Funds Quarterly Legal and Regulatory Update

Period covered:
1 April 2015 – 30 June 2015

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS

(i) ESMA opinion on the impact of EMIR on UCITS

Directive 2009/65/EC (the "**UCITS Directive**") requires UCITS investing in over-the-counter ("**OTC**") derivative transaction to adhere to counterparty exposure limits (in general 5% of net asset or 10% of net asset when the counterparty is a credit institution). Regulation 648/2012 on OTC derivatives, central counterparties ("**CCPs**") and trade repositories ("**TR**") (the "**EMIR Regulations**"), which was issued subsequent to the UCITS Directive, requires certain OTC derivative transactions be subject to clearing obligations. The question therefore arose as to how the EMIR Regulations would interact with the UCITS Directive? In particular, how the counterparty exposure limits for OTC derivative transactions which are centrally cleared (in accordance with the EMIR Regulations) should be calculated for the purpose of the UCITS Directive? On 22 July 2014, as a first step to addressing this matter, the European Securities and Markets Authority ("**ESMA**") issued a discussion paper (ESMA/2014/876) entitled, "*Calculation of counterparty risk by UCITS for OTC financial Derivative transactions subject to clearing obligation*" (the "**Discussion Paper**").

Following on from its Discussion Paper, on 22 May 2015 ESMA issued its Feedback Statement and Opinion (2015/ESMA/880) (the "**Opinion**"). In the Opinion, ESMA confirms that in its view, there is a conflict between the operation of the EMIR Regulations and the requirements of the UCITS Directive in relation to OTC financial derivative transactions. ESMA's Opinion therefore recommends that the UCITS Directive be amended to take account of the clearing obligations for certain types of OTC transactions required by the EMIR Regulations. ESMA submitted the opinion to the European Commission, European Council and European Parliament.

ESMA suggest that the UCITS Directive should no longer distinguish between OTC derivatives and Exchange Traded Derivatives ("**ETDs**"). Instead, ESMA is of the view that a distinction should be drawn between cleared and non-cleared derivatives/transactions.

As a result, the counterparty limits imposed by Article 51 of the UCITS Directive would apply to both ETDs and cleared OTC derivatives. At present only investments in OTC derivatives are subject to counterparty risk exposure limits under the UCITS Directive. However, different counterparty exposure limits would apply depending on the circumstances as outlined below.

For non-cleared derivative transactions (i.e. non-cleared OTC transactions), ESMA recommends that the existing 5/10% counterparty exposure limits should remain in place.

In respect of cleared derivative transactions, ESMA suggests that different counterparty exposure limits should be applied.

ESMA suggest that EU CCPs and Non-EU CCPs which are recognised by ESMA should be deemed to have a low risk.

Consequently, a UCITS should be permitted to have a high exposure limit to such CCPs. The Opinion does not clarify what "high limit" means in terms of an actual quantitative exposure limit.

In contrast, ESMA suggests that counterparty exposure limits to Non-EU CCPs which are not recognised by ESMA should be deemed to be higher risk. Consequently, the exposure limit of a UCITS to such CCPs should be lower (again, the Opinion provides no clarification what "lower" would mean in terms of an actual quantitative limit).

EMSA also indicates that in its view, separate counterparty exposure limits may need to be applied to CCPs and a CCP's clearing members.

The counterparty exposure limits to be applied by a UCITS to clearing members of EU CCPs and Non-EU CCPs recognised by ESMA should be determined based upon the type of account (i.e. individual client account or omnibus client account) which the UCITS has in place with the relevant CCP. In the case of an individual client account, it would not be necessary to have a separate (i.e. in addition to the exposure limit to the CCP) exposure limit to the clearing member. However, if the account is an omnibus client account, ESMA is of the view that a UCITS should be required to apply a counterparty exposure limit to the clearing member (in addition to the limit to the CCP). Again, the Opinion does not propose any particular limits in this regard.

Although ESMA has now issued an opinion on this matter calling for a modification of the UCITS Directive, it is still unclear as to when we may expect such modification to occur. This is because it would require an amendment to the Directive (which would have to go through the normal legislative process) and also because the Opinion itself is vague on the proposed levels of counterparty exposure which ESMA is suggesting would be appropriate to different circumstances (simply referring to high and low levels).

(ii) Central Bank Updates its Q&A on UCITS

On 12 June 2015, the Central Bank published a Fifth Edition of its UCITS Questions and Answers ("**Q&A**") document. The previous edition was published on 17 December 2014.

The aim of the UCITS Q&A is to outline answers to queries likely to arise in relation to UCITS. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements.

The latest update sees the addition of a new question (Question ID 1013) which deals with Re-domiciliations:

Question:

Can an investment fund which re-domiciles to Ireland as a UCITS be permitted to disclose its past performance in its Key Investor Information Document ("**KIID**") relating to the period when it was domiciled outside Ireland?

Answer:

The Central Bank will permit this past performance to be disclosed where the UCITS management company confirms that:

- the UCITS investment policy, strategy and portfolio composition have not been substantially altered as a consequence of the transfer to the UCITS regime;
- there is no change to the entities involved in the investment management of the UCITS;
- it is satisfied that the past performance data is accurate; and
- appropriate disclosure will be included with the past performance in the KIID stating that the data relates to a period when the investment fund was domiciled outside Ireland and was not authorised as a UCITS.

The updated Q&A is available via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/150612%20UCITS%20QA%20NO%205_%20FINAL.pdf

(iii) EFAMA publish its latest Investment Funds Industry Fact Sheet

On 16 April 2015, the European Fund and Asset Management Association ("**EFAMA**") published its latest Investment Funds Industry Fact Sheet (the "**Fact Sheet**"), which provides net sales of UCITS and non-UCITS for April 2015.

Twenty-seven associations representing more than 99.6% of total UCITS and non-UCITS assets at the end of April 2015 provided net sales and/or net assets data. The main developments in April 2015 in the reporting countries can be summarised as follows:

- Net sales of UCITS increased to €83 billion in April, up from €69 billion in March, as all fund categories attracted net new money during the month;

- Long-term UCITS (UCITS excluding money market funds ("**MMFs**") continued to register large net inflows (€66 billion), albeit lower than in March (€71 billion);

- Bond funds posted reduced net sales of €22 billion compared to €26 billion in March;

- Equity funds experienced a turnaround in net flows to register inflows of €6 billion, against net outflows of €3 billion in March;

- Balanced funds registered net inflows of €29 billion, down from €39 billion in March;

- MMFs registered a turnaround in net sales in March to post net inflows of €16 billion, compared to net outflows of €2 billion in March;

- Total non-UCITS net sales amounted to €16 billion, compared to €18 billion in March. Net sales of special funds (funds reserved to institutional investors) recorded a second consecutive month of net inflows of €12 billion; and

- Total net assets of UCITS stood at €9,036 billion at the end April 2015, representing a 0.4 percent increase during the month. Total net assets of non-UCITS decreased 0.2 percent to stand at €3,541 billion at the month end. Overall, total net assets of the European investment fund industry stood at €12,577 billion at the end of April 2015.

Bernard Delbecque, Director of Economics and Research commented that "*Demand for long-term UCITS remained robust in April as the economic outlook for Europe improved following the launch of quantitative easing by the ECB*".

The fact sheet can be accessed via the following link:

http://www.efama.org/Publications/Statistics/Monthly/Monthly%20Fact%20Sheets/150619_EFAMAMonthlyFactSheetApril2015.pdf

(iv) UCITS V

In July 2012, the European Commission released a proposal on the revision of the UCITS regime in respect of depositary functions, remuneration policies and sanctions. Directive 2014/91/EU ("**UCITS V**") came into effect on September 17, 2014, and EU member states are required to transpose UCITS V into their national laws by March 18, 2016.

UCITS V is a further revision to the UCITS regime which aims to bring the UCITS regime into line in certain respects with the Alternative Investment Fund Management Directive ("**AIFMD**") and introduce a range of corresponding measures which had hitherto been regulated in somewhat less prescriptive terms.

The amendments to the existing UCITS regime aim to address lessons learned from the financial crises, most notably from the Madoff case which highlighted the lack of consistency in the application of the provisions of the UCITS Directive by Member States of the EU.

UCITS V focuses on three main areas namely:

- UCITS depositary's eligibility, functions and liability in circumstances where assets are lost in custody;
- rules governing remuneration policies which UCITS will be obliged to introduce; and
- the harmonisation of the minimum administrative sanctions regime across EU Member States.

In terms of preparation for UCITS V, UCITS and UCITS management companies will need to consider how the forthcoming changes will impact upon their business. In particular such entities will need to consider how the changes will impact on each individual fund's current custody arrangements. In addition, it is likely that a review of the fund prospectus and related documentation, including the business plan, may also be required to take into account the new requirements.

In June 2015, Dillon Eustace published a guide to UCITS in Ireland, which is available via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/A%20Guide%20to%20UCITS%20in%20Ireland.pdf

(v) Proposed Central Bank UCITS Regulations

The Central Bank proposes publishing Central Bank UCITS Regulations which will consolidate, into one document, all of the conditions which the Central Bank imposes on UCITS, their management companies and depositaries.

It is expected that the Central Bank UCITS Regulations and Guidance Notes will be issued on a statutory basis and will replace the current UCITS Notices in the forthcoming months.

The Central Bank also proposes to eliminate the promoter approval process for UCITS in the same way as it has for alternative investment funds, to coincide with the new UCITS Regulations.

AIFMD

(i) ESMA updates Q&A on application of AIFMD

On 12 May 2015, ESMA published an updated version of its questions and answers paper on its AIFMD guidelines.

The intention of the Q&A is to promote common supervisory approaches and practices in the regulation of AIFMD.

The updates to the Q&A are as follows:

- **Section III: Reporting to NCAs under Articles 3, 24 and 42**

Question 56: How do the reporting obligations apply to Alternative Investment Fund Managers ("**AIFMs**") that are sister companies and that are owned by another AIFM?

Answer 56: The reporting obligations apply to each individual AIFM for the alternative investment funds ("**AIFs"**) they manage and/or market in the Union. This means that each AIFM should report individually to the competent authorities of their home Member States.

Question 57: Should AIFMs consider commitments or actual capital drawdowns when they report information on subscriptions over the reporting period for AIFs pursuing private equity strategies?

Answer 57: AIFMs should consider actual capital drawdowns and not commitments when they report information on subscriptions for AIFs pursuing private equity strategies.

Question 58: What are the reporting obligations for a registered AIFM that decides to opt in under the Directive?

Answer 58: An registered AIFM that has opted in under the Directive has to report to its NCAs the information listed in Article 24 of the Directive.

Further, the AIFM should report on an annual basis unless, if at a later stage the total value of assets under management of the AIFM that has opted in exceeds the thresholds of Article 110 of the implementing Regulation, the AIFM will have to report on a more frequent basis to its NCAs.

Question 59: What information should a non-EU AIFM whose total value of assets under management does not exceed the thresholds of Article 3(2)(a) and (b) of the Directive and that markets its AIFs in the Union under a national private placement regime report to the competent authorities?

Answer 59: Article 3 of the AIFMD does not make any distinction between EU AIFMs and non-EU AIFMs. Therefore, non-EU AIFMs whose total value of assets under management does not exceed the thresholds of Article 3(2)(a) and (b) and that market their AIFs in the Union under a national private placement regime should at least report to the competent authorities where they market their AIFs the information listed in Article 3(3)(d) of the Directive. Indeed, the national private placement regimes of the Member States where the non-EU AIFM markets its AIFs may require non-EU AIFMs to report additional information.

Question 60: What information should an AIFM report for questions 128 to 130 of the consolidated reporting template when an AIF invests exclusively in assets denominated in the base currency of the AIF?

Answer 60: The AIFM should report the long and short positions in the base currency of the AIF.

Question 61: Should AIFMs consider distribution of dividends to investors as redemptions for the purpose of questions 267 to 278 of the consolidated reporting template?

Answer 61: No.

Question 62: Should AIFMs always apply the same reporting frequency to AIFs that are sub-funds of the same umbrella AIFs?

Answer 62: No. Each AIF, being sub-funds of the same umbrella AIFs or not, has to be treated separately for the purpose of the reporting obligations.

Question 63: Should AIFMs take into account cash and cash equivalents for the purpose of the main instruments in which the AIF is trading, the principal exposures of the AIF and the five most important portfolio concentrations?

Answer 63: Yes.

Question 64: What should be the procedure for the first reporting on AIFs?

Answer 64: The procedure should be the same procedure as for the first reporting on AIFMs. This procedure is detailed in paragraphs 11 to 13 of ESMA's guidelines on reporting obligations under Articles 3(3)(d) and 24 (1), (2) and (4) of the AIFMD.

Section VII: Calculation of Leverage

Question 5: Which positions should AIFMs take into account when calculating their exposure under the commitment approach pursuant to Article 8 of the Implementing Regulation?

Answer 5: AIFMs should take into account the absolutes value of all the positions of their AIFs valued in accordance with Article 19 of the AIFMD and the criteria laid down in paragraphs 2 to 9 of Article 8 of the Implementing Regulation. For derivative instruments, as required under Article 8(2) (a), AIFMs should convert each position into an equivalent position in the underlying assets using the methodologies set out in Article 10.

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

http://www.esma.europa.eu/system/files/2015-850_qa_aifmd_may_2015_update.pdf

(ii) Central Bank publishes updated AIFMD Q&A

On 12 June 2015, the Central Bank published the thirteenth edition of the AIFMD Q&A. This questions and answers document had previously been updated on 23 January 2015.

The updated version includes amendments to the following questions:

ID 1030

Question: Can a professional investor fund or a QIAIF have a non-EU AIFM?

Answer: Under the current transitional arrangements for AIFMD, a professional investor fund or a QIAIF can have a non-EU AIFM. However, in accordance with Article 67(1)(b) of the AIFMD, ESMA has to issue advice to the European Commission on inter alia the application of the AIFMD passport to non-EU AIFMs by 22 July 2015. If that advice is positive, the European Commission must, by 22 October 2015, adopt a delegated act specifying the date when the non-EU AIFM passport will be 'turned on'. This process is underway and the outcome is not yet known. Accordingly, professional investor funds and QIAIFs can continue to be managed by non-EU AIFMs under the existing transitional arrangements until at least 22 October 2015. At that time this position will be revisited and, if necessary, revised to align it with the European Commission's decision and any transitional arrangements provided.

ID 1058

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

Answer: A professional investor fund will continue to be subject to the NU Series of Notices until the date that its AIFM becomes registered or authorised. From that date, the professional investor fund will be subject to a number of conditions the cumulative effect of which will be to apply an equivalent regime to the professional investor fund regime as is currently set out in the NU Series of Notices. For example, it will be subject to a condition that it shall comply with the provisions of its prospectus and to conditions

concerning the publication and content of financial statements. If the professional investor fund has a registered AIFM, its depositary will also be subject to a condition that it shall comply with the AIFMD depositary regime, except in relation to depositary liability. The current non-UCITS depositary liability regime will apply instead unless the parties choose to apply the AIFMD depositary liability regime. A professional investor fund may convert to become a RIAIF or a QIAIF in which case it must comply with all of the rules applicable to a RIAIF or QIAIF.

The updated Q&A also sees the addition of five new questions on Marketing of unauthorised AIF's as follows:

ID 1089

Question: What is an 'unauthorised AIF'?

Answer: An unauthorised AIF is one which is not authorised by the Central Bank under domestic investment fund legislation.

ID 1090

Question: Can an unauthorised AIF be marketed to appraised/self-certifying investors?

Answer: An unauthorised AIF may be marketed to appraised/self-certifying investors1 in Ireland if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a QIAIF.

ID 1091

Question: Can an unauthorised AIF be marketed to retail investors in Ireland?

Answer: An unauthorised AIF may be marketed to all retail investors if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a RIAIF. As an exemption to the requirement to meet all RIAF requirements AIFs which meet the requirements of Section 705A to 705Q of the Taxes Consolidated Act 1997 and are therefore recognised as real estate investment trusts (REITs) do not need to comply with the leverage conditions which apply to RIAIFs in order to be permitted to market to retail investors.

ID 1092

Question: Can retail investors trade on the secondary market in unauthorised AIF which are not permitted to market to retail investors? Do any restrictions/constraints apply?

Answer: Yes. Retail investors can trade, on the secondary market, in unauthorised AIF. Such secondary market trades will usually occur through investment intermediary firms and, therefore, the protections of the MIFID regime will apply.

ID 1093

Question: I am an unauthorised AIF with Irish retail investors due to secondary market trading in my units. I am proposing a rights issue and pursuant to Company law must provide relevant documentation to all existing shareholders. Does the circulation of this documentation come within the scope of marketing to retail investors?

Answer: The Central Bank does not consider the provision of documents, including rights issue and/or open offer documentation, to existing investors, as an actionable breach of the rules in relation to the marketing of AIF provided that the documentation is strictly confined to what is necessary to comply with applicable law obligations in relation to the treatment of shareholders.

The full AIFMD Q&A is available via the following link

https://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/150612%20AIFMD%20QA%20Version%2013%20FINAL.pdf

(iii) AIMA submits letter regarding AIFMD leverage calculation

On 27 April 2015, the Alternative Investment Management Association ("**AIMA**"), the global hedge fund association, submitted a letter to the European Commission regarding the measure for calculating leverage under the AIFMD. The AIFMD gives power to the European Commission to develop any additional measure of leverage if it finds that the gross and commitment methods currently used under the AIFMD are not sufficient or appropriate for all types of AIFs.

AIMA's letter argued that the European Commission should use its power under the AIFMD to develop an additional measure for calculating leverage under the AIFMD which may be used by AIFMs in addition to the gross and commitment method if AIFMs wish to do so.

AIMA suggested a methodology that would deal with potential future exposure in the same way as the Capital Requirements Regulation would be the most appropriate alternative measure, as it would take a calibrated view of what are the likely risks and exposures from derivatives portfolios by taking into account both the nature and type of derivate as well as it's the maturity profile.

(iv) AIMA publishes an updated guide for fund directors

On 29 April 2015, the AIMA launched an updated version of its Fund Directors' Guide (the "**Guide**"). The Guide takes account of regulatory and tax reforms since it was last published, prior to the financial crisis in 2008, including AIFMD and the Foreign Account Tax Compliance Act ("**FATCA**").

The Guide is aimed at existing and potential fund directors, investment managers and fund promoters and the updated version includes new sections on the general approach to fund governance, monitoring of trading practices and business continuity planning.

(v) Central Bank Updates AIF Rulebook

On 12 June 2015, the Central Bank of Ireland published its latest version of the AIF Rulebook (the "**Rulebook**"), which was amended to include a definition of 'Irish resident,' which is used for the purposed of clarifying its Irish Resident Director Requirements. The Rulebook was previously updated on 6 March 2015.

The updated Rulebook is available via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/AIF%20Rulebook%20FINAL%20JUN%2015.pdf

European Long Term Investment Funds ("ELTIF")

(i) European Council publishes revised text of ELTIF Regulation

On 19 May 2015, the ELTIF Regulation was published in the Official Journal of the European Union. The ELTIF Regulation will enter into force on 8 June 2015 and will become applicable in Member States from 9 December 2015.

The ELTIF Regulation establishes a new type of fund that will allow both professional and retail investors to invest into companies and projects that need long term capital. Essentially, ELTIFs are vehicles designed to boost non-bank investment in the real economy across the European Union. ELTIFs with the ability to provide finance to various infrastructure projects or unlisted companies of lasting duration that issue equity of debt instruments for which there is no readily identifiable buyer.

ELTIFs will also be able to originate loans and use hedging techniques that serve the purpose of hedging risks inherent to other investments of the ELTIF, but are not able to take exposure to commodities or invest in real estate.

Only EU AIFs that are managed by AIFMs, authorised in accordance with AIFMD, will be able to market themselves as ELTIFs. Once authorised as an ELTIF, the fund will be eligible to be marketed across the EU using a passport. The objective of the European Commission is that the ELTIF will become a new European brand, similar to the UCITS, which ensures a level of product protection to investors.

The ELTIF Regulation can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_123_R_0010&from=EN

Irish Collective Asset – Management Vehicles ("ICAV")

(i) ICAV Act 2015 – Forms & Fees Regulation Published

On 19 June 2015, the ICAV Act 2015 (Forms) Regulations 2015 and the ICAV Act 2015 (Forms) Regulations 2015 were both published.

The form set out in the schedule ("**ICAV1**") is prescribed for the purpose of section 142(2) of the ICAV Act 2015. The purpose of the form is to be used by an Investment Company when applying to the Registrar of Companies to de-register a company following its registration as an ICAV. The fee to be paid to the registrar of companies upon application is €15.

Both Regulations are available via the following links:

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0258.pdf

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0259.pdf

Money Market Fund Regulation

(i) European Parliament votes to adopt ECON report on MMF Regulation

As readers may be aware from our previous legislative update, the European Parliament's Economic and Monetary Affairs Committee's ("**ECON**") voted on a draft report on the proposed regulation of MMFs ("**MMF Regulation**") on 26 February 2015.

The impetus for the MMF Regulation is the provision of increased safety and transparency, and overall improved investor protection.

The ECON report on MMF Regulation, which was published in February 2015, was adopted by the European Parliament in a plenary session on 29 April, 2015.

During this plenary session, the Members of the European Parliament ("**MEP's**") noted the importance of MMFs as a source of short-term financing and as such the greater resilience provided by the proposed Regulation would be vital in the event of any future financial crises.

The European Parliament published a press release on the same day as the plenary session noting the consolidation of the European Parliament's position for future three-way-talks with the European Council and the European Commission.

Following the vote of the European Parliament, it was necessary for Latvia's European Union presidency to facilitate talks in the European Council so that the European Council can agree a general approach on the MMF Regulation. However, no progress has been made to date by the Latvian presidency in this regard.

The Chair of ECON has urged the Latvian presidency to do their utmost to ensure a general approach is reached as soon as possible. However, it appears unlikely that any significant progress will be made before Latvia hands over the presidency to Luxembourg in July of this year.

ESMA

(i) ESMA call for evidence on investments using virtual currency or distributed ledger technology

On 22 April 2015, ESMA published a paper on investments using virtual currency or Distributed Ledger Technology calling for responses from all stakeholders who can provide information on the following matters:

- Virtual Currency Investment Products, i.e. collective investment schemes or derivatives such as options and CFDs that have virtual currencies as an underlying or invest in virtual currencies related business and infrastructure;
- Virtual Currency Based Assets/Securities and Asset Transfers, i.e. financial assets such as shares, funds, etc. that are exclusively traded using virtual currency distributive ledgers (also known as block chains);
- The application of the distributed ledger technology to securities/investments, whether inside or outside a virtual currency environment.

ESMA has been monitoring and analysing virtual currency investment over the last six months in order to understand developments in the market, potential benefits or risks for investors, market integrity or financial stability, and to support the functioning of the EU single market. ESMA is aiming to share its analysis in order to promote a wider understanding of innovative market developments.

All contributions should be submitted online at www.esma.europa.eu under the heading 'your input – Consultations'. ESMA will consider all responses received by 21 July 2015.

The report in full is accessible via the following link:

http://www.esma.europa.eu/system/files/2015-532_call_for_evidence_on_virtual_currency_investment.pdf

(ii) Letter from the European Commission – Early legal review of ESMA's draft technical standards

On 11 May 2015, ESMA published a letter written by the Director General for the Internal Market and Services of the European Commission, Mr Jonathan Faull, in relation to the early legal review of ESMA's draft technical standards. The purpose of the letter was to announce the preliminary agreement reached by services of the European Commission and of ESMA on conducting an early review of draft technical standards.

Mr Faull expressed that "the early review in respect to the legality and legislative consistency of draft technical standards carried out by the European Commission would apply to those draft technical standards under Central Securities Depositories Regulations ("**CSDR**"), UCITS V Directive, Transparency Directive, MAR and MiFID/MiFIR".

He states that the joint objective in respect to this exercise is to "*ensure legally sound final draft technical standards with a concurrent time-saving*". The new legal review process enables the European Commission to flag any concerns to ESMA from a legal perspective related to draft technical standards, before their adoption by the Board of Supervisors, while also reducing the risk of any potential lengthy re-approval process that could be triggered by such concerns. Mr Faull stated that he hopes these changes will make the endorsement process more efficient.

He notes that "*the early legal review is without prejudice to the independence of the decision-making progress at the European Commission and at ESMA. ESMA's Board of Supervisors will remain fully independent when adopting the draft technical standards, as provided for in the ESMA Regulation and respective sectoral legislation. At the same time, the College of Commissioners will retain its discretion regarding the endorsement of the draft technical standards adopted and submitted by ESMA, as framed under the ESMA Regulation*".

Mr Faull ensures that the early legal review does not affect in any way the powers entrusted to the European Parliament and the Council towards delegated acts under the Treaty.

Mr Faull stated that ESMA is also expected to deliver all final draft technical standards within the legal deadlines however noted that the early legal review will constitute an additional step in the process and in some cases may result in a lengthening time period necessary before ESMA can finalise and adopt the draft technical standards. He noted in particular with regard to a number of technical standards under Market Abuse Regulation ("**MAR**") and MiFID/MiFIR, which will possibly lead to the delayed submission of the final draft technical standards to the end of September 2015 as opposed to July 2015.

(iii) ESMA Consultation on best practice principles for voting research 2014

On 8 June 2015, ESMA published a call for evidence on the impact of the Best Practice Principles for Shareholder Voting Research 2014 ("**BPP**") published by the Best Practice Principles Group in March 2014.

In its February 2013 report on the role of the proxy advisory industry, ESMA recommended that the industry should develop its own EU code of conduct and committed to review the development of any such code. ESMA's review will examine both how many proxy advisers have signed up to the BPP and the depth of changes brought about by the BPP since they were introduced. The depth of changes will be assessed by reference to:

- how far the BPP address the issues identified by ESMA as needing change;
- the extent to which compliance statements published by signatories to the BPP comply with ESMA's report; and
- the actual practice of signatories following implementation of the BPP.

In relation to the actual practice of signatories to the BPP, the call for evidence seeks to gather information on how stakeholders perceive the most recent proxy seasons to have evolved in light of the BPP. It sets out a number of questions relevant to all stakeholders, with ensuing sections containing questions for specific groups of shareholders, including questions for issuers on the impact and effectiveness of the BPP so far. Questions for issuers include:

- whether the BPP have improved proxy advisors' procedures for managing and disclosing conflicts of interest;
- whether they have enhanced clarity as regards proxy advisors' methodologies and the nature of their information sources; and

- have they enhanced proxy advisors' awareness of the local market, legal and regulatory conditions to which companies are subject.

ESMA has requested that responses to the call for evidence be issued by 27 July 2015. All contributions should be submitted online under the heading 'Your input - Consultations'. This can be done via the following link:

http://www.esma.europa.eu/consultation/Call-evidence-Impact-Best-Practice-Principles-Providers-Shareholder-Voting-Research-and

(iv) ESMA publishes Risk Dashboard NO.2, 2015

On 5 June 2015, ESMA published its Risk Dashboard No.2, 2015 (the "**Risk Dashboard**")

ESMA's comments, outlined in the Risk Dashboard, include the following in respect of quarter 1 2015:

- EU systemic stress remained around the levels of the end of the previous quarter;
- Contagion, liquidity, and credit risk remained high but stable while market risk increased after having partially materialised already in the previous quarter;
- The weak economic prospects, together with an intensified geopolitical uncertainty both inside and outside the EU led to an increase in volatility for most markets, signalling increasing market concerns; and
- Going forward, key risk concerns in the EU include high asset valuations driven by search-for-yield, weak economic prospects, resurgence of public debt policy issues in a number of members states, although to various degrees, and economic and geopolitical uncertainty in the EU's vicinity.

The Risk Dashboard can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-esma_rd_02_2015_909.pdf

(v) ESMA Strategic Orientation 2016 - 2020

On 15 June 2015, ESMA published its Strategic Orientation 2016 - 2020 (the "**Strategic Orientation**").

The Strategic Orientation records and explains the strategic choices that ESMA has made and will assist in making future choices and trade-offs, in the context of the current legislative and institutional framework. It describes the context in which ESMA operates,

ESMA's mission, objectives and activities, the strategic choices that ESMA makes and what implications these choices will have.

The Strategic Orientation has been developed between July 2014 and May 2015. The practical implications of these strategic directions have been developed in a separate internal implementation plan.

The Strategic Orientation can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-esma-935_esma_strategic_orientation_2016-2020.pdf

European Markets Infrastructure Regulation ("EMIR")

(i) ESMA consults on clearing obligations under EMIR

On 11 May 2015, ESMA published its fourth consultation paper (ESMA/2015/807) on the clearing obligation under EMIR (the Regulation on OTC derivate transactions, CCPs and TRs).

This consultation paper seeks stakeholders' views on proposed regulatory technical standards ("**RTS**") on the clearing obligation under EMIR.

The aim of the consultation paper is to seek interested parties views on the RTS that ESMA has to draft and submit to the European Commission.

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission. The consultation process closes on 15 July 2015.

The consultation is available via the following link:

http://www.esma.europa.eu/system/files/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf

(ii) ESMA publishes opinion on the composition of CPP colleges

On 21 May 2015, ESMA published a draft opinion (dated 7 May 2015) on the CCP Colleges to clarify which authorities qualify as a college member under Article 18(2)(c) of EMIR following the establishment of the Single Supervisory Mechanism (the "**SSM**") and to resulting voting rights.

Under Article 18(2) of EMIR, a CCP college (that is, a college to facilitate the granting or refusal of authorisation of a CCP) should include, among other authorities, the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three member states with the largest contributions to the CCP's default fund.

Under the SSM Regulation (Regulation 1024/2013), the European Central Bank ("**ECB**") may take over from national competent authorities ("**NCAs**") the direct prudential supervision of certain clearing members that are credit institutions.

The opinion clarifies that where the ECB has taken over the direct prudential supervision of any of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP, it should join the college pursuant to Article 18(2)(c) of EMIR.

The opinion in full is available via the following link:

http://www.esma.europa.eu/system/files/2015-838_esma_opinion_on_the_composition_of_the_colleges.pdf

(iii) ESMA updates list of authorised CCPs under EMIR

On 27 March 2015, ESMA published an update to its list of CCPs that are authorised under EMIR as well as its Public Register for the Clearing Obligation under EMIR ("**Public Register**").

Following this, on 27 April 2015, ESMA recognised ten third country CCPs established in Australia, Hong Kong, Japan and Singapore.

The recognition by ESMA allows third country CCPs to provide clearing services to clearing members or trading venues established in the EU.

Those CCPs are established in jurisdictions which have been assessed as equivalent by the European Commission with regard to their legal and supervisory arrangements for CCPs. Several other steps led to the recognition of those third-country CCPs, including the conclusion of cooperation agreements with the relevant third-country authorities, as well as the consultation of certain European competent authorities and central banks, as foreseen by EMIR.

As a result, ESMA has published a list of the recognised third-country CCPs as well as the classes of financial instruments covered by the recognition of the following CCPs: ASX Clear (Futures) Pty Ltd, ASX Clear Pty Ltd, HKFE Clearing Corporation Limited, Hong Kong Securities Clearing Company Limited, OTC Clearing Hong Kong Limited, SEHK Options Clearing House Limited, Japan Securities Clearing Corporation, Tokyo Financial

Exchange Inc, Singapore Exchange Derivatives Clearing Limited and The Central Depository (Pte) Limited.

This list will be updated after each new decision on the recognition of third-country CCPs. The updated lists of CCPs are available via the following links:

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

https://www.esma.europa.eu/system/files/third-country_ccps_recognised_under_emir.pdf

The updated Public Register can be found via the following link:

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

(iv) ESMA publishes updated EMIR Q&A

On 27 April 2015, ESMA issued the thirteenth update of its Q&A document (ESMA/2015/775) on the implementation of EMIR. The update relates to the second level of the EMIR validation specifications to be commonly applied by TRs to ensure that reporting is performed according to the EMIR regime.

The validation specifications involve verifying that the values reported in the fields comply with the format and content rules set out in the technical standards on reporting. It is expected that upon implementation by the TRs, a failure to comply with the requirements will trigger a rejection of the report by the TR. This is a key step for achieving better data quality as a rejected report will indicate which fields are not reported in compliance with EMIR and need to be corrected, which will allow counterparties to improve their reporting to meet the EMIR standards.

The validation controls that TRs will put in place are based on the original rules specified in the EMIR technical standards which were published in December 2012 and entered into force on 12 February 2014. No additional reporting requirements are introduced.

In order to allow sufficient lead time to implement the second level validation, ESMA expects the TRs to be able to implement the validation by end October 2015.

The Q&A is available via the following link:

http://www.esma.europa.eu/system/files/2015_775_qa_xii_on_emir_implementation_april_2015.pdf

(v) European Commission Services Consultation on EMIR implementation

On 21 May 2015, the European Commission's Financial Stability, Financial Services and Capital Markets Union Directorate General ("**DG FISMA**") published a consultation to enable it to judge market participants' experience in implementing EMIR (the "**Consultation**").

The European Commission is required under Article 85(1) of EMIR to review and prepare a general report on EMIR for submission to the European Parliament and European Council. It is required to do this by 17 August 2015.

EMIR requires the European Commission in particular to assess:

- The need for any measure to facilitate the access of CCPs to central bank liquidity facilities;
- The systemic importance of the transactions of non-financial firms in OTC derivatives, in particular the impact of EMIR on use of derivatives by non- financial firms;
- The functioning of the supervisory framework for CCPs;
- The efficiency of margining requirements to limit procyclicality and the need to define additional intervention capacity in this area; and
- The evolution of CCPs' policies on collateral margining and securing requirements and their adaptation to the specific activities and risk profiles of their users.

The European Commission also published a speech on 29 May 2015 that was delivered by Jonathan Hill, Commissioner of DG FISMA, at a public hearing in relation to the European Commission's review of EMIR implementation. Points of interest in Lord Hill's speech include:

- Clearing obligations and margin requirements for trades not centrally cleared are still not fully in place. ESMA published its final draft RTS for the central clearing of interest rate swaps ("**IRS**") under EMIR in October 2014. The European Commission has now finalised its discussions with ESMA and is starting the process of getting the first clearing obligations adopted by the European Commission. It has taken some time to refine the rules in co-operation with ESMA, but it has been crucial to get them right as they form the blueprint for the rules that will follow. The timing means that the first clearing rules for certain interest rate products could be in place as soon as April 2016, although a longer phase-in will be provided for different types of counterparties for whom implementation is less straightforward, including a three year delay for nonfinancial end-users.

- The European Commission will soon put in place the necessary extension of the transitional relief for EU pension funds from central clearing. This will provide a further two years to look at possible solutions to the challenges that pension funds face when clearing. However, the European Commission invites comments as part of the review as to whether that will be sufficient.

- ESMA is expected to deliver draft requirements on margin for non-cleared trades within the next few months. This has taken longer than expected, but an unprecedented degree of consistency in standards globally has been achieved, which should reduce the risks of regulatory arbitrage. The European Commission expects to track the internationally agreed timetable, beginning in late 2016, but with a staggered phase-in for smaller counterparties.

Lord Hill also considers whether the review will result in an "EMIR II". He comments that this is by no means yet certain, adding that the European Commission is not planning a change to EMIR's fundamental objectives. However, if the evidence shows that the rules are not proportionate to the risks posed by different types of institution, or if there are ways to improve EMIR so it better meets the objective of financial stability, Lord Hill believes the European Commission should have the confidence to adapt the existing framework.

A related European Commission press release notes that the review will rely largely on feedback received from the consultation. Responses to the consultation are requested by 13 August 2015. An online questionnaire has been provided for this purpose. The public hearing discussion and responses to the consultation will be taken into account and the European Commission will report back later in 2015 on its findings and the next steps. The European Commission will give areas that are yet to come into force, such as clearing, time to bed down, with a view to looking at how they are working in due course.

The Consultation is available in full via the following link:

http://ec.europa.eu/finance/consultations/2015/emir-revision/docs/consultation-document_en.pdf

In order to submit responses to the Consultation, the online questionnaire is available via the following link:

https://ec.europa.eu/eusurvey/runner/emir-revision-2015?surveylanguage=en

(vi) ISDA market practice guidance for portfolio compression under EMIR

On 27 May 2015, the International Swaps and Derivatives Association ("**ISDA**") published market practice guidance dated 12 May 2015, on the portfolio compressions obligations under EMIR.

The following documents have been produced by ISDA's portfolio compressions working group to assist participants when implementing systems and procedures to meet their portfolio compressions requirements:

- Step by step overview of the EMIR portfolio compressions requirements; and
- Product feasibility matrix outlining the products that are considered to be compressible.

ISDA explains that both of the above documents are working documents and will evolve as compression tools continue to advance. The ISDA portfolio compressions working group will review the market guidance twice a year to ensure that it remains current and relevant.

ISDA's documents on EMIR are available via the following link:

https://www2.isda.org/emir/

(vii) ESMA update on derivatives reporting under EMIR

On 29 May 2015, ESMA published a press release providing an update on the harmonisation of derivative transaction reporting to trade repositories ("**TRs**") under EMIR.

ESMA has reported that since February 2014, when derivatives reporting began in the EU, the six EU TRs registered with and supervised by ESMA under EMIR have received more than 16 billion submissions, with average weekly submissions over 300 million.

In April 2015, of the 200 million plus new trades that were added:

- 55% were ETD trades;
- 31% were OTC; and
- 14% were listed derivatives traded off exchange.

ESMA has also explained that when TRs started publishing aggregate data after February 2014, the overall aggregation of publicly available data across TRs was problematic due to different data granularity, level of consistency, presentation structure and formats chosen by TRs. ESMA therefore asked for measures to be implemented to improve the quality, harmonisation and access to data aggregates.

From April 2015, harmonised public data has become available from and updated weekly by all TRs. The information available includes: open positions, trade volume and values which are broken down by derivative class, type, trade type (single-sided EEA, single-sided non EEA, or dual-sided). This enables comparison of data across TRs.

The press release in full is available via the following link:

https://www.esma.europa.eu/news/ESMA-fosters-derivatives-market-transparency?t=326&o=home

(viii) ESMA speech on EMIR work

On 9 June 2015, ESMA published a speech given by Ms Verena Ross, ESMA's Executive Director, on ESMA's work relating to EMIR (the Regulation on OTC derivative transactions, CCPs and TRs).

In her speech, Ms Ross explains that ESMA is very much at the implementation stage of its work on EMIR. With initial work on technical standards complete, ESMA is now working to ensure stringent implementation of this legislation. ESMA expects to submit draft technical standards ("**DTS**") to the European Commission after summer 2015, and the revised ESMA standards should become applicable in the second half of 2016. Ms Ross also comments on:

- ESMA's work on the clearing obligation for derivatives under EMIR. It expects the clearing obligation to be implemented in the EU in the coming months; and
- The review of EMIR reporting requirements. Ms Ross explains that beyond clarifying and improving the rules, reporting parties need to comply with those currently in force, such as the rules on assigning a mutually agreed code to the report ("**UTI**"). ESMA has agreed with NCA to increase supervision on this important obligation.

The speech in full is accessible via the following link:

http://www.esma.europa.eu/system/files/2015-921_keynote_speech_at_idx_2015_verena_ross_9_june_2015.pdf#

(ix) ESMA proposes including ETDs in CCP interoperability arrangements under EMIR

On 2 July 2015, ESMA published its final report on '*The extension of the scope of interoperability arrangements'* (the "**Report**") between EU-based CCPs required under EMIR, recommending that the interoperability provisions should be extended to ETDs.

ESMA was required under Article 85(3)(d) of EMIR to submit to the European Commission a Report on the extension of the scope of interoperability arrangements under Title V of EMIR to transactions in classes of financial instruments other than transferable securities and money-market instruments (which constitute the current scope of EMIR).

In the Report, ESMA explains how the concept of interoperability has emerged in the EU and the general regulatory framework applicable to it under Articles 51 onwards of EMIR and in ESMA's guidelines and recommendations for establishing consistent, efficient and effective assessments of interoperability arrangements. It then provides a description of the current interoperability arrangements between EU CCPs for different product types (that is, EU equities, EU government bonds and EU ETDs). Finally, ESMA examines the reasons for extending the current EMIR framework to derivatives and concludes that its scope should be extended to ETDs, but not yet to OTC derivatives.

The Report is available via the following link:

http://www.esma.europa.eu/system/files/2015-1067_-_report_on_io_extension_0.pdf

Packaged Retail Investment Products

(i) The Joint Committee launches discussion on PRIIPs key information documents

On 23 June 2015, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published a Technical Discussion Paper on risk, performance scenarios and cost disclosures for Key Information Documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs**"). The Joint Committee is looking for feedback from all concerned stakeholders by 17 August 2015.

The ESAs are mandated by the Regulation on KIDs for PRIIPs to develop draft RTS on the content and presentation of the KIDs for PRIIPs. The aim of the KIDs is to provide EU retail investors with consumer-friendly information about investment products with the ultimate aim of improving transparency in the investment market. The ESAs issued a first Discussion Paper in November 2014 (JC/DP/2014/02) seeking stakeholders' general views on how these standardised KIDs should be developed.

This Technical Discussion Paper aims to provide stakeholders with an opportunity to comment on certain specific technical areas related to risk, performance and cost information that are required for the RTS to be developed by the ESAs on PRIIPs Regulation

The Technical Discussion Paper aims to collect views on the possible methodologies to determine and display risks, performance and costs in the KID. The paper is split into a section on risk and reward and a section on costs. A number of different methodological options are identified for each element of disclosure.

The discussion paper is available on the websites of the three ESAs: EBA, ESMA and EIOPA. Comments on this discussion paper can be sent using the response form via the 'Consultations' section of the ESMA website.

Next steps

The ESAs expect to follow this Technical Discussion Paper with a final Consultation Paper setting out the draft RTS under Article 8 of the PRIIPs Regulation in Autumn 2015. A separate Consultation Paper will also be published for the draft RTS under Articles 10 and 13.

The draft RTS on Article 8 will then be finalised and submitted to the European Commission by 31 March 2016, as set out in the PRIIPs Regulation.

The consultation document is available via the following link:

http://www.esma.europa.eu/system/files/jc_dp_2015_01.pdf

The response form is available via the following link:

http://www.esma.europa.eu/consultation/Joint-Committee-consultation-Key-Information-Document-PRIIPS

Credit Rating Agencies Regulation ("CRAs")

(i) ESMA publishes Guidelines on periodic information to be submitted by CRAs

On 23 June 2015, ESMA published guidelines on the periodic information to be submitted to ESMA by CRAs (the "**Guidelines**").

These Guidelines apply to CRAs registered in the EU, and will become effective two months after the publication date.

The aim of the Guidelines set out the information that should be submitted by CRAs to facilitate the consistent supervision of CRAs by ESMA. The Guidelines also seek to clarify ESMA's expectations of the information that should be submitted to ESMA for the calculation of supervisory fees and CRAs market share.

The Guidelines are available via the following link:

http://www.esma.europa.eu/system/files/2015-609.pdf

Payment Services Directive

(i) Informal deal on PSD2 reached by ECON and European Council Presidency

The details of the informal deal between ECON and the Latvian Presidency of the European Council on payment services in the internal market ("**PSD2**") were published in a European Parliament press release on 5 May, 2015.

The press release states that the agreed PSD2 text will be further discussed between the European Parliament, the European Council and the European Commission. Once a final agreement is reached, the European Parliament will put PSD2 to a plenary vote and the outcome will also need to be endorsed by the European Council and by EU member states

Separately, the European Commission has published a press release welcoming the political agreement reached on PSD2 and advising that formal adoption is expected later in 2015

PSD2 when enacted will repeal the current Payment Services Directive which was enacted in 2007.

The updated rules purport to stimulate competition to provide payment services and foster innovative payment methods, especially for online payment services, whilst also improving security and widening consumer choice.

The European Parliament press release is available via the following link:

http://www.europarl.europa.eu/news/en/news-room/content/20150505IPR50615/html/Updating-payment-service-rules-MEPs-do-deal-with-the-Council

The European Commission press release is available via the following link:

http://europa.eu/rapid/press-release_IP-15-4916_en.htm?locale=en

Market Abuse

(i) Benchmark Regulation Update

On 2 April 2015, the European Parliament updated its procedure file on the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts ("**Benchmark Regulation**"), to indicate that the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") report on Benchmark Regulation would be discussed on a plenary session on 10 April, 2015.

ECON's report on the plenary session held on 10 April 2015 was published on 7 May 2015. The full report is available via the following link:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0131+0+DOC+PDF+V0//EN

Furthermore, in accordance with the updated procedure file, the Benchmark Regulation was due for further consideration by the European Parliament during its plenary sessions to be held from 18 and 19 May 2015, despite the previous indications that the proposed Regulation would not be considered until a plenary session to be held from 7 to the 10 of September 2015.

The European Parliament has agreed a negotiating mandate for the Benchmark Regulation and cleared the way for negotiations with the European Council and the European Commission. If political agreement is reached as a result of these negotiations, the European Parliament will endorse the agreed position at a future plenary session.

The European Council must formally approve the draft Benchmark Regulation before it comes into force. Once the Benchmark Regulation enters into force, there will be a 12 month transitional period for the majority of its provisions.

(ii) Delay announced for the delivery of draft technical standards under the Market Abuse Regulation

On 13 May 2015, ESMA published its correspondence with the European Commission outlining the agreed extension to the deadline for the submission of final DTS (originally due in July 2015) under the MAR.

The agreed extension to the end of September 2015, is a result of the European Commission conducting an early legal review of DTS. This review will evaluate the legality and legislative consistency of technical standards under a number of European Directives including UCITS V, the Transparency Directive, the Central Securities Depository Regulation ("**CDSR**"), MiFID II and MAR.

ESMA's letter is available via the following link:

http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-lettermaijoorfaull_en.pdf

The European Commission's letter is available via the following link:

http://ec.europa.eu/finance/general-policy/docs/level-2-measures/2015-05-11-letter-faull-maijoor_en.pdf.

Prospectus Directive

(i) Responses to the Review of the Prospectus Directive Consultation Paper

Responses to the consultation paper on the review of the Prospective Directive were published on 10 June 2015 by the European Commission.

The purpose of the consultation was to gather views on the functioning of the Prospectus Directive and associated implementing legislation. The consultation covered a broad range of issues, including, the scope of the prospectus requirement and the exemptions, the appropriate level of investor protection, possible ways to reduce administrative burden and costs that seem unnecessary, cross-border issues and the possibility to make the regime more appropriate for SMEs and companies with reduced market capitalisation.

The 181 responses to the directive are available via the flowing link:

https://ec.europa.eu/eusurvey/publication/prospectus-directive-2015?language=en

The Joint Committee (ESMA, EIOPA and EBA)

(i) ESA's Joint Committee report on cross-sector risk facing EU financial systems

On 5 May 2015, the Joint Committee of ESAs published its fifth bi-annual report detailing the 'Risks and Vulnerabilities in the EU Financial System' (the "**Report**").

Although the Report found that the risks affecting the EU financial system remain broadly unchanged in substance since the last report in August 2014, ESAs noted that some risks have further intensified.

The major risks include:

- Low growth, low inflation, volatile asset prices and their consequences for financial entities;
- Search for yield behaviour exacerbated by potential rebounds;
- Deterioration in the conduct of business; and
- Increased concern about IT risks and cyber-attacks.

In spite of these intensified risks, the report noted that there has been improved stability and confidence in the financial system as a result of a range of different policy and regulatory initiatives are contributing to and

The full report is available via the following link:

http://www.eba.europa.eu/documents/10180/534414/JC+2014+18+%28Report+on+risks+and+vulnerabilities+in+the+EU+financial+system+spring+2014%29.docx.pdf

(ii) Highlights from Consumer Protection Day 2015

On 3 June 2015, the Joint Committee of the ESAs held its third Joint ESA Consumer Protection Day in Frankfurt. The event attracted over 300 consumer representatives, academics, legal and financial consultants, national supervisors, experts from the EU institutions and financial services industry (banking, securities, insurance and pensions).

Key topics addressed included conduct risk, digitalisation of financial services and challenges for the next decade in banking, securities, insurance and pensions.

On 5 June 2015, the EBA published a document outlining the highlights from the joint ESAs Consumer Protection Day. This document can be accessed via the following link:

http://www.eba.europa.eu/documents/10180/1100425/Highlights+from+the+2015+Joint+Consumer+Day.pdf

(iii) Financial Regulatory Developments

On 4 June 2015, AIMA responded to the EBA's consultation paper on guidelines on sound remuneration practices under CRD4 (the "**Guidelines**"). AIMA outlines several concerns in respect of the Guidelines in its response, as follows:

- Proportionality: AIMA outlines that the EBA's interpretation of the proportionality principle could have serious negative implications for AIMA members and that it should allow firms to neutralise certain provisions of the remuneration principles where proportionate to do so;

- Scope: In respect of the EBA's proposal to apply the Guidelines to staff of delegate entities of a CRD4 group company AIMA outlines that CRD4 does not mention any requirements applying to staff outside the group; and

- Unintended Tax and Regulatory Impacts: AIMA discusses the possible tax consequences of the Guidelines on limited liability partnerships or limited partnerships if dividends paid to a CRD4 group company's shareholders or profit allocations to partners or members of partnerships are considered remuneration where those individuals are otherwise "identified staff" as well. In AIMA's opinion these payments are not remuneration but it envisages disproportionate tax consequences if they are treated as such.

AIMA's response can be accessed via the following link:

http://www.aima.org/objects_store/eba_guidelines_on_sound_remuneration_policies_under_crd_iv_-_response_to_consultation.pdf

Anti-Money Laundering ("AML")/Counter-Terrorism Financing ("CTF")

(i) MLD4 published in the Official Journal

On 5 June 2015, the Fourth Money Laundering Directive (Directive (EU) 2015/849) ("**MLD4**") was published in the Official Journal of the EU. MLD4 extends and replaces the Third Money Laundering Directive ("**MLD3**"), which is the existing EU AML and counter terrorist financing ("**CTF**") regime.

Member States are obliged to transpose MLD4 into national law by 26 June 2017.
Background

The introduction of MLD4 is largely driven by revisions to the FATF Recommendations which were adopted in February 2012 in order to address emerging AML and CTF concerns. The European Commission also published a report in 2012, which reviewed MLD3.

Consequently, the first draft of MLD4 was published in February 2013 and political agreement was reached at the end of 2014. MLD4 was published in the Official Journal following adoption by the European Council in April 2015 and by the European Parliament in May 2015. MLD4 is designed to strengthen the EU's defences against money laundering and terrorist financing.

Some of the important aspects of MLD4 include:

- the risk-based approach;
- beneficial ownership;
- the scope of customer due diligence requirements;
- politically exposed persons ("**PEPs**");
- reliance on third parties;
- enforcement.

Next Steps

MLD4 provides that the ESAs, through their Joint Committee must publish guidelines on the risks of money laundering and terrorist financing affecting the EU financial sector. MLD4 also makes provision for the publication of delegated acts and technical standards

by the European Commission. As outlined above, Member States must bring into force the laws, regulations and administrative provisions to comply with MLD4 by 26 June 2017. It should also be borne in mind that Member States may impose more stringent obligations than those outlined in the directive itself. Firms must now start preparing for compliance with the new rules and will need to consider the effect that MLD4 may have on their business.

Dillon Eustace has published an article on MLD4 which is available via the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Client%20Briefing_%20Fourth%20Money%20Laundering%20Directive%20IV.pdf

(ii) Central Bank Settlement Agreement for breaches of AML regulations

In order for the Central Bank of Ireland (the **"Central Bank"**) to ensure on-going compliance with the statutory obligations imposed on designated persons since the introduction of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "**2010 Act**") and its amendment by the Criminal Justice Act 2013 (the "**2013 Act**") (together the "**Act**"), the Central Bank commenced themed AML/CTF inspections during the summer of 2014.

Although both the number and level of fines imposed as a result of breaches were minimal, the latest settlement agreement announced on 19 May 2015, resulted in a fine of €1.75 million being imposed on a money remittance service provider.

This fine, along with AML/CTF's recurring appearance on the Central Bank's annual Enforcement Priorities, are indicative of the gravity to which the Central Bank views AML and CTF compliance.

The Central Bank's Enforcement Priorities for 2015 are available via the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankpublishesenforcementprioritiesfor2015.aspx

Although the unusually high settlement agreement against the service provider could be attributed to a deterrence mechanism and the risks inherent in a business of that size and nature, the investigation highlighted four key deficient areas that resulted in an increased fine being imposed:

- Policies and procedures in relation to AML/CTF
- Systems for monitoring and identifying suspicious activity

- Customer due diligence record retention;
- Staff Induction and training.

The importance of ensuring the proper implementation of AML/CTF and strict adherence to these particular categories should not be overlooked.

Details of the settlement agreement are available via the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/SettlementAgreementbetweentheCentralBankandWesternUnionPaymentServicesIrelandLimited.aspx

(iii) New ESMA Q&A on AML and CTF risks associated with investment-based crowdfunding

On 1 July 2015, ESMA published a set of *questions and answers* ("**Q&A**") to promote the sound, effective and consistent application of EU rules on AML and CTF to crowdfunding.

ESMA has been carrying out a programme of work on crowdfunding. In December 2014, it published an opinion and advice to clarify existing EU rules applicable to crowdfunding and identify regulatory gaps. In the course of its work, ESMA identified a need to clarify the extent of the risks involved in investment-based crowdfunding relating to the potential for money laundering and terrorist financing. The Q&A provides responses to questions raised by NCAs and draw on expert input from the Joint Committee's AML sub-committee.

The Q&A are aimed at NCAs to support them in delivering common supervisory approaches and practices in this area, taking into account the characteristics of, and risks associated with, different aspects of crowdfunding. However, ESMA considers the Q&A will also help market participants by providing clarity on the issues involved.

ESMA does not expect to produce any further Q&A on this topic, but it will consider, as appropriate, whether any aspects of the Q&A should be revised in the light of new legislation (for example, the Fourth Money Laundering Directive) or significant developments in the crowdfunding market.

The updated Q&A is available via the following link:

http://www.esma.europa.eu/system/files/esma_2015_1005_qa_crowdfunding_money_laundering_and_terrorist_financing.pdf

Connected Party Transactions

(i) Guidance Paper on Connected Party Transactions

On 16 April 2015, Irish Funds (formerly known as the Irish Funds Industry Association ("**IFIA**") published a guidance paper (the "**Guidance Paper**") which aims to provide direction to depositaries in respect of discharging their regulatory obligations as regards transactions between parties connected to the depositary and a fund. The Guidance Paper outlines an approach which depositaries may take in order to comply with their obligations.

The Guidance Paper provides for two categories of transactions as outlined below:

(i) Transactions with parties connected to the Depositary including its affiliated entities

Any transaction carried out with a fund by a party connected to the depositary or its affiliates must:

1. Be carried out as if negotiated at arm's length; and

2. Be in the best interests of the unit/shareholders; and

3. Be subject to a certified valuation by an independent competent person approved for that purpose by the Directors of the fund; or

4. Be executed on best terms on organised investment exchange; or

5. Where 3 and 4 are not practical be on terms which the Directors of the fund are satisfied conform with 1 and 2.

The Investment Manager may provide the Directors with a list of all transactions types which are carried out either with the Depositary or parties connected with the Depositary during the relevant period and on what basis it is satisfied that each type complies with the requirements covered by points 3 or 4 above.

In respect of transactions entered into with the Depositary, which are covered by point 5 above, the Depositary will notify the fund as to the type of transaction that has taken place and by which affiliate. This will allow the fund to enable it to consider approving either a certified valuation or satisfying itself that the relevant transactions were carried out as if negotiated at arm's length, and were consistent with the best interests of the Shareholders of the fund. Typically the Investment Manager will perform this task as part of its ongoing review of transactions carried out between the Depositary, its affiliates and the fund.

(ii) Transactions with parties connected to the promoter, manager, investment adviser and affiliated entities.

A list of all transactions between the fund, its investment advisor, promoter or manager during the relevant period should be provided by the investment manager to the directors and categorised as:

1. Be carried out as if negotiated at arm's length; and

2. Be in the best interests of the unit/shareholders; and

3. Be subject to a certified valuation by an independent competent person, appointed by the directors and approved for that purpose by the Depositary; or

4. Be executed on best terms on organised investment exchange; or

5. Where 3 and 4 are not practical be on terms which the Depositary is satisfied conform to 1 and 2.

The Investment Manager should provide the directors with a list of all transactions connected with themselves or the promoter or manager during the relevant period.

The Investment Manager should list these transactions in three categories:

- Those where the valuation was certified by an independent competent person, approved for that purpose by the Depositary;
- Those which were executed on best terms on an organised exchange;
- Those which do not fall into either of the first 2 categories outlined above.

For those transactions falling into the third category above the Directors should request that the Depositary confirm that those transactions were carried out on terms as if negotiated at arm's length and in the best interests of the unit/shareholders.

The Guidance Paper can be accessed via the following link:

http://files-eu.clickdimensions.com/irishfundsie-amd4t/files/ifiadepositaryconnectedpartytransactionsguidancepaperapril2015f....pdf?_cldee=b3JsYS5tY2tuaWdodEB3aWxsaWFtZnJ5Lmll&urlid=0

Data Protection

(i) General approach reached on the European Commission proposal on the Data Protection Regulation

On 15 June 2015, Ministers in the Justice Council reached a general approach on the European Commission proposal on the Data Protection Regulation. The shared ambition is to reach a final agreement by the end of 2015.

The aim of the data protection reform launched by the European Commission in 2012 is to enable people to better control their personal data. At the same time modernised rules will allow businesses to make the most of the opportunities of the Digital Single Market by cutting red tape and benefiting from reinforced consumer trust. A more rigorous and coherent data protection framework will provide for greater legal and practical certainty for citizens, businesses and public authorities.

The general approach on the Data Protection Regulation includes agreement on:

- *One continent, one law*: the Data Protection Regulation will establish a single set of rules on data protection, valid across the EU. Companies will deal with one law, not 28. It is anticipated that this change will save businesses around €2.3 billion a year. In addition, the new rules will particularly benefit small and medium-sized enterprises ("**SMEs**"), reducing red tape for them. Unnecessary administrative requirements, such as notification requirements for companies, will be removed. It is anticipated that this measure alone will save them €130 million per year;

- *Strengthened and additional rights***:** the right to be forgotten will be reinforced. When citizens no longer want their data to be processed and there are no legitimate grounds for retaining it, controllers will be required to delete the data, unless they can show that it is still needed or relevant. Citizens will also be better informed if their data is hacked. A new proposed right to data portability will make it easier for users to transfer personal data between service providers;

- *European rules on European soil***:** companies based outside of Europe will have to apply the same rules when offering services in the EU;

- *More powers for independent national data protection authorities***:** those authorities will be strengthened in order to effectively enforce the data protection rules, and will be empowered to fine companies that violate EU data protection rules;

- *The 'one-stop shop'***:** the rules will establish a 'one-stop shop' for businesses and citizens: companies will only have to deal with one single supervisory authority, not

28, making it simpler and cheaper for companies to do business across the EU. Individuals will only have to deal with their home national data protection authority, in their own language - even if their personal data is processed outside their home country.

The associated press releases can be accessed via the following link:

http://europa.eu/rapid/press-release_IP-15-5176_en.htm

http://europa.eu/rapid/press-release_MEMO-15-5170_en.htm

(ii) Data Protection Commission Investigates Enforced Subject Access Requests

More than 40 of Ireland's biggest organisations, across a variety of sectors, have been contacted by the Data Protection Commissioner (the "**DPC**") in order to assess whether they are in compliance with obligations surrounding '*Enforced Subject Access Requests'*. The organisations concerned were selected at random.

'*Enforced Subject Data Requests'* involve a situation whereby an individual is required to make a data access request and deliver the information provided under such a request to a potential employer. Enforced Subject Data Requests became an offence under data protection legislation in July of last year.

The DPC has outlined that it intends to "*vigorously pursue and prosecute any abuse detected*". The companies contacted were given three weeks to respond to the DPC and it is intended that follow-up inspections will be carried out by the DPC on this matter.

Financial Services Ombudsman

(i) Ger Deering Appointed as Financial Services Ombudsman ("FSO")

On 20 April 2015, Ger Deering took up his appointment as the Financial Services Ombudsman ("**FSO**") and will subsequently oversee the integration of the offices of the FSO and the Pensions Ombudsman ("**PO**") when the necessary legislation is enacted. Mr Deering is replacing Bill Prasifka who has completed a 5-year term in the role.

Fitness and Probity

(i) PCF Return Updates

In order to correctly capture the details of individuals who have been appointed to the new Pre-Approved Control Functions ("**PCF**"), as outlined in S.I. No394 of 2014 (the

"**Amending Regulation**"), a regulatory return report has been added to the Central Bank's Online Reporting System ("**ONR**"). This return was made available via the ONR on Thursday, 28 May 2015 and the deadline for submission was the 30 June 2015.

As the submitted data will be used to update the Central Bank's internal systems, late submissions are not being accepted.

This return only applies to the six new Pre Approved Control Functions outlined below and only applies to those six PCF's that were in situ on 31 December 2014:

- The office of **Chief Operating Officer (PCF-42)** for all regulated financial service providers;
- **Head of Claims (PCF-43)** for Insurance Undertakings;
- **Signing Actuary (PCF-44)** for Non-Life Insurance Undertakings and Reinsurance Undertakings;
- **Head of Client Asset Oversight (PCF-45)** for Investment Firms;
- **Head of Investor Money Oversight (PCF-46)** for Fund Service Providers;
- **Head of Credit (PCF-47)** for Retail Credit Firms.

The Central Banks's Guidance is available via the following link:

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

Central Bank of Ireland

(i) Central Bank Annual Report

On 30 April 2015, the Central Bank published its Annual Report for 2014 (the "**Report**"). It documents the Central Bank's key activities and developments for 2014.

The Report discusses the continuing progress displayed by Irish economy and more specifically the banking sector since emerging from the EU-International Monetary Fund Programme at the end of 2013. The Report notes the gradual improvements in the balance sheets of banks and their customers.

The Report also outlines the introduction of the SSM that came into force in November 2014. The SSM resulted in the transferal of the final responsibility for the prudential

supervision of the main Irish banks to a new institutional arrangement within the euro area. The Central Bank's support and participation in the SSM was also noted. In preparation for the introduction of the SSM, the Irish banks participated in a comprehensive Eurosystem risk assessment carried out by the Bank. In response to this major change in the approach to supervision in Europe, the Bank's resources for the supervision of banks were extensively re-organised during 2014.

The Annual Performance Statement (the **"Statement**") outlines how the focus of the Central Bank was on the supervision of mortgage arrears and distressed SME loans on banks' balance sheets. The Statement also reports on the progress being made on the management of these issues during the year.

The Central Bank also reviewed its AML/CFT supervisory strategy in 2014. The Report also outlines the Central Bank's Performance Plan for 2015, including its plans to continue conducting AML inspections in 2015.

Finally, the Central Bank reports on its financial profit of €2.1 billion for 2014, resulting in €1.7 billion being paid to the Exchequer from the Central Bank's retained earnings.

The Report is available via the following link:

http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Annual%20Report%202014.pdf

(ii) Central Bank Quarterly Bulletin for Q2 2015

On 1 April 2015, the Central Bank published quarterly results and forecasts for the Irish economy as at Q2 2015. In its report the Central Bank predicts that the strengthened growth seen in the Irish economy will continue, due to the improving labour market and increasing disposable incomes providing greater support to consumer and investment spending in 2015 and 2016.

The full bulletin is available via the following link:

http://www.centralbank.ie/publications/Documents/Quarterly%20Bulletin%20No.%202%202015.pdf

(iii) Central Bank Settlement Agreements

On 21 May 2015, the Central Bank released a publication outlining details of the first ever settlement agreement with the Central Bank that resulted in a monetary fine being imposed against an individual. The fine was imposed as a result of misrepresentation by the 'Head of Finance and Compliance' of a firm's true regulatory capital position.

Although the fine of €105,000 imposed will not be paid as the individual in question is bankrupt, both the amount of the fine and the length of the disqualification period of 10 years imposed are indicative of the seriousness that breaches of regulations are viewed by the Central Bank.

Details of the full settlement agreement are available via the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/SettlementAgreementbetweentheCentralBankofIrelandandMrTadhgGunnell.aspx

(iv) Central Bank's Consumer Protection Function Reviewed

On 24 March 2015, the Central Bank published the outcome of an external review, conducted by the Netherland's Authority for the Financial Markets (the "**AFM**"), on its consumer protection function.

The AFM is the independent supervisory authority in the Netherlands specialising in the savings, lending, investment and insurance markets.

The review which was conducted using the G20/OECD High Level Principles on Financial Consumer Protection as a benchmark, noted the dedication of the Central Bank to continually strive to achieve better outcomes for consumers despite the Central Bank's consumer protection mandate being relatively new.

The review also identified possible areas for improvement and made recommendations to further develop the existing model and approach.

The complete text of the review is available via the following link:

http://www.centralbank.ie/press-area/press-releases/Documents/A%20Review%20of%20Consumer%20Protection%20Function%20of%20Central%20Bank%20of%20Ireland.pdf

(v) Central publication on Fund Management Company Boards

On 12 June 2015, the Central Bank published a document in relation to '*Fund Management Company Boards'* which comprised of the following:-

- A Feedback Statement on the Central Bank's Consultation Paper ("**CP86**") on "Fund Management Company Effectiveness – Delegate Oversight" which was published in September 2014;
- A Consultation on Delegate Oversight Guidance;

- Guidance on Organisational Effectiveness;
- Guidance on Directors' Time Commitments; and
- Provisions regarding the next steps of the Central Bank.

In CP86, the Central Bank suggested certain proposals in order that fund management companies:

(i) Exercise sufficient control over their delegates through close oversight of delegated tasks on a day-to-day basis;

(ii) Exercise effective control over the management company's own operations and activities; and

(iii) Have boards which are composed of the right mix of experience and expertise to achieve, inter alia, the highest standards of oversight of such delegates.

Such proposals included:

- Guidance on how fund management companies should oversee delegates;
- Reduction of the number of existing managerial functions and streamlining these functions;
- Removal of current requirement to have two Irish resident directors (and suggesting replacement provisions); and
- Introduction of a requirement to provide a rationale for board composition.

In its June publication, the Central Bank indicated that it intends to proceed with a number of changes including:

- The streamlining of the managerial functions;
- Requiring fund management companies (as part of the authorisation process) to document the rational for the composition of the board;
- Introduced guidance to assist boards and directors in assessing the time commitments of individual directors in fulfilling their roles.

Boards should review their current board composition, taking into account the Directors' Time Commitments Guidance, to ensure that each director appointed has sufficient time

allocated to their role and that directorship numbers are kept at an acceptable and manageable level.

Fund management companies will have until the 30 June 2016 to update their plans/programmes of operation to reflect the revised managerial functions and the organisational effectiveness role.

For further information, Dillon Eustace has published an article, which provides details on the topics covered in the Central Bank's publication that can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Fund%20Management%20Company%20Boards%20-%20Latest%20Update%20from%20Central%20Bank.pdf

Irish Stock Exchange

(i) New online NAV submission process being introduced in September 2015

On 21 April 2015, the Irish Stock Exchange ("**ISE**") announced the introduction of a new online process for submitting net asset values ("**NAVs**") to the ISE that will take effect from September 2015.

The Code of Listing Requirements and Procedures requires funds listed on the Main Securities Market to submit a NAV per class.

The new service, which will replace ISE's existing NAV submission service, will operate through www.isedirect.ie or through an automated service. This means the e-mail address nav@ise.ie and autonav@ise.ie will no longer be in use and fax and other hard copy forms containing NAV details will no longer be processed.

This new and enhanced automated service will provide a secure environment for the submission of NAVs on a timely basis thus enabling efficient filing, real time intraday updates, straight through processing and publication and reduced risk of error. This will ensure fund issuers can continue to comply with their regulatory and transparency obligations under relevant EU securities legislation and ISE Listing Rules.

All users who currently submit NAVs by email must pre-register their e-mail address and contact information via www.isedirect.ie to facilitate the submission of NAVs online going forward.

Users who currently submit NAV's to autonav@ise.ie can opt to use the automated service now or from the launch date in September 2015.

The ISE has prepared a frequently asked questions document that is available via the following link:

http://www.ise.ie/Website/Products-Services/Investment%20Funds/FAQs-for-new-NAV-submission-process.pdf?v=352015

Companies Act 2014

(i) Introduction

The Companies Act 2014 ("**CA 2014**") commenced on 1 June 2015 and the previous Companies Act 1936-2013 has been almost entirely repealed save a number of limited exceptions.

CA 2014 significantly reforms Ireland's company law regime by consolidating, reforming and amending all existing pieces of company legislation. It impacts every Irish company and has implications for all directors and shareholders. Please see our website (http://www.dilloneustace.ie/publications) for various Dillon Eustace updates on the key elements of CA 2014.

The CA 2014 deals with all types of companies within the one piece of legislation, including two types of private company limited by shares (see further below); a private company limited by guarantee; an unlimited company; several types of public limited and unlimited companies; as well as the Societas Europea.

(ii) New Forms of Company

CA 2014 provides for several new types of company. These include a designated activity company ("**DAC**"), a company limited by shares ("**LTD**"), a public limited company/ societas europaea, an unlimited company, a guarantee company, an unregistered company and an investment company.

Private companies limited by shares will be required to make a decision as to which of the following types of company it wishes to be under CA 2014:

(a) registered under Part 2, of the CA 2014, and given the designation of "limited" or "LTD";

(b) registered under Part 16, in which case it will be referred to as a "designated activity company" or "DAC" ; or;

(c) another type of company (public limited company, societas europaea etc).

CA 2014 provides for an 18 month transition period that commenced on 1 June 2015. At the end of that transition period, where an existing private company fails to elect to convert to some other type of company, that company will be deemed to have become a LTD. The most efficient way to convert is for the shareholders to pass an ordinary resolution adopting a new constitution in place of the existing memorandum and articles of association and changing the company name, within 15 months of the commencement date of 1 June 2015.

LTD: Company Limited by Shares

The key features of the new model private company, the LTD are:

- A LTD can have between 1 and 149 shareholders, with limited liability;
- A LTD may have just one director;
- A LTD must have a company secretary. Where there is only one director, the sole director cannot also act as company secretary;
- A LTD must have a one-document constitution (to replace the current memorandum and articles of association);
- A LTD's new constitution cannot have a clause that limits the objects and business of the Company. This is known as an objects clause. This means a LTD has full unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction;
- The board (including a sole director) of an LTD will automatically be deemed to have authority to bind the company;
- A LTD cannot list any securities (including debt).
- If your company needs to list securities, then the DAC option should be chosen;
- A LTD may dispense with holding an annual general meeting even where it has more than one member
- The "ultra vires" rule (i.e. the rule whereby a company's legal capacity was limited to the objects set out in its memorandum of association) has been abolished.

Designated Activity Company ("DAC"):

The other form of private limited company provided for under CA 2014 is the DAC. A DAC is the closest of the new company types to an existing private company. It must be noted that existing credit institutions and insurance companies are also obliged under CA 2014 to convert to a DAC.

The key features of a DAC are:

- A DAC can have an objects clause, so the company's corporate capacity will be restricted. A DAC will also be capable of listing debt securities on a stock exchange and publish an offering document.
- A DAC will have a two-document constitution.
- A DACs name must end with "designated activity company" or the Irish equivalent.
- A DAC must have at least two directors.
- Similar to the previous Companies Acts 1963-2013, single-member DACs may dispense with holding an annual general meeting, multi-member DACs may not.

(iii) Other Points of Note

Financial Statements

As regards the approach in relation to financial statements, the Commencement Order clarifies:

1. If the financial year ends before 1 June 2015 and the financial statements are signed by the director(s) before 1 June, they must be prepared and filed in accordance with the 1963-2013 Companies Acts; and
2. If the financial year ends after 1 June 2015, the financial statements must be prepared and filed under the 2014 Act.

Under the Commencement Order the following new obligations in Part 6 of the 2014 Act will be commenced in respect of financial years beginning on or after 1 June 2015:

- Section 167: Audit committees;
- Section 225: Director's compliance statement and related statement;
- Section 305(1)b: Share options disclosure;

- Section 306(1): Payments to connected persons;
- Section 326(1)a: Director's names;
- Section 330: Directors' report: statement on relevant audit information.

Central Bank Issues Q&A on the Companies Act 2014

On 12 June 2015 the Central Bank issued a Question and Answers document on the 2014 Act as part of its Market Update.

The question outlined within is as follows:

Question:

Does the Central Bank require UCITS management companies, AIFMs, AIF management companies, fund administrators, depositaries and investment firms which are companies to convert to a DAC under the 2014 Act?

Answer:

Section 18(2) of the 2014 Act prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies Registration Office as a DAC unless they are public limited companies. The 2014 Act does not require other regulated financial service providers which are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.

The complete markets update is available via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Pages/default.aspx

The Workplace Relations Act 2015

(i) Workplace Relations Act signed into law

The Workplace Relations Act 2015 (the "**Act**") was signed into law by the President on 20 May 2015. Following this, it was announced in a Department Jobs, Enterprise and Innovation press release on 8 June 2015, that the Minister for Jobs, Enterprise and

Innovation, Richard Bruton, (TD) stated that, notwithstanding that a commencement order hasn't been signed, the 2014 Act will commence on 1 October 2015.

As readers may be aware from our previous legislative updates, the Act represents a significant development in Irish Employment Law, introducing reforms for how workplace disputes are processed. The Government's objective is to deliver a world-class workplace relations service which is simple to use, independent, effective, impartial, cost effective and provides for workable means of redress and enforcement, within a reasonable period of time.

The Act is available via the following link:

http://www.irishstatutebook.ie/pdf/2015/en.act.2015.0016.pdf

Irish Taxation Update

(i) EU Savings Directive ("EUSD")

On 18 March 2015, the European Commission published a proposed Directive which seeks to repeal the EUSD from 1 January 2016 (with certain elements of the Directive remaining in situ past this date). The repealing Directive has not yet been adopted by the European Commission.

It is intended to replace the EUSD with the Standard for Automatic Exchange of Financial Account Information (i.e. the Common Reporting Standard ("**CRS**")).

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

(ii) Base Erosion and Profit Shifting ("BEPS")

Given the potential impact for Irish funds of Action Point 6 of the Organisation for Economic Co-operation and Development's ("**OECD**") BEPS Project (i.e. regarding the prevention of treaty abuse), the Irish Funds Industry Association have made two submissions on the OECD's discussion draft. The latest of these submissions was issued on 17 June 2015.

FATCA

(i) Revenue Commissioners Publish FAQ Document

In June 2015, Revenue issued a Frequently Asked Questions ("**FAQs**") document which is designed to supplement their '*Guidance Notes on the Implementation of FATCA in Ireland*' originally published on 1 October 2014.

These FAQ's provide clarification on a number of matters regarding FATCA registration and reporting.

They also provide for an extension of the Irish FATCA reporting deadline such that the first FATCA reports for Irish Reporting Financial Institutions are now required to be filed with the Irish Revenue Commissioners by 31 July 2015 (extended from the original deadline of 30 June 2015).

The FAQ document is available via the following link:

http://www.revenue.ie/en/business/aeoi/index.html

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This Funds Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 30 June 2015, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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