhen-Hong Kong Stock Connect and the China Bond Connect schemes, which have proven popular with Irish funds since their approval by the Central Bank of Ireland on 15 July, 2015 and 21 March, 2019 respectively.

The SAFE announcement can be accessed [here](#).

Please see the Dillon Eustace briefing paper entitled “China Abolishes Restrictions on the Investment Quota for Qualified Foreign Investors (QFII/RQFII)” (17 September 2019) which can be accessed [here](#) for further information.

20.2 Indian Regulator issues new FPI Regulations

On 23 September 2019, the Securities and Exchange Board of India (“**SEBI**”) issued the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019 (the “**FPI Regulations**”) which took immediate effect.

The FPI Regulations govern the process to be followed by foreign investment in India by entities such as Irish regulated investment funds, so that they can commence investment in India once authorised. In issuing the FPI Regulations, SEBI has now streamlined the regulatory framework for foreign portfolio investors (“**FPIs**”) by permitting FPIs to carry out off market transfers of securities and by simplifying know your customer (“**KYC**”) requirements.

Please see the Dillon Eustace briefing paper entitled “Indian Regulator issues new FPI Regulations” (26 September 2019) which can be accessed [here](#) for further information.

21 INVESTMENT LIMITED PARTNERSHIPS (AMENDMENT) BILL 2019

21.1 Investment Limited Partnerships (Amendment) Bill 2019

On 18 September 2019, the Investment Limited Partnerships (Amendment) Bill 2019 (the “**Bill**”) completed Dáil Éireann - Second Stage (whereby the general principles of the Bill are debated). The Bill will modernise the Investment Limited Partnerships Act 1994, which governs the establishment and operation of regulated investment limited partnerships in Ireland.

The Bill, when enacted, is expected to provide for general updates and enhancements to the existing partnership legislation, to make certain technical amendments to the Irish Collective Asset-management Vehicles Act 2015 and to provide for related matters. The aim of the Bill is to make Ireland a more attractive domicile for private equity funds and in turn broaden the offering of Ireland’s investment funds sector.

The Bill’s progress can be tracked [here](#).

Dillon Eustace

30 September 2019

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