Funds Quarterly Legal and Regulatory Update

Period covered:
1 July 2014 – 30 September 2014

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS

(i) UCITS V Directive comes into Force

UCITS V, an additional revision to the UCITS regime, aims to align the UCITS regime with the AIFMD and introduce equivalent measures which had thus far been regulated in a less rigid manner. The focus is primarily on explaining the duties, eligibility, responsibility and accountability of depositories.

On 28 August 2014 the text of the UCITS V Directive (2014/91/EU) ("**UCITS V**") was published in the Official Journal of the European Union (the "**OJ**"). The Directive came into force on 17 September 2014 (20 days after publication in the OJ). Member States must now transpose UCITS V into national law by 18 March 2016. Member States are also obliged to apply such measures from that date.

The goal of UCITS V is to ultimately increase the levels of investor protection and avoid conflicts of interest that could result in excessive risk taking. The key points of Directive 2014/91/EU include that it:

- Clarifies the depositary role including the eligibility criteria for depositaries aligning them with corresponding provisions in the AIFMD, aligning the liability of a depositary with the higher standard of liability of a depositary under AIFMD, and clarifying the UCITS depositary functions and delegation;
- Introduces rules on remuneration policies to be applied to key members of the UCITS managerial staff which must be consistent with and promote sound and effective risk management and discourage disproportionate risk taking by the UCITS; and
- Harmonises minimum administrative sanctions with maximum penalties of €5 million (or 10% of annual turnover) for a company or €5 million for individuals.

UCITS V requires the European Securities and Markets Authority ("**ESMA**") to draft guidelines clarifying the specific reach of the UCITS V remuneration requirements and their practical application. Prior to this a public consultation will take place which should occur over the coming months.

UCITS V can be viewed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0091&from=EN

(ii) AIMA Produces a Summary Note on UCITS V

A summary note of Directive 2014/91/EU (the '**UCITS V Directive'**) has been published by AIMA which compares the UCITS V Directive and the provisions it changes or replaces from the UCITS IV Directive. A full comparison of the text of Directive 2009/65/EC, the UCITS IV Directive, the UCITS V Directive and the AIFMD is provided in the annex to the summary.

The summary note can be viewed via the following link:

http://www.aima.org/objects_store/ucits_v_summary_-_summary_for_members.pdf

(iii) ESMA Consults on Technical Advice on Delegated Acts Required by UCITS V

ESMA published a consultation paper (ESMA/2014/1183) on 26 September 2014 concerning delegated acts required by the UCITS V Directive (*2014/91/EU*). The consultation paper describes ESMA's technical advice to the European Commission in respect of such delegated acts.

The subject matter of the consultation paper concerns certain delegated acts that the Commission has the power to adopt under Article 26 of UCITS V. These delegated acts relate to the insolvency protection of UCITS assets when the depositary delegates safekeeping duties to a third party and the requirement for the management company and depositary to act independently.

Annex IV to the consultation sets out ESMA's views in respect of the insolvency protection of UCITS assets when delegating safekeeping. Measures, arrangements and tasks for the third party to which custody is delegated as well as measures to be put in place by the depositary are suggested by ESMA. Annex IV also provides advice on the requirement for independence. ESMA recognises two types of link between the management company or investment company and the depositary that may cause a risk to their independence. These are: common management and supervision of the management/investment company and the depositary, and cross-shareholdings between the management/investment company and the depositary.

A provisional request to ESMA was made by the Commission for technical advice on 3 July 2014, asking it to deliver its advice by 15 October 2014.

The deadline for replies to the consultation is 24 October 2014. ESMA proposes to submit the final version of the technical advice to the Commission by the end of November 2014.

The consultation paper can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1183.pdf

(iv) ESMA Revised Guidelines on Exchange Traded Funds ("ETFs") and other UCITS Issues

ESMA published a press release on 1 August 2014 to state that it has published the official translations of its final updated guidelines (ESMA/2014/937EN) in respect of ETFs and other UCITS issues. National competent authorities ("**NCAs**") must report within two months to ESMA with respect to their compliance, or intention to comply, with the updated guidelines.

These revised guidelines can be viewed via the following link:

http://www.esma.europa.eu/content/Guidelines-ETFs-and-other-UCITS-issues-0

(v) Central Bank of Ireland (the "Central Bank") Publishes CP84 on the Adoption of ESMA's Revised Guidelines on ETFs and other UCITS Issues

On 28 July 2014, the Central Bank issued a Consultation Paper ("**CP 84**") in respect of the adoption of ESMA's revised guidelines on ETFs and other UCITS issues (the "**ESMA Revised Guidelines**").

The ESMA Revised Guidelines make reference to a 20% of net asset value issuer diversification rule with regards to collateral received for the purposes of Efficient Portfolio Management ("**EPM**") techniques and OTC derivative transactions. On 24 March 2014, ESMA's issued its final report which provides for a derogation from the 20% collateral diversification rule for certain government backed securities. As a point to note, this derogation will be available to all UCITS as opposed to only Money Market Fund ("**MMF**") UCITS, as was originally intended. The Central Bank, however, has raised concerns in relation to the expansion of the derogation to non-MMF UCITS. The Central Bank has therefore issued CP84, which outlines its proposals to put into effect the derogation from the 20% collateral diversification requirement.

The Central Bank has suggested making the derogation subject to an obligation to ensure that the non-cash collateral received by the UCITS is of "high quality", taking into account various criteria specified in CP84. The Central Bank proposes to implement the ESMA Guidelines as follows:

- Provide that all UCITS may avail of the derogation from the collateral diversification requirement where the collateral consists of securities issued or guaranteed by a Member State, one or more of its local authorities, a third country or a public international body of which one or more Member States belong;
- Delete the existing rule in the UCITS Notices which requires that collateral received by UCITS must be "of high quality"; and

- Replace this with a rule to be added to the UCITS Rulebook, that the UCITS may only accept "'high quality" collateral and that in determining whether collateral is of high quality, the UCITS shall be required to conduct an assessment, prior to accepting the collateral, which takes into account: the credit quality of the instrument; the nature of the asset class represented by the collateral; any operational risk; any other significant related counterparty risk; and the liquidity profile.

Where acceptance of collateral will bring the collateral issuer limits over 20% of the total collateral held by the UCITS, the UCITS will be required to apply additional resources to carry out a more detailed assessment of the credit quality of that collateral. Credit quality of already-accepted collateral must be monitored on an on-going basis. Where there is evidence of deteriorating credit quality of collateral held, the UCITS must implement a remediation plan.

Responses to the consultation are requested by 17 October 2014.

The Central Bank's Consultation Paper on the adoption of ESMA's revised guidelines on ETFs and other UCITS issues can be viewed via the following link:

http://www.centralbank.ie/regulation/marketsupdate/Documents/CP%2084_%2028%20JUL%202014.pdf

European Market Infrastructure Regulation ("EMIR")

(i) ESMA Launches First Round of Consultations to Prepare for Central Clearing of OTC Derivatives in the EU

ESMA launched a first round of consultations to prepare for central clearing of OTC derivatives within the European Union on 11 July 2014. The two consultation papers sought stakeholders' views on draft regulatory technical standards ("**RTS**") for the clearing of Interest Rate Swaps ("**IRS**") and Credit Default Swaps ("**CDS**") that ESMA has to develop under EMIR.

With the overarching objective of reducing systemic risk, EMIR introduces the obligation to clear certain classes of OTC derivatives in central clearing houses ("**CCPs**") that have been authorised ("**European CCPs**") or recognised ("**Third-Country CCPs**") under its framework. To ensure that the clearing obligation reduces systemic risk, EMIR specifies a process for the identification of the classes of OTC derivatives that should be subject to mandatory clearing. This includes the assessment of specific criteria that the relevant classes of OTC derivatives have to meet.

ESMA is required to draft RTS on the clearing obligation within six months of the authorisation or recognition of CCPs. ESMA has analysed the classes from several CCP notifications and has

determined that some IRS and CDS classes should be subject to the clearing obligation. Although equity and interest rate futures and options are also offered for clearing, ESMA has decided that a clearing obligation is not necessary for these classes at this stage. However, the two consultation papers may be followed by one or more on other asset classes.

For IRS, the draft RTS propose the following four classes, on a range of currencies and underlying indices should be subject to central clearing:

- Basis swaps;
- Fixed-to-float interest rate swaps;
- Forward rate agreements; and
- Overnight index swaps.

For CDS, the draft RTS propose that European untranched index CDS (for two indices) should be subject to central clearing.

The IRS Consultation Paper closed on 18 August 2014 and the CDS Consultation Paper closed on 18 September 2014. ESMA will use the answers received to draft its final RTS on the clearing obligation for IRS and CDS and send them for endorsement to the European Commission. The clearing obligation will take effect following a phased implementation, with the current proposal ranging from six months to three years after the entry into force of the RTS, depending on the types of counterparties concerned.

For further information, please see: http://www.esma.europa.eu/news/Press-release-ESMA-defines-central-clearing-interest-rate-and-credit-default-swaps?t=326&o=home

IRS Consultation Paper: http://www.esma.europa.eu/system/files/2014-799.pdf
CDS Consultation Paper: http://www.esma.europa.eu/system/files/2014-800.pdf

(ii) ESMA Updates EMIR implementation Q&As

ESMA issued a revised "Questions and Answers" document on the implementation of EMIR, (the "**Q&A**") on 10 July 2014. The Q&A specifically addresses two main issues:

- Clarifies that the clearing exemption for certain European pension schemes does not extend to pension schemes established in third countries; and
- Contains information on the segregation requirements applicable to Third Country CCPs under Article 39 of EMIR.

The latest version of the Q&A can be found here; http://www.esma.europa.eu/content/QA-X-EMIR-Implementation

(iii) Updated EMIR FAQs from the European Commission

The European Commission has also updated its FAQs on EMIR (Part IV) on 10 July 2014 to include clarity around segregation requirements for non-EU clearing members of EU CCPs.

Please find the FAQs here: http://ec.europa.eu/internal_market/financial-markets/news/index_en.htm

(iv) List of Central Counterparties authorised to offer services and activities in the European Union

ESMA's list of European CCPs that have been authorised to provide services and activities in the European Union was last updated on 16 September 2014. There are now thirteen such European CCPs authorised in the European Union. The updated list can be found at this link; http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf

(v) IOSCO Consults on Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives

On 17 September 2014, IOSCO published a consultation paper on risk mitigation standards for non-centrally cleared OTC derivatives. The consultation proposes nine standards, which relate to the following areas which aim at mitigating risks in uncleared OTC derivatives:

- Standard 1 : Scope of coverage
- Standard 2 : Trading relationship documentation
- Standard 3 : Trade Confirmation
- Standard 4 : Valuation with counterparties
- Standard 5 : Reconciliation
- Standard 6 : Portfolio Compression
- Standard 7 : Dispute Resolution
- Standard 8 : Implementation
- Standard 9 : Cross-border transactions.

The proposed standards have been developed in consultation with the Basel Committee on Banking Supervision ("**BCBS**") and the Committee on Payments and Market Infrastructures. They are intended to complement the margin requirements developed by BCBS and IOSCO in September 2013.

The consultation recognises that some jurisdictions have already implemented or are implementing requirements in this area and specifically recognises the risk mitigation measures which have been implemented in the U.S. and the European Union. IOSCO calls for the proposals contained in the consultation paper to be implemented as soon as possible. IOSCO also notes that, due to the global nature of the derivatives markets, any regulatory standards should be compatible across jurisdictions to avoid arbitrage, conflicting rules and to level the playing field.

The consultation closes on 17 October 2014.

(vi) IOSCO Launches Public Information Repository for Central Clearing Requirements

IOSCO unveiled an information repository for central clearing requirements for OTC derivatives, which provides regulators and market participants with consolidated information on the clearing requirements of different jurisdictions.

The repository sets out central clearing requirements on a product-by-product level, and any exemptions from them. The information in the repository will be updated quarterly.

The repository can be accessed at this link:

http://www.iosco.org/library/index.cfm?section=information_repositories

(vii) ESMA Discussion Paper on Calculation of Counterparty Risk by UCITS for OTC Derivatives subject to EMIR clearing

On 23 July 2014, ESMA published a discussion paper (the "**Discussion Paper**") on the calculation of counterparty risk by UCITS for OTC derivative transactions subject to clearing obligations under EMIR.

The Discussion Paper is seeking stakeholders' views on how the limits on counterparty risk in OTC derivative transactions that are centrally cleared should be calculated by UCITS, and whether the same rules should be applied by UCITS for both centrally cleared OTC transactions and Exchange Traded Derivatives.

The Discussion Paper is focused on the impact of a default of a clearing member or of other clients of that member on the UCITS that enters into centrally cleared OTC derivative transactions. This takes into account the fact that European CCPs and Third Country CCPs are already subject to stringent collateral requirements, and should generally be considered as entailing low counterparty risk.

This Discussion Paper distinguishes between different clearing arrangements:

1. Direct clearing arrangements, i.e. the UCITS is a client of the clearing member with:

   - Individual client segregation;
   - Omnibus client segregation;
   - Other types of segregation arrangement; or
   - Segregation arrangements with a non-EU CCP outside the scope of EMIR.

2. Indirect clearing arrangements between the CCP, the clearing member, the client of the clearing member and the UCITS.

The consultation is open for feedback until 22 October 2014. ESMA will use the feedback received from the public consultation to determine its final views on the appropriate way forward, including a possible recommendation to the European Commission on a modification of the UCITS Directive.

(viii) Joint Consultation on Draft RTS on Risk-Mitigation Techniques for OTC-derivative Contracts not Cleared by a CCP

The European Supervisory Authorities ("**ESA's"**) launched a consultation on 14 April 2014 regarding draft RTS on risk mitigation measures for OTC derivative contracts not cleared by a CCP. The consultation closed on 14 July 2014.

For those OTC derivative transactions that will not be subject to central clearing, the draft RTS prescribe that counterparties apply robust risk mitigation techniques to their bilateral relationships, which will include mandatory exchange of initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.

The draft RTS elaborate on the risk-management procedures for the exchange of collateral and on the procedures concerning intragroup exemptions including the criteria that identify practical and legal impediments to the prompt transfer of funds.

The draft RTS lay down the methodologies for the determination of the appropriate level of margins, the criteria that define liquid high-quality collateral, the list of eligible asset classes, collateral haircuts and concentration limits.

Based on the responses received, the ESAs will prepare the final draft RTS and intend to submit these to the European Commission before the end of 2014.

The responses can be found at this link; http://www.esma.europa.eu/consultation/Joint-Discussion-Paper-Draft-Regulatory-Technical-Standards-risk-mitigation-techniques-#responses

(ix) Treatment of FX Forwards under EMIR

As previously reported, the treatment by regulators of FX Forwards under EMIR varies across the European Union. The reason for these diverging approaches is the fact that a derivative under EMIR is defined by reference to Directive 2004/39/EC (the "**MiFID Directive**") and Member States transposed the MiFID Directive differently.

Concerns have been expressed by both the European Commission and ESMA about the lack of consistency between EU Member States with regards to the definition of an FX Forward. On 31 July 2014, (further to previous correspondence between ESMA and the European Commission on the topic) ESMA published a letter (dated 23 July 2014), (the "**Letter**") from the European Commission on the need for clarity regarding the definition of a financial instrument relating to FX.

The Letter outlines the need for a consistent interpretation to ensure the effective application of the reporting regime of EMIR. However, unfortunately the European Commission has now clarified that it is not in a position to develop such a definition using an implementing act, for legal reasons[1]. However, the Letter provides that MiFID II and related implementing measures (which will apply from 3 January 2017) will be able to provide legal certainty as to the definition of a FX contract. In addition, the Letter suggests that ESMA should consider whether "the current approach by Member States achieves a sufficiently harmonised application of the EMIR reporting obligation in the period before the application of MiFID II or whether further measures by ESMA e.g. guidelines are necessary". The Letter sets out the "broad consensus" on a definition of FX spot contracts, which have been reached following extensive public debate and meetings of the European Securities Committee as follows:

- To use a T+2 settlement period to define FX spot contracts for European and other major currency pairs;
- To use the "standard delivery period" for all other currency pairs to define a FX spot contract;
- Where contracts for the exchange of currencies are used for the sale of a transferable security to use the accepted market settlement period of that transferable security to define a FX spot contract, subject to a cap of 5 days; and
- A FX contract that is used as a means of payment to facilitate payment for goods and services should also be considered a FX spot contract.

[1] Directive 2010/78/EU introduced a sunset clause in Article 64a of MiFID I which provides that "the powers conferred on the Commission in Article 654 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty on 1 December 2009 shall cease to apply on 1 December 2012".; i.e. the legal power of the European Commission to adopt implementing legislation that could clarify the definition of FX financial instruments lapsed on 1 December 2012.

Following the publication of the Letter by ESMA, the Central Bank updated its "Frequently Asked Questions", (the "**Q&A**") to reflect the updated developments at European level. The Q&A now provides as follows;

- All FX transactions with settlement before or on the relevant spot date are not to be reported;
- All FX transactions with settlement beyond seven days are to be reported;
- All FX transactions with settlement between the spot date and seven days (inclusive) are to be reported only if, in a jurisdiction where one counterparty to the trade is located, local laws, rules or guidance would deem the transaction reportable. Where an Irish counterparty is entering into FX transactions with a counterparty located in another jurisdiction, the Irish counterparty should rely on documentation from that counterparty to inform it as to whether there is a requirement in the relevant jurisdiction to report the transaction.
- All FX transactions between two Irish counterparties with settlement between the spot date and seven days (inclusive) are not required to be reported. However, counterparties should have the capacity to report such trades (notwithstanding that there is no obligation to report) and that counterparties build a capacity to report such trades in the future.

The Central Bank has indicated that its guidance is a temporary measure and that the Q&A may be updated/superseded if there are any further developments at a European level on this topic.

(x) European Commission Response to ESMA letter setting out its Intention to Ease EMIR Frontloading Requirements

On 8 May 2014, ESMA sent a letter to the European Commission proposing to limit the scope of the frontloading requirement under EMIR.

The frontloading requirement imposes an obligation on counterparties to clear OTC derivative contracts which have been executed after a CCP has been authorised under EMIR (the first of which was authorised on 18 March 2014) and before the date of application of the clearing obligation (i.e. the date specified for the clearing obligation to apply by ESMA in the relevant regulatory technical standards).

In this way under the frontloading rules an OTC derivative contract concluded after the authorisation of a CCP might at a later date become subject to the clearing obligation before its expiration date. According to Recital 20 of EMIR, the objective of the frontloading requirement is to ensure a uniform and coherent application of EMIR and a level playing field for stakeholders when a class of OTC derivative contracts is declared subject to the clearing obligation.

This frontloading obligation has proved to be particularly controversial as many in the industry have argued that the uncertainty over which OTC contracts will become subject to the clearing obligation and the unknown duration of the frontloading period has created legal uncertainty about the status of OTC derivative contracts entered into after the CCPs are authorised and an inability to correctly price such transactions.

The period during which frontloading is relevant can be divided into two separate periods:

- Period A: the period between the notification of the classes to ESMA and the entry into force of the relevant regulatory technical standards ("**RTS**") on the clearing obligation; and

- Period B: the period between the entry into force of the RTS and the date of application of the clearing obligation.

In its letter, ESMA suggested that the frontloading requirement should not apply to transactions that are entered into during Period A and should only apply to transactions entered into during Period B. The determinant of whether an OTC contract entered into during Period B will be subject to the frontloading obligation is whether, as at the date of the application of the clearing obligation for that OTC derivative contract and for the counterparty in question, there is a certain minimum remaining maturity.

On 8 July 2014, ESMA received a response from the European Commission whereby the European Commission indicated its agreement with the proposals relating to frontloading which were contained in ESMA's letter of 8 May 2014.

A copy of the European Commission's letter can be found at this link; http://www.esma.europa.eu/system/files/d2392454.pdf

Alternative Investment Fund Managers Directive ("AIFMD")

(i) Central Bank AIFMD Q&A 10th Edition

An amended version Q&A with additional questions on remuneration has been released by the Central Bank. The updates refer to certain clarifications made by ESMA and other regulators.

The fact that AIFMs can substitute payment in AIF units with payment in an appropriate proxy such as shares in the AIFM has been confirmed in the Q&A. It is also outlined by the Central Bank that the starting date for the remuneration disclosures in the AIF annual report would be the first full

financial reporting year following application of the AIFMD-compliant remuneration policy by the AIFM.

The Q&A makes additional clarifications relating to the governing law of the AIFM agreement (the AIFM agreement no longer needs to be governed by Irish law) and leverage disclosure in the offering documents of an AIF.

The Q&A confirms that CRD/MiFID firms (including firms still subject to CRD III and which have availed of the CRD IV exemptions) are to be considered as equally effective as AIFMD remuneration rules. This also applies to non-EU firms which are party to group remuneration policies that are equally as effective as MiFID or CRD.

The Q&A can be viewed via the following link:

http://www.centralbank.ie/regulation/marketsupdate/Documents/AIFMD%20QA%2010%20Final%20%20clean.pdf

(ii) ESMA Updates Q&A on Application of AIFMD

On 21 July 2014, ESMA published an updated version of its Q&A paper on the application of the AIFMD. The Q&A strives to encourage common supervisory approaches in the implementation and application of the AIFMD. The Q&As are grouped according to the following headings:

- Reporting to national competent authorities under Articles 3, 24 and 42;
- Depositaries; and
- Calculation of leverage.

On 30 September 2014, ESMA subsequently published an updated version of its Q&A paper on the application of the AIFMD. The updated Q&As are outlined under the following headings:

- Reporting to national competent authorities under Articles 3, 24 and 42; AND
- Delegation.

The primary purpose of the Q&A is to encourage common supervisory procedures in respect of the application of the AIFMD and its implementing measures. The Q&A also aims to provide clarity on the content of the AIFMD rules, thereby supporting AIFMs.

This latest Q&A can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1194_qa_on_aifmd.pdf

(iii) Central Bank Q&A on new online QIAIF Authorisation Process

The Central Bank has circulated a Q&A relating to the new online QIAIF authorisation process. Points raised include the following:

- The Central Bank is introducing new Service Standards on which it will report on a half yearly basis. As part of this initiative, the QIAIF application deadline is being moved from 3pm to 5pm in order to provide firms with additional time to submit applications;

- The Funds Authorisation system ORION is a new online system (separate to ONR) which is proposed to be used as part of the QIAIF authorisation process. Tests have been conducted to measure its stability and performance. In the event of system issues, a four week transitional period will be provided and firms will be allowed to manually submit applications in the interim;

- The legal adviser will be copied on the authorisation / approval letter;

- Both the depositary and administration agreements form part of the application pack. As these are clause based documents, applicants must include the appropriate references in each agreement. These references are validated by the ORION system and checked by the Central Bank staff. Guidance on how to prepare and upload these documents will be provided on the Central Bank website;

- All users within each firm will have access to all the applications within that firm, allowing each to edit applications as required. Only one person can edit an application at one time, however multiple users can view the application at the same time. The Central Bank will contact each law firm and request them to supply a list of persons who need to be set up on ORION. This work will be completed ahead of the go-live date;

- All applications are stored on the ORION system. The print functionality is not currently available but will be available when the authorisation process is automated later in 2014;

- Documents must be uploaded in WORD format (*.docx). The law firm can provide documents using 'Comparite' or similar document comparison tools. These must be in WORD format (.docx);

- Applications for QIAIF Sub Fund approvals (except where such submissions include post-authorisation changes to existing sub-funds) will be required to be submitted through ORION. Applications for QIAIF Sub Fund approvals which include post authorisation changes shall continue to be made by hardcopy in the normal manner;

- Where an application is returned to the applicant as incomplete, it will be possible to (a) amend the legal structure; (b) alter the answers to questions and (c) upload revised documents;

- There will be a facility to upload executed PDF agreements as well as the annotated versions. A PDF of the relevant agreements with signatures should be submitted under Supplementary Documents 'Any Other Documentation'. The Word version of the relevant document e.g. Trust Deed can be uploaded under Trust Deed and the PDF version containing the executed Trust Deed with signatures can be uploaded under 'Supplementary Documents';

- AIFMs should be cleared to passport in advance of the fund application and therefore should have a "C" number. On the Central Bank's website the third party approval process is described: "Applicants should ensure that details of the proposed investment manager and email contact details for the relevant regulatory authority are provided to the Central Bank in sufficient time to enable verification of its home Member State approval. This will not be necessary if the entity is on a relevant passport register maintained by the Central Bank." Full information on the process is available on the Central Bank's website;

- If derogation is being sought then a submission must be made well in advance of filing the QIAIF application. The applicant should complete the text box to refer to any derogation granted. The letter issued by the Central Bank granting the derogation can be uploaded in the Supplementary Documents section under 'Any Other Documentation'.

It is expected that the new online system will be launched for QIAIF applications before the end of 2014. However, the Central Bank has advised that guidelines for best practice for submitting an application on ORION will be published before ORION goes live. We understand that a similar process will also be implemented in respect of UCITS applications.

(iv) Central Bank Response to AIFMD Queries on AIFMD Authorisation Process

The Irish Funds Industry Association issued a letter to Industry on 11 July 2014, in respect of AIFM applications and filings. This letter addresses the following points:

- "Secondees who act as designated persons must be located in the State":

  There is no reference to the use of secondees fulfilling a designated person role in the AIF Rulebook and to accommodate the use of secondees in such circumstances the Central Bank has applied the de minimus standard set out in UCITS Guidance Note 4/07

on the Organisation of Management Companies. This requirement stems from concerns that secondees not based in Ireland are likely to have conflicts of interest that cannot be adequately managed. In addition, AIFMs using secondees to fulfill designated person roles may not be in a position to exercise sufficient control over the AIFMs' activities.

- Impacts relating to AIFM authorisations occurring post 22 July 2014:

  Revised documentation

  a. It is important to note that the Central Bank AIF Rulebook does not take effect until authorization is granted to the AIFM. This is significant as the requirement to file the revised fund documentation for noting is triggered by the appointment of an authorised AIFM.
  b. Where it is not possible to align the date of the appointment with the revised fund documentation, the Central Bank will accept the revised fund documentation as soon as possible thereafter. However, the Central Bank should be contacted in advance and will require an assurance from the board of the AIFM and the board of the AIF that the fund documentation will be revised and submitted for noting as soon as practicable and in any event no later than five business days of the authorization of the AIFM.

The Central Bank outlined that key factors in meeting deadlines are the timelines and the completeness of an applicant's responses and their engagement with the Central Bank during the approval process.

(v) Central Bank Publishes Statement in respect of AIFM applications

The Central Bank published a statement on 23 July 2014 to state that, as of close of business on 22 July 2014 the Central Bank had authorized 64 AIFMs. In addition, 35 AIFMs had been registered (a 'Registered AIFM' is an AIFM which only acts as AIFM to AIFs which are smaller than a threshold size set out in the AIFMD). In total, at that point 99 AIFMS had the authority to operate within the State and the 64 authorised AIFMs also have the right to market themselves throughout the EU.

(vi) Central Bank Publishes CP85 on Loan Originating Qualifying Investor AIF

On 28 July 2014, the Central Bank published a formal consultation on loan origination (the "**Loan Consultation**") which will allow Irish funds to originate loans directly.

Loan originating funds are funds which source loan assets for their investment portfolio by directly originating loans. The structure outlined in the Loan Consultation foresees the establishment and authorisation of Irish-regulated qualifying investor alternative investment funds ("**QIAIFs**"), whose exclusive strategy is loan origination. The Loan Consultation envisages a regulated fund structure, which will be authorised under the AIFMD framework and which deals with certain risk areas which the Central Bank has identified in relation to loan origination activities.

A benefit afforded to QIAIFs is that they can achieve regulatory authorisation within a 24 hour period of document submission to the Central Bank. Furthermore, loan originating QIAIFs will be able to utilise the AIFMD marketing passport, which will facilitate distribution throughout the European Union to professional investors. As a consequence of a bill published by the Irish government on 29 July 2014, a loan originating QIAIF will be able to be structured as an ICAV, a new Irish corporate vehicle, purposefully designed for investment funds and with the ability to "check the box" for US tax purposes.

It is proposed that loan originating QIAIFs will have to adhere to various additional Central Bank requirements in order to make sure that risks related to loan origination funds are adequately supervised, whilst simultaneously meeting the credit needs of the economy in practice. These additional requirements relate to credit granting, monitoring and management; diversification and eligible investments; liquidity and distributions; stress testing; investor due diligence; leverage; and disclosure.

On 26 August 2014, AIMA submitted a response to the Loan Consultation. AIMA outlined its apprehensions with regards to certain restrictive provisions of the proposal, in particular due to the fact that AIMA believes that it could make the new fund vehicle much less appealing for managers and investors. The points raised by AIMA relate specifically to: (i) the proposed leverage restriction; (ii) the restriction on eligible assets; (iii) liquidity; and (iv) requirements with respect to certain loans acquired from a credit institution.

On 18 September 2014, the Central Bank published its Feedback Statement in respect of the Loan Consultation. This provides a synopsis of the responses received along with the Central Bank's advice and decisions. The AIF Rulebook has also been updated to incorporate the final rules applicable to a loan originating QIAIF.

The Central Bank Feedback statement in respect of Consultation Paper CP 85 can be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP85%20Consultation%20on%20loan%20originating%20Qualifying%20Investor%20AIF/CP%2085_28%20JUL%202014.pdf

Following the Loan Consultation and the Central Bank's feedback on same, the Central Bank has published new rules on loan originating QIAIFs. The Central Bank will accept applications for authorisation of loan originating QIAIFs from 1 October 2014.

The new rules on loan originating QIAIFs can be viewed via the following link:

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

In addition, on 18 September 2014, the Central Bank has published the revised AIF Rulebook which incorporates changes resulting from the Loan Consultation process and other amendments necessary for consistency and drafting purposes.

(vii) ESMA Publishes Official Translations of its Guidelines on Reporting Obligations under AIFMD

ESMA published the official translations of its guidelines on reporting obligations under Articles 3 and 24 of the AIFMD.

The aim of the guidelines is to ensure that reporting obligations to national authorities ("**NCAs**"), which originate from Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, are applied in a uniform and reliable manner. The guidelines clarify the information that AIFMs must report to NCAs, the timing of the reports and the procedures to be followed when AIFMs move from one reporting obligation to another.

The guidelines will apply from two months after publication, which is 8 October 2014.

(viii) Central Bank Publishes AIFMD Reporting Guidance and Templates

The Central Bank has published AIFM reporting guidance notes and accompanying templates to be used when undertaking the regulatory reporting required under Article 3(3)(d) and Article 24 of the AIFMD. The Central Bank has also published a guidance note and template for completion of the Minimum Capital Report by Irish authorised AIFMs and/or UCITS management companies.

Links to the individual documents, the Reporting Guidance for Alternative Investment Fund Managers, the AIFM-UCITS Minimum Capital Requirements Guidance, AIFMD Reporting - Alternative Investment Fund Template, the AIFMD Reporting - Alternative Investment Fund Manager Template and the AIFMD-UCITS Minimum Capital Requirements Reporting Template (which should be used in conjunction with the Online Reporting User Manual) can be accessed via the following link under the heading "AIFM Reporting":

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

The IFIA has prepared a presentation on getting started with AIFMD regulatory reporting which covers:

- Identifying your reporting requirements;
- Identifying the key actions that need to be taken by AIFMs and administrators;
- Identifying which data fields are mandatory, conditional or optional;
- Identifying which fields are static and which are dynamic;
- Suggesting a data owner (AIFM or administrator) for the various categories of data;
- Rating the complexity level of the various data requirements;
- Outlining key areas of judgement/uncertainty which may need to be agreed between AIFMs and their service providers through various protocols, with a sample protocol provided.

The IFIA presentation can be viewed at the following link:

http://www.irishfunds.ie/fs/doc/publications/uploadtowebsite-ifia-aifmd-reporting-guide-presentation-aug-2014.pdf

The Central Bank published an Update to Reporting Guidance for Alternative Investment Managers. This guidance note is relevant to all AIFMs, including Internally Managed Alternative Investment Funds, who are authorised or registered by the Central Bank or who manage or market AIFs in Ireland. “AIFMs” in the context of this document will refer to both AIFMs and Internally Managed AIFs.

The Update to Reporting Guidance for Alternative Investment Managers can be accessed via the following link:

http://www.centralbank.ie/regulation/industrysectors/funds/aifmd/Documents/AIFMD%20Reporting%20Guidance%20v1.0.pdf

(ix) AIFM Amendment Regulations

The European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2014 (SI 379/2014) provide for certain necessary amendments to the AIFM Regulations (SI 257/2013), the UCITS Regulations (SI 352/2011) and the Investor Compensation Act 1998. The AIFM Amendment Regulations were published in the 12 August 2014 issue of Iris Oifigiuil. The following amendments have been made:

- Both the AIFM Regulations and the UCITS Regulations have been amended to transpose the requirements of the Credit Ratings Agencies Directive ("**CRAD**") into Irish law by 15 December 2014. The purpose of the CRAD is to curb the reliance on ratings provided by credit rating agencies and to clarify the obligations for risk management;
- Clarify that the Investor Compensation Company Limited ("**ICCL**") can levy AIFMs and UCITS management companies which are covered by the Investor Compensation fund (where they offer additional non-core services of individual portfolio management, investment advice and safekeeping and administration of CIS and, in the case of AIFMs, receipt and transmission of orders);
- Clarify that non-EU AIFMs must apply to the Central Bank for approval prior to marketing in the State;
- Clarify that AIFMs offering individual portfolio management services must comply with MiFID client asset requirements, that AIFMs may maintain client asset accounts for processing "subscriptions and salesperson moneys" and these must also comply with MiFID client asset requirements; and to
- Amend various inaccuracies in the European Union (Alternative Investment Fund Managers) Regulations 2013 (SI 257 of 2013).

The European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2014 (SI 379/2014) are available via the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0379.pdf

(x) Guidance Note for AIFMs and UCITS Management Companies regarding Minimum Capital Requirement Report

A Firm that is authorised as an AIFM and/or as a UCITS Management Company is obliged to submit the Minimum Capital Requirement Report to the Central Bank. The half yearly and annual audited accounts at the reporting intervals specified in Chapter 3 of the AIF Rulebook and paragraph 20 of UCITS Notice 2 should also be submitted along with the report. The Minimum Capital Requirement Report must be signed by a director or a senior manager of the Firm.

The Minimum Capital Requirement Report - Guidance Note for AIFMs and UCITS Management Companies is available via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/UCITS-AIFM%20MCR%20Guidance%20v1.0.pdf

(xi) Central Bank Information regarding Sub-Delegation Arrangements under Article 20(4) of AIFM Directive

Article 20(4) (b) of the AIFMD outlines that a third party which has been appointed by an AIFM may subsequently appoint a sub-delegate in respect of the various functions that have been designated to it on the condition that the AIFM has informed the competent authorities of its home member state prior to the sub-delegation arrangements becoming effective.

The Central Bank has outlined that it would expect that all sub-delegation agreements are set out in the Programme of Activity. Notification of any proposal in relation to sub-delegation should be submitted in advance to the Central Bank via the ONR under the "Other Documents" return. In cases where the AIFM is not yet set up on the ONR, notification via email to the firm's supervisor is required.

Money Market Funds

(i) Council of EU Timetable to Consider Money Market Funds Regulation

The Council of the EU published a note (dated 30 June 2014) (*11391/14*) on 2 July 2014 setting out its provisional agenda for Council meetings for the second half of 2014. The note includes the following provisional agenda items for the Economic and Financial Affairs Council (ECOFIN):

- 7 November 2014: General approach on the proposed Directive on payment services in the internal market (PSD2) and exchange of views on the proposed Regulation on multilateral interchange fees for card-based payment transactions (MIF Regulation).
- 9 December 2014: General approach on the proposed Regulation on Money Market Funds (MMF Regulation).

(ii) ESMA Publishes Review of CESR Guidelines on a Common Definition of European Money Market Funds

On 22 August 2014, ESMA published its opinion on how national competent authorities should apply the modifications to the CESR guidelines on money market funds as outlined in the report on Mechanistic Reference to Credit Ratings in the European Supervisory Authority's ("**ESAs**") Guidelines and Recommendations (JC 2014 004) issued by the Joint Committee of the three ESAs, when monitoring the application of the CESR guidelines by the relevant financial market participants. The Joint Committee report outlined how the CESR guidelines were to be amended, specifically in regard to the evaluation of credit quality of money market instruments by managers of Short-Term Money Market Funds and Money Market Funds.

(iii) European Parliament Updates Procedure File on MMF Regulation

The European Parliament updated its procedure file on the proposed MMF Regulation on 29 September 2014. The procedure file suggests that the Parliament's Economic and Monetary Affairs Committee (ECON) will consider the MMF Regulation in a committee meeting on 23 February 2015. Parliament will subsequently review the Regulation in its plenary session which is to be held on 25 March 2015. The European Commission published its legislative proposal for the MMF Regulation in September 2013.

Irish Collective Asset Management Vehicles ("ICAV")

(i) ICAV Bill 2014

Ireland has been promising for some time to introduce a new type of corporate fund structure known as an ICAV which will not be required to be incorporated under the Irish Companies Acts and will not be a public limited company. ICAVs will be available as UCITS and as AIFs, will offer a more administratively efficient structure for corporate fund vehicles (benefitting from the disapplication of company law provisions designed for trading companies), and will be structured so that they can "*check-the-box*" to be treated as a partnership or disregarded entity for US federal tax purposes. That will facilitate investment by US taxable and/or US taxable and tax-exempt investors in a master feeder structure.

The Irish government has now published the Irish Collective Asset-management Vehicle Bill 2014 (the "**ICAV Bill**").

It is currently expected that the ICAV Bill will be enacted by the end of 2014. The Central Bank has previously advised that it expects to be in a position to accept applications for registration two weeks from the date of enactment of the ICAV Bill.

The ICAV Bill can be viewed via the following link:

http://www.oireachtas.ie/documents/bills28/bills/2014/7814/b7814d.pdf

Regulation on Securities Settlement and on Central Securities Depositaries in the EU

i. CSDR Published in the Official Journal

The text of the Regulation on improving securities settlement and regulating central securities depositories (CSDs) (Regulation 909/2014) (CSDR or CSD Regulation) was published in the Official Journal ("**OJ**") on 28 August 2014.

The Regulation was adopted by the European Parliament on 15 April 2014 and by the Council of the EU on 15 April 2014.

The CSDR came into force on 17 September 2014 (20 days after publication in the OJ). Article 3(1) of the Regulation will apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities. Article 5(2) will apply from 1 January 2015 except in the case of a trading venue that has access to a CSD referred to in Article 30(5), where it will apply at least six months before such a CSD outsources its activities to the relevant public entity, and in any event from 1 January 2016. Other measures will apply from the date that the relevant delegated and implementing acts adopted by the European Commission enter into force.

ii. European Commission makes Provisional Request to ESMA for Technical Advice on Possible Delegated Acts under CSDR

The European Commission published a letter to ESMA on 23 June 2014 outlining a provisional request for technical guidance in relation to potential delegated acts regarding various settlement discipline procedures and aspects concerning supervisory co-operation under the proposed Regulation on enhancing securities settlement and regulating central securities depositories (CSDs) (CSD Regulation or CSDR).

Two formal mandates for technical guidance are appended to the letter to aid the Commission in formulating delegated acts, which are necessary as a result of the following provisions of the CSDR:

Settlement fails: Article 7 of the CSDR provides for a set of stringent procedures to deal with settlement fails. These include cash penalties for a participant of a securities settlement system operated by a CSD that fails to settle on the agreed date. The Commission is required to adopt a delegated act to specify the parameters for the calculation of a deterrent and proportionate levels of cash penalties for settlement fails under Article 7(13) of the CSDR.

Co-operation Measures: Article 24(7) of the CSDR allows for certain co-operation measures between home and host member states where a CSD delivers services on a cross-border basis, thereby utilising passport rights. They must initiate formal co-operation arrangements in respect of the supervision of a CSD where the CSD's activities have become "of substantial importance for the functioning of the securities markets and the protection of the investors" in the host member state. Under Article 24(7) of the CSDR the Commission is obliged to adopt delegated acts regarding procedures for creating criteria under which the significance of the operations of the CSD may be deemed to amount to this. In this regard, the Commission requests guidance, specifically on the meaning of "substantial importance".

The Commission has asked ESMA to deliver its technical guidance nine months after the CSDR enters into force. As noted above the CSDR came into force on 17 September 2014. Therefore ESMA will be required to deliver its technical guidance within 9 months, on or before 17 June 2015.

PRIIPs KID Regulation

(i) European Commission Requests EIOPA's Advice on Possible Delegated acts to PRIIPs KID Regulation

The European Commission published a request, dated 30 July 2014, to the European Insurance and Occupational Pensions Authority ("**EIOPA**") for technical advice on potential delegated acts in respect of the proposed Regulation on key information documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs**") (the "**PRIIPs Regulation**").

Articles 16(8) and 17(7) of the PRIIPS Regulation provides for temporary product intervention powers for EIOPA and other competent authorities.

In April 2014, the PRIIPs Regulation was adopted by the European Parliament and it introduces a key information document that will deliver retail investors information regarding an expansive range of investment opportunities, including insurance-based investment products, structured investment products and investment funds.

A deadline has been set by the Commission for EIOPA to deliver the technical advice within six months of the PRIIPs KID Regulation coming into force. It is anticipated that the Regulation will come into force by the end of 2014. It will become applicable two years from that date.

Credit Rating Agencies Regulation

(i) IOSCO publishes Responses to Consultation on Code of Conduct Fundamentals for Credit Rating Agencies

The International Organization of Securities Commissions (IOSCO) updated the publications section of its webpage on 15 July 2014 in order to provide links to the public responses that have been received to its consultation, which was published in February 2014, on revisions to the code of conduct fundamentals for credit rating agencies ("**CRAs**") (CR01/2014). Some of the respondents included The European Association of Credit Rating Agencies (EACRA), FitchRatings, Moody's Investor Service and Standard & Poor's Ratings Services.

(ii) ESMA Consults on Guidelines on Periodic Information Submitted to it by CRAs

ESMA has commenced a consultation in respect of new supervisory guidelines concerning the material periodically submitted by CRAs to ESMA. The objective of the consultation paper is to make certain that the information that CRAs are asked to submit aids ESMA's supervisory work in terms of identifying the key risks in the CRA sector. The final date for comments is 31 October 2014.

Registered CRAs must periodically report to a Central Repository ("**CEREP**") and the Supervision of CRAs Tool ("**SOCRAT**"). All registered and certified CRA must make available information on the historical performance of their ratings on CEREP while SOCRAT will facilitate the processing of data in a standard and automatic manner and support ESMA CRA Unit in the conduct of the supervisory activities. Additionally CRAs must notify ESMA of amendments to their original conditions for registration and submit periodically to ESMA information in compliance with ESMA's Guidance on the enforcement practices and activities. CRAs must also submit annually information regarding their revenues for the calculation of the supervisory fees and market share to ESMA. Finally, CRAs submit to ESMA periodically other information that is used for on-going supervisory purposes.

As part of the supervision mandate conferred to ESMA by the Regulation, ESMA will also request CRAs to submit ongoing information on their ratings activity. To support an efficient, standardised and secure treatment of this data, ESMA is developing, for the sole purpose of internal supervision, the Supervision of CRAs Tool (SOCRAT). The tool will facilitate the processing of such data in a standard and automatic manner and support ESMA CRA Unit in the conduct of the supervisory activities.

Article 16 of EU No 1095/2010 of the European Parliament and of the Council of 24 November 2010 proposes the guidelines, and enables ESMA to publish guidelines addressed to financial

market participants with the aim of creating reliable, capable and effective supervisory procedures. These proposed guidelines will substitute CESR's Guidance on the enforcement practices and activities to be conducted under Article 21.3(a) of the Regulation (ESMA/2010/944) of 30 August 2010.

The consultation paper should be by read by CRAs (as defined in Article 3(1)(b) of the CRA Regulation), companies which have applied for registration or are considering applying for registration, competent authorities, and consumer groups.

The consultation paper can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-845_cp_on_periodic_information_to_be_submitted_to_esma_by_credit_rating_agencies.pdf

(iii) ESMA Publishes Technical Advice on Creditworthiness Assessment for Sovereign Debt under CRA Regulation

ESMA published technical advice (ESMA/2014/850) to the European Commission on the development of an EU creditworthiness assessment for sovereign debt on 18 July 2014.

The Commission is required by Article 39b(2) of the CRA Regulation (Regulation 1060/2009) (as amended by the CRA III Regulation (Regulation 462/2013)) to adopt a report on this issue by 31 December 2014.

In its request for advice, the Commission had asked ESMA to provide input on the issue of sovereign ratings and rating processes, including an overview of the market for sovereign ratings, information on operational issues relating to sovereign ratings, information on sovereign rating processes, as well as lessons drawn from ESMA's supervisory experience.

ESMA identifies a number of key points that it believes are important when considering the appropriateness of the development of a creditworthiness assessment for sovereign debt. These include:

- The rating process should be a fully independent assessment;
- The review function responsible for the annual review of rating methodologies must be independent of the business lines that are responsible for credit rating agencies (CRAs);
- Confidentiality of all rating sensitive information is critical. Also, access to pre-rating information should only be available to people involved in rating activities and all necessary steps should be taken to ensure this information is adequately protected; and

- Sufficient resources must be available for the conduct of both a rigorous rating process and ongoing monitoring.

(iv) ESMA Report on Staffing and Resource Needs Arising from Regulatory and Supervisory Responsibilities under CRA

ESMA published a report on 5 August 2014 to the European Parliament, Council of the EU and European Commission on ESMA's staffing and resource needs arising from the assumption of its powers and duties under the CRA Regulation.

The regulatory and supervisory duties that ESMA utilises to meet its responsibilities under the CRA Regulation are outlined in Section III of the report. For each task, the report assesses the implications in respect of both the processes and activities to be carried out and ESMA's resources and budget.

The other supervisory duties to be carried out by ESMA resulting from CRA III are addressed in Section IV of the report. These include the provision of reports, guidelines and technical advice on a range of topics.

The report addresses the fact that ESMA encountered a sharp increase of resources in the initial years subsequent to the entry into force of the CRA Regulation. It expects that incremental growth in staff numbers in 2015 and 2016 will allow it to cope successfully with the additional tasks resulting from CRA III.

(v) European Commission Adopts Three Delegated Regulations on CRA III Regulatory Technical Standards

The European Commission published a press release on 30 September 2014, stating that it has adopted the following three Delegated Regulations containing regulatory technical standards (RTS) required by the CRA III Regulation (*Regulation 462/2013*):

- *Commission Delegated Regulation (EU) No …/.. supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments* (C(2014) 6939 final). The Commission also published the *annexes* to this delegated Regulation.
- *Commission Delegated Regulation (EU) No …/.. supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority* (C(2014) 6840 final). The Commission also published the *annexes* to this Delegated Regulation.

- *Commission Delegated Regulation (EU) No …/.. supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of on-going supervision by the European Securities and Markets Authority* (C(2014) 6871 final). The Commission also published the *annexes* to this Delegated Regulation.

On the condition that no objection is raised by either the European Parliament or the Council of the EU within the relevant time period specified in the European Banking Authority (EBA) Regulation (*Regulation 1093/2010*), the Delegated Regulations will be published in the OJ. The Delegated Regulations will enter into force twenty days after publication in the OJ.

The provisions will be directly applicable from the following dates:

- Reporting on fees charged by CRAs: date of entry into force.
- European Rating Platform: 21 June 2015.
- Disclosure on structured finance instruments: 1 January 2017.

European Venture Capital Funds Regulation and European Social Entrepreneurship Funds Regulation

(i) ESMA consults on Implementing Measures under European Venture Capital Funds Regulation and European Social Entrepreneurship Funds Regulation

ESMA published a consultation paper (ESMA/2014/1182) on 26 September 2014 concerning its technical advice to the European Commission on implementing measures under the European Social Entrepreneurship Funds Regulation (Regulation 346/2013) (the "**EuSEF Regulation**") and the European Venture Capital Funds Regulation (Regulation 345/2013) (the "**EuVECA Regulation**").

The implementing measures that the Commission has the power to adopt under Articles 3(2), 9(5), 10(2) and 14(4) of the EuSEF Regulation and Article 9(5) of the EuVECA Regulation are the focus of the consultation.

Annex IV to the consultation sets out ESMA's proposed technical advice on level 2 measures in respect of:

- The specification of the definition of qualifying portfolio undertaking;
- Conflicts of interest of EuSEF managers and EuVECA managers;

- The methods for the measurement of the social impact; and
- Information that EuSEF managers should provide to investors.

A request to ESMA for technical advice was submitted by the Commission on 27 May 2014, however, an initial deadline of 31 January 2015 was extended to 30 April 2015. Annex II to the consultation sets out the text of the request for advice. Responses to the consultation are required to be submitted by 10 December 2014. ESMA aims to produce the final version of the technical advice to the Commission before the end of April 2015.

Market Abuse

(i) Opinion on ESMA's Discussion Paper on Policy Orientations on Possible Implementing Measures under the Market Abuse Regulation

On 21 April 2014, the Securities and Markets Stakeholder Group (the "**SMSG**") published a report in order to provide an opinion to ESMA on its Discussion Paper on policy orientations on possible implementing measures under the Market Abuse Regulation (the "**MAR**") (see ESMA/2013/1649). The SMSG welcomed ESMA's Discussion Paper. It outlines that the Discussion Paper is very detailed and will remain a reference for future interpretation.

The SMSG's opinion is focused on some specific topics which are the following: buy-back and stabilisation, market soundings, accepted market practices, public disclosure of inside information and delay, insider list, managers' transactions. There are no specific comments on investment recommendations but the SMSG thinks that their content is a very important element in order to ensure the fair and correct information provision to the client: sometimes the recommendation does not contain clear information about the interests and thus potential conflicts of interest, or it is hidden or found somewhere way back in the related documents. Increased transparency should be ensured in order to define exactly what would be the elementary sales approach when making use of the investment recommendation. The SMSG opinion is rendered both with some general remarks and with some specific answers to ESMA's questionnaire, following the numbering in the ESMA paper.

(ii) ESMA Consults on New Market Abuse regime

ESMA published a consultation paper on its draft technical advice on possible delegated acts concerning the MAR on 15 July 2014. It should be noted that the title of the consultation paper states that it is a "draft". However, due to the fact that it has an ESMA reference number it would appear to be the final version of the consultation paper. ESMA also produced a consultation paper relating to draft regulatory technical standards (RTS) and implementing technical standards (ITS)

on MAR (ESMA/2014/809). Any comments relating to the consultation papers must be submitted by 15 October 2014. The new MAR framework will become applicable in July 2016.

(iii) Open Hearing on the Consultation Papers on Technical Advice and Technical Standards under the Market Abuse Regulation

ESMA will hold an open hearing in Paris on 8 October 2014 on the issues raised in the two recently published Consultation papers on technical advice and technical standards under the MAR. The itinerary in respect of the discussion of each of the respective consultation papers is as follows:

- Consultation Paper on ESMA draft technical standards:

  a. Arrangement and procedures required for market soundings;
  b. Technical means for Public disclosure of inside information and for delaying disclosure of inside information;
  c. Arrangements for objective presentation of investment recommendations and for disclosure of particular interests or indication of conflict of interests;
  d. Format for Insider lists and for notification of managers' transactions; and
  e. Others.

- Consultation Paper on ESMA technical advice to the Commission on possible delegated acts:

  a. Minimum thresholds for the purpose of exempting certain emission allowance market participants for duty to disclose inside information;
  b. Reporting of violations and related procedures;
  c. Determination of the competent authority for notification of delays in disclosure of inside information;
  d. Managers' transactions: type of transaction to report and trading during closed period; and
  e. Non exhaustive list of indicators of market manipulation.

(iv) Implementation of 2014 Market Abuse Regulation

In September 2014, a representative of the Central Bank was requested to provide their view of how the full regime of the 2014 Market Abuse Regulation will look once fully implemented.

The items discussed were as follows:

- The new developments in the text of the Market Abuse Regulation itself;
- The sizable Level II legislative agenda under MAR; and
- A discussion of what, in an ideal world, market abuse regulation will look like in Europe when all of these regulatory measures are in place.

The speaker's concluding remarks concerned an exploration of what market abuse regulation will look like in Europe when all of the measures outlined were in place and indeed are operationalized by market participants and National Competent Authorities. In this regard, the observations of the speaker can be grouped into three headings, namely:

- the disclosure environment and the transparency architecture;
- enhanced pan-European detection of Market Abuse; and
- a reduction of regulatory arbitrage by the application of similar sanctions across the European Union.

This speech can be accessed via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/20140908%20MAR%202020%20M%20Moloney.pdf

Prospectus Directive

(i) ESMA Launches Consultation on Draft Regulatory Technical Standards on Prospectus Related issues under Omnibus II Directive

ESMA launched a consultation on draft Regulatory Technical Standards ("**RTS**") on prospectus related issues under the Omnibus II Directive on 26 September 2014.

As stated by ESMA, the proposed draft RTS addresses four topics within the prospectuses regime as follows:

- Procedures for approval of prospectuses – The draft RTS outlines the manner in which to submit requests for prospectus approval to the competent authority, procedures for submitting information in connection with the first draft of the prospectus, rules for communication regarding subsequent versions of the prospectus as well as requirements concerning submission of the final version for approval;

- Information which may be incorporated into prospectuses by reference – The draft RTS establishes an exhaustive list of information which complies with the conditions for incorporation by reference set out in Article 11(1) of the Prospectus Directive;

- Publication of prospectuses. The draft RTS addresses issues of availability to potential investors in terms of accessing prospectuses on websites and publication of final terms to base prospectuses and information incorporated by reference and requires issuers, offerors and persons asking for admission to trading on a regulated market to provide competent authorities with a hyperlink to the prospectus for minimum 12 months when competent authorities have decided to publish a list of approved prospectuses along with hyperlinks to such under Article 14(4) of the Prospectus Directive; and

- Dissemination of information relating to offers to the public and admissions to trading on a regulated market outside the prospectus, including advertisements. The draft RTS sets out a list of categories of dissemination of advertisements, clarifies that inaccurate or misleading advertisements must be amended and specifies what is to be understood by the requirement in the Prospectus Directive's Article 15(4) that the content of information disclosed about an offer or admission to trading outside the prospectus is to be consistent with information in the prospectus.

The consultation is open for feedback until 19 December 2014. All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

ESMA is required to submit the draft RTS to the European Commission by 1 July 2015.

More information is available at the following link:

http://www.esma.europa.eu/consultation/Consultation-draft-RTS-prospectus-related-issues-under-Omnibus-II-Directive

Transparency Directive

(i) ESMA Releases its Final Guidelines on the Enforcement of Financial Information Published by Listed Entities in the EU

On 10 July 2014, ESMA published its final Guidelines on the enforcement of financial information published by listed entities in the European Union (the "**Guidelines**") under the Transparency Directive. Furthermore, the document includes ESMA's feedback on the responses to its consultation on these draft guidelines as launched in July 2013.

As stated in the press release published by ESMA, the aim of the guidelines is to strengthen and promote greater supervisory convergence in existing enforcement practices amongst EU accounting enforcers.

These Guidelines set out the principles to be followed by accounting enforcers throughout the enforcement process by defining the objectives, the characteristics of the enforcers, and some common elements in the enforcement process. They will strengthen the development of coordinated views on accounting matters prior to national enforcement actions, the identification of common enforcement priorities and common responses to the accounting standard setter to ensure consistent application of the financial reporting framework. It is also clarified that the Guidelines will apply to all national securities regulators and other bodies responsible for enforcing financial information requirements in the EU.

According to the words of the ESMA Chair, "one of the key objectives of accounting enforcement is to contribute to the consistent application of the financial reporting standards and ensure the disclosure of high quality financial information relevant to investors' decision-making processes, thus strengthening investor protection and confidence in financial markets. And also: "these Guidelines constitute a key step in strengthening supervisory convergence across Europe, by further building a common approach to the enforcement of financial information and reinforcing coordination among European enforcers".

The Guidelines provide a common approach in several areas as follows:

- Enforcement objectives and scope;
- The enforcement process at national level, such as selection methods, examination procedures and enforcement actions; and
- Coordination of enforcement activities at European level, such as setting up European common enforcement priorities, defining criteria for selecting accounting matters for further discussion at European level and their reporting.

In relation to the next steps of these Guidelines, ESMA affirms they will now be translated into the official languages of the EU and national securities regulators will then have two months from the date of the publication of the translations on ESMA's website, to confirm to ESMA whether they comply or intend to comply with the Guidelines by incorporating them into their supervisory practices.

A copy of the Guidelines is available at the following link:

http://www.esma.europa.eu/system/files/2014-807_-_final_report_on_esma_guidelines_on_enforcement_of_financial_information.pdf

(ii) ECB Publishes Opinion on Proposed Regulation for Reporting and Transparency of Securities Financing Transactions

On 10 July 2014, the European Central Bank ("**ECB**") published an opinion (dated 24 June 2014) in respect of the European Commission's proposal for a Regulation on reporting and transparency of securities financing transactions ("**SFTs**"). The opinion was released in response to requests from the European Parliament and from the Council of the EU on 18 March 2014 and on 27 March 2014, respectively.

As stated in the opinion, the ECB broadly welcomes the proposed Regulation, which is aimed to increase the safety and transparency of the financial market. It also makes specific observations on several matters as follows:

- Exemption for central bank transactions from transparency and reporting obligations;
- Clarification of the Commission's power to amend the list of exemptions;
- Rehypothecation; and
- Modalities for the reporting of data on SFTs.

In addition, the ECB drafting proposals are provided in an annex included in the opinion.

The opinion released by the ECB may be accessed via the following link:

https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2014_49_f_sign.pdf

Anti-Money Laundering/Counter-Terrorism Financing

On 25 February 2014, the Central Bank published its planned series of Themed Reviews and Inspections for 2014, as well as its 2014 Enforcement Priorities. It is clear from these publications that a key focus of the Central Bank is the area of anti-money laundering and counter terrorist financing ("**AML/CTF**") and the controls which designated persons are required to put in place to mitigate against the risk of AML/CTF. It is also clear from these publications that the Central Bank expects regulated entities to have appropriate systems, controls and procedures in place to meet with their regulatory obligations.

The following is a summary of the information which may be requested by the Central Bank as part of the themed AML/CTF inspections;

List of documentation to be submitted to the Central Bank in advance of inspection

1. An up-to-date organisation chart, which includes the names of directors and senior managers and the date of their respective appointments, together with a breakdown of those with day-today management of AML/CTF responsibilities of the entity;
2. A copy of the entity's current AML/CTF policy and procedures;
3. A copy of the entity's customer due diligence procedures if separate to the AML/CTF procedures requested at point 2 above;
4. A copy of the entity's current AML/CTF Risk Management Strategy, policies and procedures, including details of the risk based approach employed;
5. A copy of any relevant outsourcing or similar agreements;
6. Copies of all board minutes (where they relate to AML/CTF) from inception date to date of Central Bank letter advising entity of proposed themed inspections (the "**Central Bank Letter**");
7. A copy of the entity's suspicious transaction reporting procedures.
8. An outline from end to end of the process which has been put in place to deal with suspicious transactions reporting;
9. An outline of the entity's transaction monitoring procedure/system;
10. Details and results of any AML/CTF testing and/or internal or external audits carried out between inception date and date of the Central Bank letter;
11. Details of number of suspicious transactions received by the MLRO together with details of how many suspicious transaction reports ("**STRs**") were submitted to An Garda Síochána and the Revenue Commissioners between inception date and date of the Central Bank letter;
12. Copies of AML/CTF training provided to persons involved in the conduct of the business from inception date to date of the Central Bank letter;
13. A list of all customers, in the form of a spread-sheet, categorised into natural and legal persons, since 15 July 2010, including date of entry and date of verification;
14. A list of any customers on which redemptions were placed prior to the identity of the customer having been verified; and
15. A list in the form of a spread-sheet of all transactions (including new subscriptions, additional subscriptions, transfers and partial or full redemptions) processed by the entity for one week as per the date specified in the notification letter.

List of documentation to be available to the Central Bank for inspection on the first day of the onsite visit

1. Access to AML/CTF training records for period from inception date to date of the Central Bank letter, including copies of training material and staff training records;
2. The current list of all Politically Exposed Persons and high risk customers in the entity;
3. Access to customer due diligence records and transaction/service records;

4. Access to STRs information, including sight of original information provided to An Garda Siochana and the Revenue Commissioners and details of suspicious transactions received by the MLRO but not reported; and
5. Access to the entity's transaction monitoring system (where applicable).

Investment Funds and their service providers should be aware that the Central Bank has recommenced its themed AML/CTF inspections. In this regard, such entities should ensure that they have robust AML/CTF controls in place. In particular, in accordance with section 54 of the Acts, an entity which falls within the description of designated person is required to have its own standalone AML/CTF policy. This means that in the case on an Investment Fund, it is required to have its own AML/CTF policy, notwithstanding that it outsources the day to day AML/CTF responsibilities to a separately appointed Administrator.

Corporate Governance Code for Fund Service Providers

The Irish Funds Industry Association ("**IFIA**") issued on 5 August 2014 a voluntary Corporate Governance Code for Fund Service Providers (the "**Code**"), which will sit alongside its 2012 Corporate Governance Code for Collective Investment Schemes and Management Companies.

Although the Code is a voluntary one, its adoption is not only recommended by the IFIA but, as set out in its foreword to the Code, it is *encouraged* by the Central Bank. The Code proposes a "comply or explain" type approach whereby a Fund Service Provider subject to the Code would indicate either in its Annual Report (as part of its financial statements) or on a website whether it had adopted the Code and, if so, whether in full or in part, setting out any reasons for non-adoption or for its decision not to comply with certain parts of the Code.

A transitional period of 12 months for adoption of the Code is suggested by IFIA, with disclosure as to adoption/compliance appearing in Annual Reports/websites for years commencing on or after 1 January 2015.

The Code states that it applies to administrators, custodians and depositaries authorised and regulated by the Central Bank of Ireland. Therefore, it would not appear to apply to an Irish branch of a custody or depositary bank whose head office is located in another EU Member State. Additionally, the Code does not apply to management companies (even those providing fund administration services investment schemes to collective investment schemes) as the separate IFIA Corporate Governance Code for Collective Investment Schemes and Management Companies would apply to such management companies.

The Code is quite similar to that for Collective Investment Schemes and Management Companies,

with familiar requirements such as the requirement that the board be of sufficient size and expertise to adequately oversee the entity's operations; the board having the appropriate balance of skills, experience and knowledge to enable it discharge its duties; at least one director to be an independent non-executive director ("**INED**"); at least two directors to have Irish residency; at least two directors to be reasonably available to meet the Central Bank at short notice; board members must have sufficient time to devote to their role including and set out a time commitment; disclosure of concurrent directorships and requirement for there to be a Chairman (either an NED or an INED).

The Code contains broad statements as to the role and responsibilities of the Chairman; of the CEO; the role of the Board and the role of NEDs, INEDs and of the executive; as well as the need for reserved powers. It also has requirements regarding meetings – normally two meetings every 6 months – including attendance, agenda setting and reporting, minutes and conflicts and also contains provisions regarding committees of the Board, general requirements as to understanding risk, risk appetite and risk management.

The Code can be viewed at the following link:

http://www.irishfunds.ie/fs/doc/publications/corporate-governace-booklet-8page-web-2.pdf

Data Protection

(i) Minister for Justice Commences Additional Sections of Data Protection Act

On 18 July 2014, three sections of the Irish Data Protection Acts 1988 and 2003 (the "**DPA**") that had not yet been enacted were commenced by the Minister for Justice, thereby bringing the remaining sections of the DPA into force with effect from that date. As a result, data controllers now have a broader duty to notify third party recipients of personal data when that data has been changed or deleted. Employers are also restricted from requiring certain individuals in the employment context from making an access request for their personal data.

Section 6 of the DPA outlines that a data controller must rectify, block or erase personal data that is collected, processed or otherwise dealt with in contravention of the DPA and to notify the data subject accordingly. Following the commencement of section 6(2)(b), the data controller is also now required to notify any person to whom the personal data was disclosed during the preceding 12 months unless such notification proves impossible or involves a disproportionate effort. The data controller is obliged to make the notification within 40 days of receipt of the request from the data subject to rectify, block or erase personal data that was collected, processed or otherwise dealt with in contravention of the DPA.

Section 10(7) of the DPA provides that a data controller is obliged to notify the data subject where it blocks, rectifies, erases, destroys or adds a statement to personal data in compliance with an enforcement notice issued by the Data Protection Commissioner. Following the commencement of section 10(7)(b), the data controller is now also required to notify any person to whom the personal data were disclosed during the preceding 12 months unless such notification proves impossible or involves a disproportionate effort. The data controller is obliged to make the notification within 40 days of compliance with the enforcement notice.

Furthermore, following the commencement of section 4(13) of the DPA, an employer is prevented from "*requiring*" an individual (i.e. the data subject), in the context of their role as an employee, potential employee or contractor, to make an access request under section 4 of the DPA to another data controller or to provide data received in response to such a request. The changes introduced in respect of certain employment situations may be directed at employers who utilise the right of access as a means to inspect a person's background. An employer must ensure to take extra care if suggesting that an individual use their right of access. A breach of this section incurs criminal penalties. This could result in fines of up to €100,000 in serious cases.

Statutory Instrument 337 of 2014 and Statutory Instrument 338 of 2014, which enact the abovementioned sections of the Act, can be accessed via the following links, respectively:

http://www.betterregulation.com/rulebooks.php?T=http://www.betterregulation.com/doc/1/77054

http://www.betterregulation.com/rulebooks.php?T=http://www.betterregulation.com/doc/1/77054

(ii) New Guide to Audit Process Published

In August 2014, the Office of the Data Protection Commissioner issued new guidance on its powers under Sections 10(1A) and (1B) of the Data Protection Acts to carry out investigations into organisations' data protection compliance.

As clarified in the preface, this guidance was originally published in 2009 and its revised version has been updated to take into account legislative developments as well as reflect any changes in the approach of the Office of the Data Protection Commissioner to the audit process. This guidance is designed to assist organisations selected for audit by the Office of the Data Protection Commissioner. It is also stated in the guide that it is hoped that this resource will provide organisations holding personal data with a simple and clear basis to conduct a self-assessment of their compliance with their obligations under Irish Data Protection Law.

The updated guide to audit process consists of the sections set out below:

- Introduction (concerning Compliance Audits; Audit Focus and Potential Benefits for Organisations);
- Audit Model;
- Legal Basis for Audits/Inspections;
- Pre-Audit Procedures;
- Audit Methodology;
- Inspection Day;
- Audit Report; and
- Appendices.

The new guide to audit process is available through the following link:

http://www.dataprotection.ie/docimages/documents/GuidetoAuditProcessAug2014.pdf

(iii) EU Justice Commissioner's Speech on the Right to be Forgotten and the EU Data Protection Reform

On 18 August 2014, the European Commission published a press release in relation to the speech of EU Justice Commissioner, named "The right to be forgotten and the EU data protection reform: Why we must see through a distorted debate and adopt strong new rules soon", held at the IFLA World Library and Information Congress in Lyon, France.

According to the words of the EU Justice Commissioner, since the business is moving faster than the political machine, it is high time for Member States to catch up. Negotiations on the data protection reform have been on-going for more than two and a half years and they have made good progress. But there is more work to be done. Heads of State and Government have committed themselves to a swift conclusion of negotiations several times. At the European Council at the end of June, they affirmed the importance of adopting "a strong EU General Data Protection framework by 2015".

The EU Justice Commissioner urges Member States to stick to this goal, exhorting them to be ambitious and help to give Europe the data protection rules it needs since they "cannot afford to delay such significant opportunities for growth and run the risk of having others' standards imposed on them by others". It is also underlined that EU needs a strong, modern data protection framework, and they need it soon.

The press release including the EU Justice Commissioner's speech may be accessed via the following link:

http://europa.eu/rapid/press-release_SPEECH-14-568_en.htm

Whistleblowing

(i) The Protected Disclosure Act 2014

On 15 July 2014, the Protected Disclosures Act 2014 (the "**Act**") became operational.

As clarified by the Minister for Public Expenditure and Reform, the legislation meets the commitment included in the Programme for Government to introduce comprehensive whistleblower protection legislation. The commencement of the Act also addresses the recommendation contained in the Final Report of the Mahon Tribunal advocating the introduction of pan-sectoral whistleblower protection legislation. Furthermore, the legislation closely mirrors international best practice recommendations on whistleblower protection made by the G20/OECD, the UN and the Council of Europe and draws on recent developments in legislative models adopted or being put in place in other jurisdictions.

The key features of the legislation are as follows:

- Comprehensive coverage, including all employees, contractors, agency workers, members of the Garda Siochana and the Defence Forces;
- The absence of any good faith or public interest test which could otherwise act as a significant deterrent to making a protected disclosure;
- The scope for protection of a disclosure made prior to the legislation coming into effect;
- The availability of interim relief if an employee is dismissed for having made a protected disclosure;
- Access to the State's industrial relations machinery for securing redress against penalisation for having made a protected disclosure;
- Compensation of up to five years remuneration; and
- Strong protections against the disclosure of a whistleblower's identity.

The legislation is also particularly focused on seeking, as much as possible, to protect the identity of a whistleblower and identifies a number of distinct disclosure channels for potential whistleblowers.

A protected disclosure is the disclosure of "relevant information". To qualify as relevant information:

- A worker must reasonably believe that the information disclosed tends to show one or more "relevant wrongdoings";

- The wrongdoing must come to the worker's attention in connection with his/her employment. For example, a disclosure will not be protected if it relates to matters in someone's personal life outside and unconnected to the workplace.

"Relevant wrongdoings" are defined in an exhaustive list and include the following:

- The commission of an offence;
- A miscarriage of justice;
- Non-compliance with a legal obligation;
- Health and safety threats;
- Misuse of public monies;
- Mismanagement by a public official;
- Damage to the environment; or
- Concealment or destruction of information relating to any of the foregoing.

Special arrangements are also put in place for disclosures regarding law enforcement matters and to disclosures which may adversely affect Ireland's security, defence or international relations.

The Protected Disclosures Act 2014 and the related Commencement order may be accessed via the following link:

http://www.per.gov.ie/protected-disclosures-i-e-whistleblowing/

Fitness and Probity

(i) Guidance on the Fitness and Probity Amendments 2014

On September 2014, the Central Bank published the Statutory Instrument No. 394 of 2014 (the "**Amending Regulation**") prescribing a further six pre-approval controlled functions ("**PCFs**") according to the Fitness and Probity regime.

Part 3 of the Central Bank Reform Act 2010 (the "**Act**") prescribes that a certain person performing a controlled function ("**CF**") in a regulated financial service provider must have a level of fitness and probity appropriate to the performance of that particular function. Furthermore, the Central Bank has the power to prescribe a subset of CFs as functions for which the prior approval of the Central Bank is required in order to appoint the person.

The PCFs affected by the amendments are the functions 42 to 47 as follows:

- 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 Investors Money Oversight (PCF-46) for Fund Service Providers; and
- Head of Credit (PCF-47) for Retail Credit Firms.

The Amending Regulation, besides prescribing the above six new PCFs, serves to update other parts of the Fitness and Probity regulations which deal with the following matters:

- Clarification on the exclusion of Certified Persons – It is specified that regulated financial service providers cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons;
- PCF Title Changes – The title of PCF-14 has been changed from "Head of Risk" to "Chief Risk Officer" and the title PCF-26 has also been changed from "Head of Markets Supervision" to "Head of Regulation";
- Stock Exchange Amendment – the Amending Regulations reflect the fact that on 11 April 2014 the Irish Stock Exchange ("**ISE**") Ltd was demutualised and it became a public limited company;
- Alternative Investment Fund Managers – The Amending Regulation incorporates the AIFMs as introduced by the AIFM Directive into the scope of the fitness and probity regime.

The Central Bank issued Guidance on the Fitness and Probity Amendments 2014 (the "**2014 Guidance**"), the purpose of which is to assist regulated financial providers in complying with their obligations under the Amending Regulation.

As clarified in the 2014 Guidance, the Amending Regulation will come into effect on 31 December 2014. It is also clarified that persons in situ in any of the six new PCFs on 31 December 2014, may continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF.

The full Guidance is available at the following link:

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

(ii) Central Bank Publishes Fitness and Probity Services Standards Performance Report

On July 2014, the Central Bank published its Regulatory Transactions Service Standards Performance Report (the "**Report**"), covering the period January – June 2014.

As stated in the Report, this document sets out the Central Bank's performance against Service Standards it has committed to in relation to the processing of Fitness and Probity PCF Individual Questionnaire ("**IQ**") applications and the authorisation on new entities.

These authorisation service standards are being introduced on a phased basis from January 2014 for a number of entities as follows:

- Credit Institutions;
- Insurers;
- Investment Firms; and
- Regulated Markets.

It is also clarified by the Central Bank that there are now a total of seven Service Standards and the performance against the targets was exceeded in six of the seven cases for the period from January to June 2014.

This Report consists of two Sections and an Appendix as follows:

- Section 1 outlines performance against the fitness and probity service standards;
- Section 2 highlights performance against authorisation service standards for the relevant period; and
- Appendix A sets out the reasons why an IQ application may be returned as incomplete.

The full report is available through the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Service%20Standards%20Performance%20Report%20July%202014.pdf

(iii) Central Bank Issues CP83 on Fitness and Probity Regime for Credit Unions that are also Authorised as Retail Intermediaries

On 1 August 2014, the Central Bank published a consultation paper ("**CP83**") namely Fitness and Probity regime for Credit Unions that are also authorised as Retail Intermediaries.

As recalled in the paper, on December 2012, the Central Bank had published a previous consultation paper concerning Fitness and Probity regime for Credit Unions ("**CP62**"). CP62 also proposed that credit unions that are authorised as retail intermediaries would become subject to the Fitness and Probity regime which applies to all regulated financial service providers, with the exception of credit unions, from 1 July 2015 for the retail intermediary portion of their business.

Following the initial implementation of the Fitness and Probity regime for credit unions, the Central Bank has reviewed the proposed approach on applying fitness and probity requirements to credit unions that are also authorised as retail intermediaries and is now proposing a renewed tailored approach.

The CP83 sets out the Central Bank's proposals in respect of this revised approach and is seeking feedback on the same proposals. The structure of the paper is as follows:

- Section 1 – Introduction;
- Section 2 – Background;
- Section 3 – Overview of the revised approach;
- Section 4 – Implementation of the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries;
- Section 5 – Making Submission; and
- Appendix 1 – CFs and PCFs in the general Fitness and Probity regime.

The CP83 can be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP83%20Fitness%20and%20Probity%20regime%20for%20Credit%20Unions%20that%20are%20also%20authorised%20as%20Retail%20Intermediaries/CP%2083%20Fitness%20and%20Probity%20regime%20for%20Credit%20Unions%20also%20authorised%20as%20Retail%20Intermediaries.pdf

Central Bank of Ireland (the "Central Bank")

(i) Central Bank Publishes Discussion Paper on Risk Appetite

On 20 June 2014, the Central Bank published a discussion paper on the importance of an effective Risk Appetite Framework.

As clearly stated in the paper, the purpose is to generate discussion and debate among stakeholders on risk appetite, its linkage with organisational strategy, and its importance for

financial institutions. The main concepts and theories of risk appetite and its place within Risk Appetite Frameworks ("**RAF**") are considered. The paper also provides some suggestions as to what a risk appetite statement might contain.

The paper is aimed primarily at directors and then at senior management within organisations regulated by the Central Bank. On the basis that it is acknowledged that there are varying degrees of knowledge in relation to risk and management of risk, the view of the Central Bank is that the Board is ultimately responsible for risk management and strategy and the paper sets out that risk appetite must be considered with strategy because they are fundamentally interlinked.

Furthermore, the paper affirms that it is intended to be the first in a series of initiatives on elements of risk appetite. The goal of this paper is identified in advancing understanding as to what an effective risk appetite encompasses and in doing so to contribute to a clearer view of what organisations are hoping to achieve in their Risk Appetite Statements.

The Central Bank encouraged both individuals and organisations to respond to the paper with their own views regarding this matter. Submission should have been made by 1 September 2014 to riskappetite@centralbank.ie

A copy of the discussion paper is available at the following link:

http://www.centralbank.ie/regulation/poldocs/dispapers/Documents/Risk%20Appetite%20Paper.pdf

(ii) Central Bank Released Recommendations on Regulatory Returns

On 12 September 2014, the Central Bank released a letter in respect of the Thematic Review of data integrity of regulatory returns submitted to the Central Bank by investment firms, fund service providers and stockbrokers (the "**Firms**") as a mechanism to provide feedback in relation to the findings and outcomes of those thematic reviews.

As clarified in the letter, the reviews were conducted by Authorised Officers of the Central Bank and focused on data contained in the regulatory returns of a selected sample of Firms. The returns reviewed included FINREP accounts, annual audited financial statements and regulatory capital returns.

The letter outlines that the Central Bank found that not all Firms apply the same level of control and oversight over the production of regulatory returns leading to omissions, discrepancies and misclassifications. The Central Bank emphasises that each Firm and its Board must fully appreciate and understand its obligations to ensure that all regulatory reporting to the Central

Bank is complete, timely, accurate and in compliance with relevant legislation and Central Bank guidance.

Specifically, the Central Bank has set out a number of recommendations that Firms will need to take into account in relation to the production, oversight and reporting of all regulatory returns. These recommendations are outlined in the schedule enclosed to the Central Bank's letter.

The Central Bank also advises that, where there is non-compliance with relevant regulatory requirements, it will have regard to these recommendations, when exercising its regulatory and enforcement powers.

The Central Bank's letter and the enclosed schedule of recommendations may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/administrators/Documents/Thematic%20Review%20of%20data%20integrity%20of%20regulatory%20returns.pdf

(iii) Central Bank Information Update on Fund Applications, Post-Authorisation Amendments and Manager Applications Deadlines

On 17 September 2014, the Central Bank published a letter gathering details of projected volumes of fund/sub-fund applications (including self-managed/internally managed investment company applications and risk management processes) as well as post-authorisation amendments which have pre-Christmas or pre-year end authorisation/approval/noting deadlines. It is also underlined that applications must be complete when submitted.

Deadlines for receipt of applications, as set out by the Central Bank, are as follows:

FUNDS/POST-AUTHORISATION	DEADLINE FOR RECEIPT
FUNDS AND NON FAST-TRACK SUB-FUNDS (this deadline also applies to self-managed/internally managed investment company applications and risk management processes)	10 October
FAST-TRACK SUB-FUNDS	7 November
POST-AUTHORISATION – MAJOR ITEMS	10 October
POST-AUTHORISATION – ALL OTHER ITEMS	7 November

In relation to QIAIF Filings, normal timeframes apply until 22 December.

FOR AUTHORISATION/APPROVAL/ NOTING ON:	DEADLINE FOR RECEIPT
24 December	3pm on Monday 22 December
29 December	3pm on Tuesday 23 December
2 January	3pm on Wednesday 31 December

Regarding QIAIF Change of Service Provider Filings ("**COSPs**") that are effective from 31 December 2014 to 1 January 2015, complete applications must be submitted by close of business on Friday 19 December.

In respect of UCITS/RIAIF, any notings for 24 December must be received by 3pm on 23 December, while funds seeking to revoke on 31 December must submit a complete revocation application (including payment of the funding levy) by close of business on 19 December.

The Central Bank also advises that in the event that it transpires, subsequent to the submission of the above list, that an item on the list will not be submitted or was submitted and is not proceeding, an update must be sent to the following address:

AIFauthorisations@centralbank.ie

(iv) Central Bank Publishes Guide to the 2014 Industry Funding Regulations

Following recent approval of the Central Bank Act 1942 (Section 32d) Regulations 2014 by the Minister for Finance, the Central Bank has published its Guide to the 2014 Industry Funding Regulations.

Pursuant to Section 32D of the Central Bank Act, 1942 (as amended) the Commission of the Central Bank may, with the approval of the Minister for Finance, make regulations requiring regulated entities to pay a levy to the Bank.

The objective of these Regulations is to raise approximately 50 per cent of the budget attributable to the Bank's financial regulation activities directly from the financial service providers it regulates. The balance is funded by the Central Bank by means of a subvention.

The Guide released by the Central Bank is intended to provide a user-friendly guidance as to how the industry funding levy for 2014 is calculated. It is divided into five sections which deal with the following points:

- Section 1 – "Background to the 2014 Industry Funding Regulations" which sets out the background of the levy and summarises these Regulations;

- Section 2 – "Significant Changes in 2014" which sets out significant changes to the levy in 2014 together with changes to the categorisation of regulated financial service providers;
- Section 3 – "Calculation of the Industry Funding Levy" which explains how the levy is calculated for each industry sector;
- Section 4 – "Financial Information for Industry Sectors" which is intended to explain how to calculate the levy rates for individual financial service providers and how the net Annual Funding Requirement is determined; and
- Section 5 – Appendices.

In September 2014, the Central Bank commenced issuing the 2014 Industry Funding Levy notices. Regulated entities are reminded that all levy notices are due and payable 35 days following the issue of these notices. Accounts may be settled by cheque, electronic funds transfer or direct debit. Those firms that have opted to settle their account by means of direct debit should note that the Central Bank expects to carry out a direct debit run during the week beginning 20 October 2014.

Further details can be found in the Guide which is available at the following link:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202014%20DRAFT%202.pdf

(v) Central Bank Consults on Fund Management Company Effectiveness

The Central Bank has published a Consultation Paper ("**CP86**") on a number of initiatives which are '*designed to underpin the achievement of substantive control by fund management companies, acting on behalf of investment funds, over the activities of their delegates'*.

'Fund management companies' include UCITS management companies, authorised Alternative Investment Fund Managers, self-managed UCITS investment companies and internally managed Alternative Investment Funds.

The full text of CP86 is available on the Central Bank website via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP86%20Consultation%20Paper%20on%20Fund%20Management%20Company%20Effectiveness-Delegate%20Oversight/CP86%20Fund%20Management%20Company%20Effectiveness-Delegate%20Oversight.pdf

The four key areas covered by the Central Bank in CP 86 relate to:

- guidance on how fund management companies should oversee delegates;
- reduction of the number of existing management 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.

Dillon Eustace has published an article on this topic that can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Central%20Bank%20Consults%20on%20Fund%20Management%20Effectiveness.pdf

The Central Bank has invited submissions on its consultation by 12 December 2014. Dillon Eustace will be providing comments to the Central Bank and should you wish to provide any comments on CP86 to the Central Bank, we would be happy to incorporate them into our submission.

Companies Bill Update

(i) Implementation of the Companies Bill

The Companies Bill 2012 is currently being reviewed by the Oireachtas but given the number of amendments that have been introduced it is expected that the Companies Bill will not be enacted until December 2014 at the earliest. Notwithstanding the date of enactment of the Bill, the commencement date of the Act will be 1 June 2015.

Some of the key changes under the Companies Bill include:

- The Codification of Directors' Common Law Fiduciary Duties

The Companies Bill gives statutory recognition to the current common law and equitable principles regarding director's duties which will ensure greater clarity for directors.

- New Model Company – Private Company Limited by Shares

The new model private company limited by shares is intended to replace the existing private company limited by shares. There are many similarities between these legal entities, however there are some important changes such as:

- A model company limited by shares can be formed with just one director; and
- A model company limited by shares will have unlimited legal capacity and the "ultra vires" rule, whereby a company's legal capacity is limited to the objects set out in its memorandum of association, will be abolished.

- Elective Regime

All private companies will be obliged to either register as a designated activity company or adopt a new form of constitution and be registered as a private company limited by shares within the 18 month transition period. Otherwise, the private company will be deemed to be a private company limited by shares and a default form of constitution deemed to have replaced its memorandum and articles of association.

- Summary Approval Procedure

The new summary approval procedure will authorise activities that might otherwise require High Court sanction or approval to be approved by the shareholders of a company. In certain circumstances, a reduction of capital or a merger may be effected without the need for High Court approval once the process set out under the Companies Bill is complied with.

- Directors' Compliance Statements

Directors of the following companies will be obliged to sign a compliance statement acknowledging responsibility for compliance with company law obligations:

- Public Limited Companies; and
- "Large" private companies limited by shares, designated activity companies and guarantee companies (i.e. which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million).

Directors of unlimited companies and investment companies are excluded from these obligations.

- Changes to the Insolvency and Corporate Recovery Regimes

The Companies Bill proposes a welcome consolidation and modernisation of the law relating to liquidations, receiverships and examinerships. The Companies Bill seeks to reduce the Court's supervisory role in Court liquidations such that it is more closely aligned to creditors' voluntary liquidations and introduces greater consistency between the three types of liquidations, being members' voluntary, creditors' voluntary and Court liquidations. The Companies Bill also proposes more extensive powers of intervention and scrutiny over liquidators for the Director of Corporate

Enforcement. While the changes in relation to examinerships are relatively modest, the Companies Bill does also reform and consolidate the law relating to receivers including, for example, providing that receivers' powers will be enumerated in a non-exhaustive list, that list being without prejudice to powers which may be granted by a debenture.

- Re-classification of all Company law offences

All company law offences have been allocated into four categories of offences with penalties attaching to each offence.

- Priority of charges and registration of charges

Where security is taken over assets which do not require specific registrations for priorities in registries other than the Companies Registration Office (such as the Land Registry), the current law provides that the priority rests with the creditor who has taken the security first in time. It is proposed under the Companies Bill that this will no longer be the case and instead where security is taken over such assets, the priority will rest with the creditor who has been the first to register the security interest with the Companies Registration Office. In addition, whilst the existing procedure for the registration of the particulars of charges with the Companies Registration Office within a 21 day period will remain (the "**one stage procedure**"), a new "two stage procedure" will also be introduced for the registration of the particulars of charges.

FATCA

In the last Quarterly Legislative Update we advised that, on 27 June 2014, the Irish Revenue Commissioners (in conjunction with the Department of Finance) finalised the relevant Regulation (S.I. No. 292 of 2014) with respect to FATCA (the "**FATCA Regulations**"), which came into operation on 1 July 2014.

On 1 October 2014 the Irish Revenue Commissioners issued finalised Guidance Notes with respect to Ireland's implementation of FATCA.

The FATCA Regulations along with the Irish IGA, Section 891E of the Taxes Consolidation Act 1997 and finalised Guidance Notes set out the framework for Irish Financial Institution to implement and comply with the provisions of FATCA.

A copy of the finalised Guidance Notes is available at the following link:

http://www.revenue.ie/en/practitioner/ebrief/2014/no-882014.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 September 2014, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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