Funds Quarterly Legal and Regulatory Update

Period covered:
1 January 2017 – 31 March 2017

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS

(i) Feedback Statement on CP 105 – Consultation on amendments to the Central Bank UCITS Regulations

On 19 January 2017, the Central Bank published its feedback statement on CP 105 – Consultation on amendments to the Central bank UCITS Regulations (the "**Feedback Statement**").

CP 105, originally published on 2 June 2016, relates to a number of amendments to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (the "**Central Bank UCITS Regulations**"): (a) arising as a result of the implementation of UCITS V; and (b) technical changes, including corrections of typographical errors, identified after the Central Bank UCITS Regulations were published.

The feedback statement summarises the responses received to the three specific questions raised in CP 105 along with the Central Bank's comments and decisions.

Question 1: Stakeholders were requested to indicate whether they agree with the changes as currently proposed and to provide observations. In addition, stakeholders were requested to indicate whether further amendments may be required as a result of the implementation of UCITS V.

Regarding the proposal to include the Central Bank's requirements in respect of establishing subsidiaries, the Central Bank advises as follows:

- Provisions in relation to the establishment/use of subsidiaries are included in the UCITS Regulations – Regulation 74(3) subparagraphs (d) and (e). Similar to the approach taken for alternative investment funds, the Central Bank will issue guidance on their website in relation to applying to the Central Bank for approval to establish a subsidiary; and

- The Central Bank agrees that requiring disclosure of the names of subsidiaries in the prospectus may not be practical. The amending Regulations will reflect a revised provision requiring disclosure in the UCITS annual report.

Regarding the proposal of inserting a new Regulation 114A applying the depositary's safekeeping obligations where assets of the UCITS are held through subsidiaries, the Central Bank will amend the typographical error in Regulation 114A to refer to Article 14 (rather than Article 15) of Commission Delegated 438/2016.

Where assets are held through a subsidiary, the Central Bank considers these as being the UCITS' assets which should be protected in the same manner as assets held directly by the

UCITS. UCITS V Level 2 contains depositary obligations regarding monitoring "all cash of the UCITS". The Central Bank views this as including the UCITS' cash held through a subsidiary and consequently the depositary's cash flow monitoring duties should apply to UCITS' cash held through the subsidiary. For clarity Regulation 114 A will be further amended to provide that where a UCITS establishes a subsidiary, the assets of the subsidiary must be held by the depositary and the depositary's safekeeping and cash monitoring obligations shall apply.

Question 2: Stakeholders were requested to indicate whether they agree with the changes as currently proposed and to provide observations. Examples include:

1. A proposal to amend Regulation 36 to reflect the fact that valuation of a particular asset type of a UCITS may be mandated by legislative requirements other than those in the Central Bank UCITS Regulations (e.g. valuation of OTC derivatives not cleared by a CCP in accordance with Regulation (EU) No 68/2012 (EMIR)); and

2. A proposal to amend Regulation 53(2)(b) to permit a responsible person more flexibility in providing disclosure for long and short positions.

The Central Bank has considered these items and advises as follows:

1. Regulation 36/Schedule 5 is not being amended. However, the Central Bank will issue a Q&A to clarify that valuation of a particular type of a UCITS may be mandated by legislative requirements other than those in the Central Bank UCITS Regulations. In such circumstances those particular assets should be valued in accordance with the relevant legislative requirements.

2. The Central Bank intends to amend Regulation 53(2)(b) to give the responsible person more flexibility to provide for disclosure of long and short positions. The new provision will permit disclosure on the basis of the anticipated maximum percentage or anticipated ratio of long positions to short positions.

Question 3: The Central Bank is considering whether the requirements in relation to disclosure of open derivative positions in annual and half-yearly reports might be amended, particularly in circumstances where the disclosure can be lengthy and technical in nature.

Further to comments received, the Central Bank will amend the Central Bank UCITS Regulations to include a new provision incorporating the proposed option to present either a full portfolio statement listing each open financial derivative position or a condensed portfolio statement listing open positions representing 5% or more of assets.

However, where a condensed portfolio statement is provided the Central Bank considers that the introduction of an additional leverage metric could improve disclosure in terms of making it more informative. The leverage metric should be consistent with the leverage measure as used by the UCITS (i.e. sum-of-the-notionals or commitment methodologies) per its risk management process. However, for the purposes of the condensed portfolio statement the leverage is to be analysed (delineated) within each of the following headings:

each derivative type, each derivate type by currency and maturity, each derivative type by industry sector and each derivative type by geographic region.

In addition, the Central Bank sought feedback on a number of technical amendments.

The Central Bank will proceed to amend the Central Bank UCITS Regulations to give effect to the changes described in the feedback statement as well as changes resulting from the consultation process on fund management company effectiveness ("**CP 86**"). While it was anticipated that the revised Central Bank UCITS Regulations would be published in first quarter of 2017, to date they have not been published.

A copy of the feedback statement is available at the following link:

http://files.irishfunds.ie/1484913456-2017-01-CP105-FEEDBACK-STATEMENT-Final.pdf?_cldee=YnJlZWRhLmN1bm5pbmdoYW1AZGlsbG9uZXVzdGFjZS5pZQ%3d%3d&recipientid=contact-60deb89e6c66e411aea8d89d67632eac-4b5f952645e04d7bbc8c0fc7a2a379db&esid=543e6d7e-08df-e611-80f0-5065f38b46e1&urlid=0

(ii) ESMA issues Opinion on UCITS Share Classes

On 30 January 2017, the European Securities and Markets Authority ("**ESMA**") published an Opinion in relation to the differences which can exist between different types of units or shares within the same UCITS fund, with ESMA identifying differing approaches in different Member States. In order to address such differences, ESMA included four criteria UCITS must follow when setting up different share classes. The publication of such criteria is envisaged to create increased harmonisation across the EU in this area. The four criteria are summarised as follows:

- **Common investment objective**: A common investment objective should exist among all the share classes within the same UCITS. Hedging arrangements, with the exception of currency risk, are non-compatible with having a common investment objective as per the ESMA Opinion;

- **Non-contagion:** ESMA notes that UCITS management companies should have in place procedures whereby a risk which is pertinent to one share class cannot have a potential adverse effect upon a differing share class. ESMA notes that although such risks cannot be fully eradicated, the carrying out of various tasks serves to lessen the likelihood of such potential adverse effects. Such tasks include stress testing, monitoring payment and delivery obligations and having in place a detailed, pre-defined and transparent hedging strategy;

- **Pre-determination:** All elements of the share class should be identified and determinable before the fund is set up; and

- **Transparency:** Information regarding differences in share classes within the same fund should be made available to investors when a choice of two or more classes exists.

All new funds which have share classes will be required to adhere to the criteria set out in the Opinion.

For existing funds which have share classes and do not currently comply with the provisions of the Opinion there is a transitional period for the implementation of the criteria as set out in the Opinion. However, where a fund retains existing share classes which fall foul of the Opinion such share classes must be closed to investment by new investors by 30 July 2017 and closed to additional investment by existing shareholders by 30 July 2018.

ESMA's full Opinion is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/opinion_on_ucits_share_classes.pdf

(iii) Central Bank publishes updated UCITS Q&A

On 13 March 2017, the Central Bank published the sixteenth edition of its Q&A on UCITS Regulations.

The amended Q&A include changes in relation to transitional arrangements following the publication of the Central Bank (Supervision and Enforcement Act) 2013 (Section 48(1)(Investment Firms) Regulations 2017 ("**CBI IF Regulations**").

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

https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Funds/UCITS/Guidance/170313__final-ucits-qa-no-16-amendments-further-to-inv-firm-regs-_ph.pdf?sfvrsn=4

AIFMD

(i) Revised AIF Rulebook and updated AIFMD Q&A

On 3 January 2017, the amended requirements for loan Originating Qualifying Investor AIFs ("**L-QIAIFs**"), as outlined in the AIF Rulebook took effect. The Central Bank published its notice of intention for such changes in November 2016. The amendments represent a broadening of the activities L-QIAIFs are permitted to engage in, however, their activities must principally remain as lending and lending related. Clarification on the L-QIAIF rule changes has been provided by the Central Bank with the publication of the twenty-third and twenty-fourth edition of the AIFMD Q&A with the latter also containing amendments following the publication of the CBI IF Regulations.

The updates to the AIF Rulebook relate only to the L-QIAIF and do not relate to amendments advised under the Central Bank's Feedback Statement on CP 99 – Consultation on Amendments to the AIF Rulebook. The Central Bank intends to replace the AIF Rulebook, similar to the approach taken with the publication of the Central Bank UCITS Regulations. The amendments in relation to L-QIAIFs will form part of the planned AIF Regulations which are intended to replace the AIF Rulebook. It is not yet known when the consultation period on such AIF Regulations will take place.

On 13 March 2017, the Central Bank published a Revised AIF Rulebook which amends the rulebook in light of the CBI IF Regulations whereby the chapter in relation to Fund Administrators has been deleted.

The updated AIFMD Q&A is available at the following link:

https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/funds-service-providers/aifm/AIFM/aifmd-qa-version-24.pdf?sfvrsn=2

The updated AIF Rulebook is available at the following link:

https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Funds/AIFS/Guidance/aif-rulebook-march-2017.pdf?sfvrsn=2

European Venture Capital Funds ("EuVECA") & European Social Entrepreneurship Funds ("EuSEF")

(i) ECON report on proposed Regulation to amend the EuVECA Regulation and EuSEF Regulation

On 30 March 2017, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") published its report on the proposed Regulation amending the European Venture Capital Funds Regulation ("**EuVECA Regulation**") and the European Social Entrepreneurship Funds Regulation ("**EuSEF Regulation**"). ECON had adopted the report on 22 March 2017, which among other matters proposes to:

- Extend the range of managers eligible to set up and manage EuVECA and EuSEF funds to all managers authorised as alternative investment fund managers ("**AIFMs**");
- Extend the range of companies that can be invested in by EuVECA to "small mid-caps" (i.e. unlisted companies with up to 499 employees);
- Make the cross border marketing of the funds easier and cheaper; and

The report can be accessed through the following link:

http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0120&format=PDF&language=EN

Securities Financing Transactions Regulation ("SFTR")

(i) Responses to ESMA consultation on supervision fees for trade repositories under SFTR and EMIR

On 14 February 2017, ESMA published a webpage containing the responses it has received to its consultation on draft technical advice to the European Commission in relation to fees for trade repositories under the Regulation on reporting and transparency of securities financing transactions ("**SFTR**"). Amendments to the fees under EMIR were also referred to in the webpage.

The consultation to which the responses relate was originally published by ESMA in December 2016.

The responses may be accessed at the following link:

https://www.esma.europa.eu/press-news/consultations/technical-advice-commission-fees-trs-under-sftr-and-certain-amendments-fees

(ii) ESMA publishes Report on Technical Standards under SFTR and Certain Amendments to EMIR

On 31 March 2017, ESMA issued a final report on the draft regulatory technical standards implementing SFTR, which aims to increase the transparency of securities financing transactions ("**SFTs**") (the "**Report**").

The SFTR will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository ("**TRs**"). These details will include the relevant terms of the repo, stock or margin loan, the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied.

The Report provides detailed provisions on:

- **SFT reporting** – including the use of ISO 20022 methodology for reporting, validation and access to data;
- **Data collection and availability** – the use of standardised identifies such as LEI, UTI and ISIN which should improve data quality and aggregation across TRs;
- **Defined access levels** for different public authorities;
- **Registration and extension of registration of TRs – detailed requirements on:**
  - verification of completeness and correctness of reports;
  - data availability and integrity ;
  - operational separation;
  - ancillary services;

- outsourcing;
- IT resources; and

- **Exchanges of data on sanctions between authorities.**

The reporting standards for SFTs has been built on ESMA's experience with EMIR and other EU-wide reporting regimes in order to align reporting standards to the maximum extent possible.

In addition to the SFTR, ESMA is proposing certain amendments to the existing standards implementing EMIR. These amendments are to ensure a level-playing field for market participants with regard to registration and access rules.

ESMA has sent the Report and the amended technical standards under EMIR to the European Commission, which has now three months to decide whether or not to endorse them.

The SFTR implementing measures are expected to enter into force by the end of 2017. Firms would have to start reporting their SFTs to TRs twelve months after the publication in the Official Journal of the European Union. The reporting obligation itself will be phased-in over nine months.

The Report is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf

Money Market Funds Regulation

(i) European Parliament to vote on MMF Regulation in April 2017 session

Following the publication by the Council of the final compromise text of the proposed Regulation on Money Market Funds ("**MMF Regulation**") on 30 November 2016, it is expected that the European Parliament will vote on the MMF Regulation and approve at first reading on 5 April 2017.

It will then be submitted to the Council for adoption.

Packaged Retail Insurance-based Investment Products ("PRIIPs")

(i) Amended Delegated Regulation adopted by European Commission in respect of PRIIPS KID

On 8 March 2017, the European Commission adopted a Commission Delegated Regulation, including Annexes ("**PRIIPs RTS**"), supplementing the Regulation on key information documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs Regulation**").

The recently adopted PRIIPs RTS are a revised version of the respective delegated regulation adopted by the European Commission in June 2016 and aims to address the concerns expressed by the European Parliament in September 2016. Key amendments to the PRIIPs RTS are as follows:

- Clarification in relation to the treatment of multi-option products ("**MOPs**") which have UCITS or non-UCITS funds as underlying investment options, according to which a PRIIP manufacturer can use the key investor information document ("**KIID**") prepared in accordance with the UCITS Directive to comply with the PRIIPs KID disclosure requirements until 31 December 2019;

- The alignment of the comprehension alert with complex products under MiFID II; and

- An amendment to the performance scenarios where the option to provide a fourth scenario has been replaced by a mandatory requirement to add a stress scenario.

The European Parliament and the European Council have a period of three months to review the PRIIPs RTS. If no objections are raised, the PRIIPs RTS will become applicable twenty days following publication in the Official Journal of the EU. The PRIIPs RTS will apply from 1 January 2018. The European Supervisory Authorities ("**ESAs**") are expected to publish a Q&A to supplement the PRIIPs RTS later in 2017.

The amended PRIIPs RTS may be viewed at the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-1473-F1-EN-MAIN-PART-1.PDF

European Markets Infrastructure Regulation ("EMIR")

(i) EBA and ESMA report on interaction of CRR with EMIR

On 18 January 2017, EBA and ESMA published a report (the "**Report**") on the functioning of the Capital Requirements Regulation (Regulation 575/2013) ("**CRR**") with EMIR (the Regulation on OTC derivative transactions, central counterparties ("**CCPs**") and trade repositories (Regulation 648/2012).

In the Report, EBA and ESMA analyse requirements in CRR and EMIR that are potentially duplicative. In particular, the Report focuses on the duplicative requirement which applies to firms authorised as a credit institution and that operate as CCP's. The Report notes that, at present, only three EU credit institutions are also licensed as CCPs.

The Report makes certain recommendations including:

- The treatment of CRR capital requirements for exposures already covered by specific financial resources in compliance with EMIR should be clarified;

- CCPs holding a banking licence should be exempted from certain CRR requirements concerning credit risk, counterparty credit risk and market risk for exposures that are already covered by financial resources under EMIR. These entities should also be exempt from requirements in Articles 300 to 309 of the CRR concerning exposures to CCPs with which an interoperability arrangement has been established in compliance with EMIR; and

- Article 305 of the CRR, which regulates the treatment of clients' exposures to the clearing members, should be clarified to allow a consistent application of EMIR and CRR requirements related to clients' accounts and to improve the requirements around the production of legal opinions, as well as to avoid unnecessary capital requirements for clients' exposures to CCPs.

The Report can be viewed at the following link:

http://www.eba.europa.eu/documents/10180/1720738/Report+on+the+interaction+with+EMIR+%28ESAS-2017-82+%29.pdf

(ii) Delegated and Implementing Regulations on technical standards on EMIR reporting requirement

On 21 January 2017, the following regulations relating to technical standards on data reporting under Article 9 of EMIR were published in the Official Journal of the EU:

- Commission Delegated Regulation (the "**Delegated Regulation**") (EU) 2017/104 amending Delegated Regulation (EU) No 148/2013 supplementing EMIR with regard to regulatory technical standard ("**RTS**") on the minimum details of the data to be reported to trade repositories.

  The European Commission adopted the Delegated Regulation, which relates to Article 9(5) of EMIR, on 19 October 2016.

- Commission Implementing Regulation (the "**Implementing Regulation**") (EU) 2017/105 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards ("**ITS**") with regard to the format and frequency of trade reports to trade repositories according to EMIR.

The Delegated Regulation and the Implementing Regulation entered into force on 10 February 2017. They will apply from 1 November 2017, with the exception of Article 1(5) of the Implementing Regulation, which will apply from 10 February 2017.

The Delegated Regulation can be viewed at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0104&from=EN

The Implementing Regulation can be viewed at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0105&from=EN

(iii) ESMA consults on guidelines on transfer of data between trade repositories

On 30 January 2017, ESMA published a consultation paper in relation to guidelines (the "**Guidelines**") in respect of the transferring of data between trade repositories ("**TRs**") under EMIR.

The Guidelines as referred to, will relate to counterparties to derivatives and CCPs who are required to report derivatives under EMIR, together with TRs registered and recognised by ESMA. The Guidelines provide further information on the following:

- The reporting without duplication of derivatives by counterparties and CCPs as per Article 9(1) of EMIR;
- The transfer of derivatives data between TRs at the request of the counterparties to a derivative, or the entity reporting on their behalf, or in the situation as covered by Article 79(3) of EMIR;
- The recording of data of derivatives under Article 80(3) of EMIR.

The Guidelines establish high level principles that would need to be followed by TR participants, reporting entities, counterparties, CCP's and TR's.

The consultation closed on 31 March 2017 and ESMA is expected to publish final guidelines later in 2017.

ESMA's consultation paper can be viewed at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-17_cp_on_guidelines_on_tr_portability.pdf

(iv) Commission receives advices from ESMA in relation to EMIR review and sanctioning powers under EMIR and CRA Regulation

On 30 January 2017, ESMA published a letter dated 27 January 2017 sent to the European Commission to ask it to consider a number of issues relating to its supervisory and sanctioning powers under EMIR. This request is in the context of the ongoing review of EMIR launched in 2015 by the European Commission.

The letter may be viewed at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-19_letter_to_com_-_emir_review_and_sanctioning_powers.pdf

(v) 2017 EU-wide CCPs stress test launched by ESMA

On 1 February 2017, ESMA published its framework in relation to the stress testing which is to be carried out on CCPs over the course of 2017.

The framework outlines how the new stress test exercises will work and the manner in which the stress testing will be carried out. ESMA has made a number of changes to the 2017 framework in light of the stress testing which was carried out in 2016 whereby changes were identified.

CCPs currently carry out their own daily stress testing which focus on their individual environments; however ESMA's stress tests will serve to broaden the risk profile that is included in the tests as it will take into account the entire EU CCPs system. The ability of the CCPs to perform will be tested in line with a combination of multiple participant defaults and simultaneous market price shocks.

ESMA has submitted the data request to all EU CCPs and has issued instructions on how the CCPs are expected to calculate the data required which will be used in the stress testing process. ESMA envisages finalising the data analysis by the third quarter of 2017 and publishing the results stemming from the analysis in the fourth quarter of 2017.

This stress testing plan is beneficial as it will identify where the CCPs require attention in terms of any potential short comings but will also provide information on where and how CCPs are prepared in an event of market shock. If, following the stress testing, particular areas prove concerning, ESMA will provide recommendations on how to correct such issues.

Further information is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-51_public_framework_2017_ccp_stress_test_exercise.pdf

(vi) ESMA updates Q&A on EMIR implementation

On 2 February 2017, ESMA published an updated version of its Q&A on the implementation of EMIR.

The updated Q&A includes a new answer in relation to transition to the revised technical standards on reporting which will become applicable on 1 November 2017. The Q&A clarifies that the reporting entities are not obliged to update all the outstanding trades upon the application date of the revised technical standards and they are required to submit the reports related to the old outstanding trades when a reportable event takes place (e.g. when a trade is modified).

The purpose of the Q&A is to promote common supervisory approaches and practices in the application of EMIR.

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

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

(vii) Limited reprieve from EMIR 1 March 2017 variation margin deadline

On 23 February 2017, the European Supervisory Authorities ("**ESAs**") issued a press release indicating its expectation that national EU regulators would show temporary forbearance in enforcing EMIR's variation margin provisions, on a case by case basis.

While this statement by the ESAs does not have the effect of amending the EMIR legislation, it would be expected to result in a temporary reprieve from enforcement action at a national level due to non-compliance with the variation margin rules. That is, assuming the relevant EU regulator considers this to be appropriate in light of the size of the exposure to the counterparty and the counterparty's default risk. The ESAs' statement also sets out that "participants must document the steps taken toward full compliance and put in place alternative arrangements to ensure that the risk of non-compliance is contained, such as using existing Credit Support Annexes to exchange variation margins." It would appear from this that counterparties who already have CSAs in place must take demonstrable steps to exchange variation margin under such CSAs from March 1 (even if not compliant with the EMIR requirements) whereas counterparties without such CSAs would not be expected to do so. It is not clear what "alternative arrangements" the ESAs expect counterparties without existing credit support documentation to put in place.

The statement goes on to say that "this approach does not entail a general forbearance, but a case-by-case assessment from the [national regulators] on the degree of compliance and progress" with the expectation that "the difficulties will be solved in the coming few months and that transactions concluded on or after 1 March 2017 remain subject to the obligation to exchange variation margin."

While this temporary reprieve will be welcomed by many, counterparties should take note of its limited and qualified nature.

Further information in relation to this is available at the following link:

https://www.eba.europa.eu/documents/10180/1762986/ESAs+Communication+on+Industry+Request+on+Forbearance+Variation+Margin+Implementation.pdf

(viii) Responses to ESMA consultation on draft RTS on data to be made publicly available by trade repositories under EMIR

On 23 February 2017, ESMA published a webpage detailing the responses it has received to its consultation paper on draft regulatory technical standards ("**RTS**") on data to be made publicly available by trade repositories ("**TRs**") under Article 81 of EMIR. ESMA published the consultation paper in December 2016.

Further information is available at the following webpage:

https://www.esma.europa.eu/press-news/consultations/consultation-draft-technical-standards-data-be-made-publicly-available-trs

(ix) Central Bank updates Q&A on EMIR in relation to variation margin rule

On 27 February 2017, the Central Bank updated its Q&A in relation to EMIR to include the following question and answer:

Question:
I cannot comply with the 1st March 2017 deadline for exchange of variation margin for reasons outside of my control. What should I do?

Answer:
It is a legal obligation to exchange variation margin from the 1st March 2017. However, it has been recognised by authorities across the EU and by IOSCO that there are operational challenges in meeting this deadline.

The Central Bank applies a risk-based approach to the supervision of the adequacy of processes adopted by entities. All counterparties are expected to make every effort to move into full compliance at the earliest possible date.

While the Central Bank does not expect market participants to unwind or avoid transactions that they would have otherwise entered into, it does expect to see evidence of robust planning to achieve compliance at the earliest possible time for all in-scope transactions entered into from 1 March 2017.

(x) European Commission adopts Delegated Regulation on list of exempted entities under EMIR

On 2 March 2017, the European Commission adopted a Delegated Regulation (the "**Delegated Regulation**") in relation to the list of exempted entities report.

The European Commission has concluded that central banks and public bodies charged with or intervening in the management of the public debt from Australia, Canada, Hong Kong, Mexico, Singapore and Switzerland should be exempted from the clearing and reporting requirements set out in EMIR. Article 1 of the Delegated Regulation therefore amends article 1(4)(c) of EMIR to add the central banks and public bodies of these jurisdictions to the list of exempted entities under EMIR.

The Delegated Regulation will enter into force twenty days after it has been published in the Official Journal of the EU.

The Delegated Regulation may be viewed at the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-1324-F1-EN-MAIN-PART-1.PDF

(xi) ESMA signs MoUs with non-EU regulators under EMIR

On 20 March 2017, a press release was published by ESMA announcing a number of memoranda of understanding ("**MoUs**") that it had entered into under EMIR, which are as follows:

- Brazil (with the Banco Central de Brasil and the Comissao de Valores Mobiliarios);
- Japan (with the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Economy, Trade and Industry;
- India (with the Reserve Bank of India);
- Dubai (with the Dubai Financial Services Authority for the Dubai International Financial Center); and
- United Arab Emirates (with the Securities and Commodities Authority).

These MoUs establish co-operation agreements, including the exchange of information for CCPs established and authorised or recognised in Brazil, Japan, India, the Dubai International Financial Centre or the United Arab Emirates and which have applied for EU recognition under EMIR.

The full press release can be found at the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-cooperate-non-eu-regulators-ccps

(xii) ESMA updates list of recognised third-country CCPs

On 30 March 2017, ESMA updated its list of recognised CCPs based in third countries.

Under the EMIR regime, third country CCPs must be recognised by ESMA in order to operate in the European Union.

The CCPs which were recognised are as follows:

- Dubai Commodities Clearing Corporation;
- Clearing Corporation of India Ltd;
- Nasdaq Dubai Ltd;
- Japan Commodity Clearing House Co. Ltd;
- BM&FBovespa S.A., Brazil; and
- Nodal Clearing LLC, USA.

A full list of CCPs recognised to offer services and activities in the European Union may be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/third-country_ccps_recognised_under_emir.pdf

(xiii) Delegated Regulation further extending temporary clearing exception for PSAs under EMIR published in the Official Journal of the European Union

On 31 March 2017, Commission Delegated Regulation (EU) 2017/610 amending as regards the extension of the transitional periods related to pension scheme arrangements ("**PSAs**") was published in the Official Journal of the EU. The exemption for PSA's will run until August 2018.

The European Commission adopted the Delegated Regulation on 20 December 2016. The Council of the EU announced its decision not to object to the Delegated Regulation on 23 February 2017.

The Delegated Regulation entered into force on 1 April 2017.

The Delegated Regulation is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0610&from=EN

Credit Rating Agencies ("CRAs")

(i) ESMA publishes official translations of its final guidelines on validation and review of CRA's methodologies

On 23 March 2017, ESMA published the official translations of its final guidelines on the validation and review of credit rating agencies' ("**CRAs**") methodologies.

The press release which accompanied the translations stated that the guidelines had been translated into all of the official EU languages and become effective two months after their publication; therefore they will become effective on 23 May 2017.

The objective of the guidelines is to clarify ESMA's expectations and to ensure consistent application by CRA's of articles 8(3) and (5) of the CRA Regulation. However these guidelines do not apply to certified CRAs.

The press release can be found at the following link:

https://www.esma.europa.eu/press-news/esma-news/cra-guidelines-validation-and-review-methodologies-now-available-in-all-eu

ESMA

(i) ESMA launches new Q&A tool

ESMA's new webpage to support its new Q&A tool has been live since 9 February 2017. It is envisaged that the tool will provide a mechanism for ESMA to collect and address questions from stakeholders on a public forum.

Questions may be wide ranging, relating to the application of legislation under the remit of ESMA of any of the guidelines or opinions issued by ESMA.

The webpage contains an overview of all the Q&As developed by ESMA per legislative act and sets out instructions on submitting questions to ESMA. In addition to the above, ESMA has also published a separate guide in relation to the submission of questions best practice.

ESMA's new webpage is available at: https://www.esma.europa.eu/questions-and-answers

(ii) ESMA supervisory convergence work programme for 2017

On 9 February 2017, ESMA published its 2017 supervisory convergence work programme ("**SCWP**").

The 2017 SCWP is ESMA's second consecutive annual work programme on supervisory convergence, in line with its 2016-2020 strategic orientation. The priority areas identified by ESMA for 2017 are:

- Ensuring the sound, efficient and consistent implementation of key new EU legislation by preparing for the MiFID II Directive (2014/65/EU) ("**MiFID II**") and the Markets in Financial Instruments Regulation (Regulation 600/2014) ("**MiFIR**") and applying the Market Abuse Regulation (Regulation 596/2014) ("**MAR**") including the finalisation of the underlying IT infrastructure;

- Improving data quality through focusing on the efforts of national competent authorities ("**NCAs**") to prepare for and enforce compliance with the various reporting requirements under EU legislation such as MiFID II and MiFIR, EMIR and AIFMD;

- Ensuring adequate investor protection in the context of cross-border provision of services; and

- Ensuring effective convergence in the supervision of EU central counterparties.

ESMA will monitor the implementation of the 2017 SCWP, and the priorities may be readjusted depending on developments during 2017. ESMA will also ensure more systematic monitoring of compliance by NCAs with guidelines and peer review recommendations, and will provide remediation as required.

The SCWP is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma42-397158525-448_supervisory_convergence_work_programme_2017_0.pdf

(iii) ESMA final draft technical standards under Benchmarks Regulation

On 30 March 2017, ESMA published a final report containing the final draft regulatory technical standards ("**RTS**") and implementing technical standards ("**ITS**") required under the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds ((EU) 2016/1011) ("**Benchmarks Regulation**").

The report sets out policy decisions and the final text of 11 sets of RTS and ITS required under the Benchmarks Regulation. Such technical standards are referred to as follows:

- Procedures, characteristics and positioning of the oversight function (Article 5(5), Benchmarks Regulation);
- Appropriateness and verifiability of input data (Article 11(5), Benchmarks Regulation);
- Transparency of methodology (Article 13(3), Benchmarks Regulation);
- Specification of elements of the code of conduct of contributors (Article 15(6), Benchmarks Regulation);
- Governance and control requirements for supervised contributors (Article 16(5), Benchmarks Regulation);
- Compliance statements for significant and non-significant benchmarks (Articles 25(8) and 26(5), Benchmarks Regulation);
- Specification of qualitative criteria for significant benchmarks (Article 25(9), Benchmarks Regulation);
- Content of benchmark statements (Article 27(3), Benchmarks Regulation);
- Information to be provided in applications for authorisation and registration (Article 34(8), Benchmarks Regulation);
- Form and content for the application for recognition by third-country administrators (Article 32(9), Benchmarks Regulation); and
- Procedures and forms for exchange of information between competent authorities and ESMA (Article 47(3), Benchmarks Regulation).

The draft RTS and ITS have been submitted by ESMA to the European Commission who have three months to decide whether or not to endorse them. ESMA has previously consulted on the majority of these technical standards in September 2016.

The final report which contains the technical standards is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-48_-_final_report_ts_bmr.pdf

(iv) ESMA updates Q&A on CFDs and other speculative products

On 31 March 2017, ESMA published an updated version of its Q&A on the application of the Markets in Financial Instruments Directive (2004/39/EC) ("**MiFID**") to the marketing and sale of financial contracts for difference ("**CFDs**") and other speculative products (such as binary options and rolling spot forex) to retail clients.

The Q&A includes six new questions and answers in a new section 10, which provide clarity on the following:

- Passporting and the cross-border provision of services by investment firms offering CFDs and other speculative products to retail clients outside the home Member State without the establishment of a branch or tied agent;
- Assessment of the use of third parties by investment firms to acquire retail clients; and
- Examples of poor practice observed by national competent authorities regarding the use of third parties by investment firms offering CFDs and other speculative products to acquire retail clients on a cross-border basis.

Together with the updated Q&A, ESMA notes that it will also examine whether further work is required in light of the MiFID II requirements that will enter into force in 2018, such as noted in an accompanying press release issued by ESMA.

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

https://www.esma.europa.eu/sites/default/files/library/esma35-36-794_qa_on_cfds_and_other_speculative_products_mifid.pdf

ESMA's press release in relation to the potential further work required in light of MiFID II is available at the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-publishes-updated-qa-cfds-and-other-speculative-products-2

The Joint Committee (ESMA, EIOPA and EBA)

(i) European Commission consults on operations of ESAs

On 21 March 2017, the European Commission published a consultation paper on the operations of the European Supervisory Authorities ("**ESAs**") (that is, ESMA, EIOPA and the EBA).

The consultation focuses on issues relating to the tasks and powers of the ESAs, grouped under the following headings:

- Optimising existing tasks and powers;
- Promotion of supervisory convergence;
- Consumer and investor protections;
- Working with third country supervisory authorities;
- Access and management of data between national competent authorities and ESAs;
- Powers in relation to reporting and improving reporting standards, in order to remove any overlaps or inconsistencies; and
- Financial reporting and enforcement of accounting standards.

In addition to the above, the European Commission is pursuing comments on the following topics:

Governance of the ESAs: The European Commission seeks views on the effectiveness of ESA's governance and, in particular, the current tasks and powers of their management boards.

Adapting the supervisory architecture to challenges in the market place: The European Commission is seeking views on the efficiency of the current sectoral model of the ESAs. In particular, it asks for comments on the merits of a "twin peaks" model, which would involve maximising synergies between the EBA and EIOPA and consolidating consumer protection powers in ESMA.

Funding of the ESAs: The European Commission is seeking views on whether the ESAs should be funded fully or partly by the industry.

The deadline for responses is 16 May 2017. The European Commission has indicated that further legislation may be recommended pending the outcome of the consultation.

The full consultation paper is available at the following link:

http://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document_en.pdf

(i) Responses to European Commission fitness check consultation on EU consumer and marketing directives

On 17 January 2017, the European Commission announced that it has received responses following a consultation period in relation to its "Fitness Check" on EU consumer and marketing directives. Responses were received in the areas of consumer contract simplification, banning particular unfair contact terms and fines for business for non-compliance with consumer legislation which would be based on a percentage of the turn-over of each business, among others.

While differing in their response to the proposals for reform and to what are the major obstacles to the effective application of the EU consumer protection regime, respondents in all categories considered the issue of consumers being unfamiliar with their rights as being an area of concern in relation to the application of consumer protection rules.

The European Commission envisages publication of its final report on EU consumer and marketing law to take place in the second quarter of 2017 having taken into consideration the responses received following the consultation period.

Further information on this topic may be found at the following link:

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689

(ii) European Commission CMU report on addressing national barriers to capital flows

On 27 February 2017, the European Commission published a report as part of its capital markets union ("**CMU**") initiative on addressing national barriers to capital flows (the "**Report**").

Key topics set out in the Report include the following:

- **Barriers to the cross-border distribution of investment funds:** Barriers identified include differences in the national criteria in relation to marketing of funds, administrative arrangements imposed on UCITS and alternative investment funds ("**AIFs**") together with regulatory fees for cross-border marketing.

  The European Commission has requested that Member States review their national criteria in relation to marketing and carry out changes in order to map the administrative arrangements, with the objective of eliminating unnecessary administrative burdens by 2019. The European Commission also calls on Member States to ensure that all fund notification-related fees are published in a comprehensive and user-friendly manner on a single website. The European Commission will examine later on in 2017 whether it is worthwhile developing a single public domain for fee-related information in the form of a comparative website or a central repository.

- **National approaches to crowdfunding:** It was noted that a disparity in terms of investor protection rules has resulted in many platforms declining to offer their services to non-residents and have made extensions to new markets possible only through new establishments. The European Commission has invited Member States to examine whether their national crowdfunding legislation provides an adequate level of protection to investors while permitting cross-border activity.

- **Residence requirements on managers of financial institutions:** The European Commission notes that some Member States require residence in their territories as a condition for appointment to certain positions in financial institutions. The European Commission has invited Member States to remove this residency requirement unless it is justified, suitable or proportionate and has suggested a deadline of the final quarter of 2017 for implementation of this step.

The Report includes proposed guidelines in relation to the actions which need to be taken in relation to national barriers to capital flows. The European Commission expects that this will be a living document and will be updated regularly to reflect additional actions to be taken before 2019 in respect of barriers that may need to be identified in the second stage.

The Report is available in full at the following link:

https://ec.europa.eu/info/file/99455/download_en?token=Ic00eual

(iii) European Commission assessment of EU equivalence decisions in financial services policy

On 27 February 2017, the European Commission published a draft staff working document that includes an assessment of EU equivalence decisions in financial services policy.

The staff working document includes the following:

- Provision of a factual analysis of third-country provisions in EU financial services legislation;

- A consideration of the current legislative framework and interactions with supervisory work in the EU and in conjunction with international counterparts;

- An explanation of the mechanism which culminates in a determination by the European Commission of the equivalence of third-country rules and supervisory systems; and

- Reference to the European Commission's experience with the equivalence framework.

The European Commission considers as “broadly satisfactory” its experience in relation to the use of equivalence as a tool to deal with cross-border regulatory issues. However, the European Commission notes that there are a number of areas which may require increased focus in relation to its continued use by the EU.

The European Commission notes that the existing equivalence criteria, which have been created for each act individually, are not as clear as is required in order to assess both the regulatory and supervisory framework to an equal degree. In addition to this, the criteria do not provide a clear answer as to what the role of the ESAs should be in such equivalence assessments.

The European Commission notes that monitoring should relate to relevant market developments together with legal requirements and supervision. For example, a substantial increase in the exposure of EU markets to an equivalent third country in a relevant sector would generally represent a need for a renewed assessment by the European Commission. The European Commission regards that the ESAs are well placed, in line with their mandate, to engage in specific monitoring tasks in relation to their area of activity.

In concluding, the European Commission notes that equivalence determinations are an important element of the regulatory framework in respect of financial services within the EU. They underpin the international activities of EU financial intermediaries and allow non-EU intermediaries to operate in the EU. In addition, they facilitate cross-border regulation and supervision. The careful risk calibration behind the approach also stimulates competition and efficiency in EU markets through proportionate equivalence assessments focussing on risks and proper enforcement arrangements.

The draft staff working paper is available at the following link:

https://ec.europa.eu/info/sites/info/files/eu-equivalence-decisions-assessment-27022017_en.pdf

(iv) European Commission action plan for consumer financial services

On 23 March 2017, the European Commission published its action plan for consumer financial services.

In creating the action plan the European Commission utilised its green paper on retail financial services and outlines the steps which can be taken to develop a genuine technology-enabled single marker for retail financial services, where consumers are exposed to the best value products while also being suitably protected.

Measures detailed in the action plan include:

- Make product switching easier;
- Improve the quality of financial services comparison websites;
- Develop a deeper single market for consumer credit;
- Examine consumer protection rules to assess whether they create unjustified barriers to cross-border business; and

- Assess which actions are required to support the development of FinTech and a technology driven single market for financial services.

The action plan forms part of the European Commission's work on building a capital markets union ("**CMU**").

Further information on the action plan is available at the following link:

http://europa.eu/rapid/press-release_IP-17-609_en.htm

(v) European Commission conducts consultation on developing its policy approach to FinTech

On 23 March 2017, the European Commission published a consultation paper called "FinTech: a more competitive and innovative European financial sector". In order to further develop the European Commission's policy approach towards technological innovation in financial services ("**FinTech**") the consultation seeks stakeholders' views on:

- The impact of new technologies on the European financial services sector, both from the perspective of providers of financial services and consumers; and

- Whether the regulatory and supervisory framework fosters technological innovation in line with the European Commission's three core principles which are: technological neutrality; proportionality; and market integrity.

The consultation is structured along four broad policy objectives that reflect the main opportunities (as well as the relevant challenges) related to FinTech.

Section 1 of the consultation paper explores the benefits that FinTech can offer to consumers, investors and firms in terms of access to financial services and strengthening financial inclusion. The section also seeks feedback on the potential challenges and risks posed by financial innovations to consumer protection and stability of the financial sector.

Section 2 reviews how FinTech can improve services, reduce operational costs, increase efficiency and speed up innovation in the EU financial services industry by streamlining processes in the provision of services. It also looks at the challenges that these developments bring for financial stability and financial sector employment.

Section 3 describes the opportunities of FinTech in increasing the competitiveness of the single market, through lowering barriers to entry for newcomers, while preserving fair competition, a level playing field and incentives to innovate. This section also explores how regulators, supervisors and industry can best support innovation in the financial sector.

Section 4 assesses the impact of FinTech on the capacity to estimate and monitor risk in the financial sector via access to larger amounts of data than traditional channels have offered, while protecting individuals' need for privacy and control over their personal data.

It is hoped that the feedback will help the European Commission to gauge how FinTech can make the single market for financial services more competitive, inclusive and efficient. The goal is to create an enabling environment, where innovative FinTech products and solutions take off at a brisk pace all over the EU, while ensuring financial stability, financial integrity and safety for consumers, firms and investors.

Responses to the consultation are invited by 15 June 2017.

The Commission's consultation paper can be accessed at:

http://ec.europa.eu/info/sites/info/files/2017-fintech-consultation-document_en_0.pdf

International Organisation of Securities Commissions

(i) IOSCO final report on loan funds survey

On 20 February 2017, the International Organisation of Securities Commissions ("**IOSCO**") published its final report setting out its findings following a survey on loan funds.

In December 2015, IOSCO launched a questionnaire in order gather information from the members of its Committee on Investment Management on existing practices and experience in relation to loan funds in the area of investment funds. The report explains that there are loan originating funds and loan participating funds. These include open-ended funds and closed-ended funds, and are marketed to retail and professional investors.

Twenty-four jurisdictions participated in the survey. Based on the results of the survey, the report identifies the current position in each jurisdiction and explains how the markets have evolved. It also explains how regulators are addressing the risks associated with funds. These relate to:

- Liquidity risk;
- Credit risk;
- Systemic risks from excessive credit growth; and
- Regulatory arbitrage.

In conclusion, the report notes that no further work is currently required in relation to loan funds, although IOSCO will continue to supervise this segment of the fund industry and will potentially revisit it for further work dependent on market developments.

IOSCO's report can be viewed at the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD555.pdf

Market Abuse Regulation

(i) Official translations of ESMA final guidelines on inside information and commodity derivatives under MAR

On 17 January 2017, ESMA published the official translations of its final guidelines on inside information and commodity derivatives under the Market Abuse Regulation (Regulation 596/2014) ("**MAR**") into all of the official languages of the EU.

The final version of the guidelines was originally published in September 2016 and serve to clarify the definition of inside information as it relates to commodity derivatives under MAR, establishing a non-exhaustive indicative list of information that is expected or required to be available in line with legal or regulatory provisions in EU or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets. The translated guidelines will become effective two months following publication.

Further information in relation to the official translations may be found at the following link:

https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives

(ii) Central Bank notification regarding ESMA Market Abuse Guidelines

On 19 January 2017, the Central Bank in accordance with Article 16(3) of Regulation EU No 1095/2010 (the "**ESMA Regulation**") confirmed to ESMA that it complies with two sets of ESMA Market Abuse Guidelines:

- MAR Guidelines on legitimate interests of issuers to delay the disclosure of inside information and situations in which the delay of disclosure is likely to mislead the public; and
- MAR Guidelines on persons receiving market soundings.

(iii) ESMA updates Q&A on MAR

On 27 January 2017, ESMA published an updated version of its Q&A on MAR. The following updates have been made to the Q&A:

- A new question 6 has been included which relates to calculating the options which can be granted for free in relation to manager and employee transactions; and
- New questions 9 to 11, relating to investment recommendation and information recommending or suggesting an investment strategy.

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

https://www.esma.europa.eu/sites/default/files/library/esma70-21038340-40_qa_on_market_abuse_regulation.pdf

Prospectus Directive

(i) Financial reporting: ESMA Q&A on alternative performance measures

On 27 January 2017, ESMA published a new Q&A on ESMA Guidelines on alternative performance measures ("**APM**"), comprising six questions on the implementation of its Guidelines on APMs for listed issuers. In the Q&A ESMA confirms:

- How to apply the guidelines when constituent parts of a prospectus straddle the date on which the guidelines came into force (3 July 2016). In short, the applicability of the guidelines will be determined by reference to the publication date of the prospectus. The examples of how to apply the guidelines in such cases replicate those set out in new question 101 in the 26th version of ESMA's Q&A on prospectuses, which was added to the prospectuses Q&A in December 2016.

- Its APM guidelines apply to all financial measures which fall within the definition set out in paragraphs 17 to 19 of the APM guidelines and are disclosed outside financial statements but in documents within the scope of regulated information.

- Where APMs directly identifiable from financial statements are also disclosed outside financial statements, the issuer or the persons responsible for the prospectus: do not need to provide a reconciliation between the APM used and the most directly reconcilable line item, total or subtotal presented in financial statements; and, where applicable, may use the compliance by reference principle (paragraphs 45 to 48 of the APM guidelines) and refer to the specific page or section in the financial statements, where this information is readily and easily accessible to users.

- The APM guidelines apply to interim financial reporting if it falls under the definition of regulated information set out in the Transparency Directive (as amended). Therefore, the APM guidelines apply to: additional periodic financial information, when this information is published in accordance with Article 3(1a) of the Transparency Directive; half yearly financial reports, as required by Article 5 of the Transparency Directive; or any financial information published in accordance with Article 17 of the Market Abuse Regulation (such as ad-hoc disclosures). Where interim financial reports or the additional periodic financial information are regulated information, the APM guidelines only apply to the information accompanying financial statements (such as the interim management report), as the APM guidelines exclude from their scope the financial statements.

- The APM guidelines apply to all labels of APM used by issuers or the persons responsible for a prospectus (and not only to the labels "non-recurring", "infrequent" or "unusual", which are specifically referred to in paragraph 25 of the guidelines).

- How the concept of "corresponding previous periods" in relation to financial reports, ad-hoc disclosures or prospectuses should be applied by issuers or the persons responsible for the prospectus. Essentially, issuers or the persons responsible for the prospectus should disclose figures for all periods presented, that is, where the financial

reports or prospectuses have more than one comparative period, comparatives on the APMs should be provided for all prior periods presented.

ESMA confirmed that it would welcome feedback from market participants on these or other questions with a view to updating the Q&A where necessary.

The Q&A is available at the following link:

https://www.esma.europa.eu/file/21236/download?token=I5WVQq27

Transparency Directive

(i) Transparency Directive: guidelines in relation to EEA national regulations on major holdings notifications published by ESMA

On 3 February 2017, ESMA published a guide in relation to the Transparency Directive relating to national regulations across the EEA in respect of major holdings notifications. It is envisaged that the guide will act as a document to be used by market players and will aid such persons in the navigation of the different criteria required across the EEA, such guidelines may prove particularly useful for shareholders with notification obligations as per national law in respect of the Transparency Directive.

The guide is split into two sections, the first section outlining the national regulations for each EEA country (with the exception of Liechtenstein) with respect to the making and publishing notifications of major holdings. The second section is presented in table layout and outlines information and rules and practices of each Member State, which aids comparison of rules.

It is ESMA's intention to keep the guidelines up to date to reflect any changes in national rules and policy.

More information in relation to the guidelines can be found at the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-publishes-practical-guide-national-rules-across-eea-major-holdings

Central Bank of Ireland

(i) Central Bank Address to Irish Funds and the Central Bank's Independent Fund Directors Briefing

On 17 January 2017, the Central Bank published the address of acting Director of Securities and Markets Supervision, Grainne McEvoy, which was delivered on the 13 January 2017 and 16 January 2017. The address was in relation to the regulatory agenda, in particular, the priorities of the Central Bank relating to the Irish funds industry.

Some of the topics referred to in the address include the following:

- **Total Expense Ratios:** During 2016 the Central Bank undertook a review of the Total Expense Ratios ("**TERs**") of UCITS. The Central Bank's focus in the context of its review centered on the quality, comparability and presentation of fee disclosures pertaining to investment funds and, in particular, whether such disclosures are sufficient to allow investors to make informed investment decisions. The aim of this exercise was to build up a data-driven approach to understanding TERs and to identify funds that are outliers.

  The Central Bank is of the view that more can be done to provide investors with clear information on the fees and charges they can expect to pay.

- **Increased use of Data Driven Supervision:** in relation to investor fees the Central Bank has put in place a team of data analysts who will support frontline supervisors undertaking their work in this area:

  - **Data Quality:** Following analysis, the Central Bank has identified the issue of data quality as an area of increased focus for supervisors. It is envisaged that where issues are raised in relation to reporting quality the data providers will be subject to additional follow-up engagement from the Central Bank.

  - **Fee Disclosure:** The Central Bank has noted that the presentation of fees and expenses to investors can be complex and disjointed, with particular concern for less sophisticated investors. This may affect the investor's ability to fully understand the impact of the fees and expenses on their investment and as such the Central Bank notes that additional clarity and improved disclosure would be of aid to investors in making informed decisions.

  - **Identification of Outliers:** The review identified a number of funds which have been classed as outliers in terms of higher fees being charged in comparison to similar funds. As such, it is envisaged that Central Bank supervisory staff will engage with such funds.

  It is likely that the Central Bank will consult further with industry on the issue of disclosure of fees and charges.

- **Themed Review of Fund Share Classes:** The Central Bank recently undertook a themed review of the use of share classes within Irish authorised investment funds. The objective of the review included gathering intelligence with regards to the population of share classes, to determine whether such classes were distributing or accumulating income, whether they were marketed to institutional or retail investors; or were engaging in hedging techniques at share class level. In light of this, the Central Bank has identified items which require follow-up action. An example of such follow-up action would include liaising with funds engaging in hedging activity where the objectives behind the hedging policy are ambiguous in order to foster transparency.

- **Supervisory Priorities – 2017:** In accordance with its Strategic Plan 2016/2018, it is the intention of the Central Bank to increase supervisory activities for entities deemed to be low impact under PRISM. In light of this, the Central Bank's supervisory staff are planning a comprehensive programme of activities which will affect the funds industry in 2017.

- **Depositary On-Site Inspections:** The Central Bank will continue its programme of work to include onsite, in-depth inspections of Irish depositaries. This work commenced last year when selected depositaries were subject to a review of their oversight and monitoring obligations of investment funds.

- **Full Risk Assessments:** In addition to the depositary inspections, supervisory staff will also be conducting full risk assessments on selected investment funds. While no decision has yet been taken on which funds will be subject to a full risk assessment, certain factors will increase the likelihood of a particular fund being selected, including for example (i) where investor complaints have been received, (ii) situations where other issues or additional market intelligence have been brought to the Central Bank's attention and (iii) other specific areas which the Central Bank has highlighted previously as areas of focus.

- **Automation of Authorisation Process:** One of the Central Bank's workstream for 2017 will be the automation of the authorisation process for investment funds. An important subset of funds applications, namely Qualifying Investor Alternative Investment Funds ("**QIAIFs**") are currently being processed using the new automatic system, Orion. Further to the introduction of Orion in December 2016 for QIAIFs, approximately 80% of investment fund applications are processed online.

  The Central Bank is also considering the introduction of application fees to assist in covering the costs of processing of fund applications. Such a system would be comparable to other European jurisdictions and would be beneficial as the costs would be borne directly by the applicant rather than imposing such costs on existing regulated entities, as is currently the case. The Central Bank has indicated that such fees would be approximately €3,000 for an umbrella fund application, €2,000 for each sub-fund application and €5,000 for a standalone fund. Such fees would be in addition to the annual regulatory levy payable by funds to the Central Bank. Industry has requested an appropriate level of engagement and consultation prior to the Central Bank finalising its position on this matter.

- **Review of Regulatory Reporting:** As a priority in 2017, the Central Bank will conduct a review to evaluate the current system of regulatory reporting and consider options for streamlining and consolidating reporting requirements. In doing so, the Central Bank expects to improve the ease of which industry participants can submit regulatory information, together with improving the usability of data for regulatory authorities. Such objectives are unique to the Central Bank and as such could potentially become a leader in the area on a European and International level.

The text of the speech is available at the following link:

https://www.centralbank.ie/news/article/address-by-acting-director-of-securities-markets-supervision-grainne-mcevoy-at-irish-funds-breakfast-briefing-and-the-central-bank-s-independent-fund-directors-briefing

(ii) Central Bank responds to Irish Funds submission in relation to Submission and Validation of Investment Funds quarterly returns

On 30 January 2017, the Central Bank responded to Irish Funds in relation to their submission on Submission and Validation of Investment Funds quarterly returns whereby a number of issues were addressed. In the response the Central Bank:

- Committed to give six months' notice going forward where there are changes to the reporting form;
- Agreed to enhance liaison between it and industry in relation to ad-hoc data requests where possible. Such liaison would have the effect of avoiding data request deadlines from falling during a time of key reporting deadlines, thus allowing submissions to be more efficient;
- Agreed that when providing updates to validation rules by email such updates will also be published on the Central Bank's website.

The submission of Irish Funds dated 9 January 2017 can be located at the following link:

Irish Funds letter dated 9 January 2017

The response received from the Central Bank of Ireland dated 30 January 2017 is available at the following link:

Central Bank letter dated 30 January 2017

(iii) Policy statement on EBA's guidelines to sound remunerations policies published by the Central Bank

On 31 January 2017, the Central Bank released a statement affirming that as of 1 January 2017, the policies of the European Banking Authority ("**EBA**") apply to credit institutions, CRD IV investment firms and national competent authorities ("**NCAs**"). Such policies relate to the Guidelines on sound remuneration policies under Articles 74(3) and 75(2) of Directive 2013/36/EU ("**CRD IV**") and disclosures under Article 450 of Regulation (EU) No. 575/2013 ("**CRR**"), collectively known as EBA's Remuneration Guidelines.

The EBA Remuneration Guidelines act in line with the remuneration requirements of CRD IV and refer to, among other things:

- Identifying those categories of staff whom the remuneration provisions apply to;
- The application of remuneration requirements in a group context; and

- The governance process for implementing sound remuneration policies.

The provisions of the CRD IV allow an organisation to apply the principle of 'proportionality', when establishing and applying a remuneration policy provided it is done so in a manner that is appropriate to the size, internal organisation and the nature, scope and complexity of the activities of the organisation.

Where the proportionality principle is being relied upon in relation to remuneration of identified persons, the Central Bank will, as part of the compliance assessment, assess the appropriateness of the reliance on the principle in line with, inter alia, the European Commission's thresholds in Article 94(3) of its proposal for amendments to CRD IV, which was published on 23 November 2016.

The Central Bank's statement may be viewed at the following link:

https://www.centralbank.ie/docs/default-source/publications/policy-statement-eba-remuneration-guidelines.pdf

(iv) Central Bank confirms departure of Cyril Roux, Deputy Governor (Financial Regulation)

On 28 February 2017, the Central Bank announced that Deputy Governor, Cyril Roux, will be leaving the Central Bank in April 2017 to pursue opportunities in the private sector.

(v) Central Bank clarification in respect of monitored email address

On 28 February 2017, the Central Bank provided clarification in relation to Part V of the Consultation Paper 86 ("**CP 86**") which addresses the requirement of funds and fund management companies to have in place a monitored email address. In order to allow efficient and effective communication between the Central Bank and the fund and fund management companies.

Clarification in relation to the requirement to have such a monitored email address has been provided by the Central Bank as follows:

- Every fund and fund service provider will be required to designate an email address which will, in effect, replace the "registered office" of that entity in that all formal correspondence from the Central Bank will be sent to that email address from 1 July 2017;

- In the case of a fund which has appointed a management company, it can designate its own "fund-specific" email address if this is the preference of the board. Alternatively it can designate the email address of the management company to receive all of its Central Bank correspondence (assuming that the management company is agreeable to it doing so);

- A fund management company may provide one generic email address for all funds under its management or alternatively can designate a separate email address for each umbrella/stand-alone fund under management;

- There are no specific requirements imposed by the Central Bank in respect of the server which hosts the email address. Therefore in the case of a Self-Managed Investment Company ("**SMIC**"), the SMIC will not be prevented from using an email address which is hosted on the server of the investment manager provided that the board of directors are satisfied that the email address will be monitored daily and that there are appropriate procedures in place to ensure that the information sent by the Central Bank is passed along to the appropriate person(s) for action without delay;

- The email server should be checked to make sure that there is no firewall in place which would prevent the receipt of bulk emails issued by the Central Bank. In addition, while it is not envisaged that the Central Bank will be sending very large attachments, the email address should have adequate capacity to receive attachments;

- The Central Bank expects each fund and fund service provider to inform it of the chosen designated email address and, in order to facilitate this, the Central Bank will provide an email address to which the "designated email address" should be submitted in advance of 1 July 2017; and

- In the event that the designated email address changes, the Central Bank will consider this to be akin to a change of registered office and will need to be informed of any such change.

Further information in relation to CP86 may be found at the following link:

https://www.centralbank.ie/publication/consultation-papers/consultation-paper-detail/cp86-consultation-on-fund-management-company-effectiveness-delegate-oversight

(vi) Record breaking year for Irish funds revealed by new data

On 28 February 2017, Irish Funds issued a press release in reference to data released by the Central Bank which shows a growth in the value of Irish-domiciled funds.

According to the data, assets in Irish domiciled funds amounted to €2.1 trillion at the end of 2016. Such value is representative of a record level of net sales of Irish domiciled funds, with net sales for 2016 across all funds types valued at €139 billion. This is the highest figure to be recorded in the seven years in which data has been collected in relation to fund sales.

In the last five years, from 2011-2016, the net assets held in Irish funds has doubled.

In addition to the growth in funds which are domiciled in Ireland, non-domiciled funds which are administered in Ireland reached the value of €2 trillion. Combined, this brings the total value of assets under Irish administration to over €4 trillion.

Ireland has achieved the role of a leading destination for alternative investment funds, servicing more than 40% of hedge funds globally and more than 50% of European ETFs. It is also seen as a place that is capable of accommodating any fund type whether an ETF, MMF or alternative UCITS.

Further information is available at the following link:

http://www.irishfunds.ie/facts-figures/irish-domiciled-funds

(vii) New Central Bank Investment Firms Regulations

On 28 February 2017, the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (the "**CBI IF Regulations**") were signed by the Central Bank Deputy Governor and were subsequently published in Iris Oifigiul on March 7 2017. The new CBI IF Regulations apply to MiFID investment firms, to IIA investment business firms and to IIA fund administrators and follow on from a consultation paper CP97 which the Central Bank issued in early November 2015.

As explained in CP97, the Central Bank previously set down a variety of requirements for MiFID firms and for IIA firms in a number of different documents. The intention behind the new CBI IF Regulations is to consolidate all of those requirements into a single document which can be updated to reflect changes which may be introduced in the future. That, in itself, is a welcome development but firms within its scope need to realise that this is more than a housekeeping requirement. By these obligations now being set within a statutory instrument, non-compliance may constitute a "prescribed contravention" under Part IIIC of the Central Bank Act, 1942 giving rise to Central Bank enforcement action.

The Central Bank has subsequently, on March 13, 2017, issued guidance on a number of related topics – Relationship with the Central Bank (with particular focus on the types of records to be maintained); Fund Administrator Outsourcing; and Own Funds, Risk Assessment and Capital Planning for Fund Administrators – and has also issued a first set of Q&A relating to these CBI IF Regulations in which the focus is predominantly on Fund Administrator Outsourcing related questions. It has also issued a Dear CEO type letter on "Outsourcing of Fund Administration Activities" on March 7, 2017.

Part 1: Application and Scope

As noted above, the CBI IF Regulations apply to:

- MiFID investment firms (which are subject to the requirements in Part 2);
- IIA investment business firms who are not fund administrators (which are subject to the requirements of Parts 2 and 3); and
- Fund administrators (which are subject to the requirements of Parts 2 to 5).

Much of what appears within the CBI IF Regulations is not new, being taken from, for example, the former Chapter 5 of the AIF Rulebook (namely Fund Administrator Requirements) so there should be a high level of familiarity with the requirements already.

Part 2: General Supervisory Requirements

Part 2 applies to each category of entity. The requirements contained within Part 2 include:

- General Requirements

  Regulations 4, 5, 6 and 7 deal broadly with a firm's interactions with the Central Bank, requiring it to consult with the Central Bank in various instances such as when engaging in a new area of business or field of activity, etc. Firms are also obliged to notify the Central Bank in writing as soon as the firm becomes aware of any of a number of occurrences including a breach by the firm of the CBI IF Regulations or of a breach of supervisory and regulatory requirements or of a breach of any other enactment or legal instrument which may reasonably be considered to be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the firm. There is no materiality threshold.

  Firms must also notify the Central Bank prior to any direct or indirect acquisition or disposal of shares or interests in any other undertaking or business (other than for the purpose of trading activities). Rules are also imposed in relation to the provision of internal audit reports and in relation to a change in auditors.

- Reporting Requirements

  A variety of reporting requirements are imposed by Regulation 8, with specific reference to the use of the Central Bank's Online Reporting System and where the specific data items and reports required are set out in the Reporting Requirements Schedule (Parts 1-7 of the Schedule to the CBI IF Regulations). This is welcome and should be quite user friendly.

Part 3: Additional Supervisory Requirements for IIA Investment Business Firms

Part III deals with a variety of additional supervisory requirements imposed on IIA investment business firms. The organisational requirements will not apply to MiFID firms given that the European Communities (Markets in Financial Instruments) Regulations 2007 (the "**MiFID Regulations**") set down the organisational requirements of such firms in detail.

Part 3, therefore, focuses on its application to IIA investment business firms and to fund administrators and imposes obligations under the following headings:

- Organisational Requirements

  Obligations imposed include the obligation to have in place, at all times, policies, resources and systems to identify, monitor, report and manage risks to which the firm is or may be exposed to in respect of its activities. The requirement makes specific

reference to management resources to, financial resources, to control systems and accounting procedures and to robust governance arrangements as well as additional provisions dealing with accounting policies and procedures and business continuity policies.

Firms are also required to ensure that a suitably qualified person is appointed to oversee the compliance function of the firm (referred to the "**Compliance Officer**") and Regulation 10 sets out the responsibilities of the Compliance Officer and the tasks of the compliance function.

- Client Borrowing

Regulation 11 makes it clear that a firm must not provide credit to a client except where that is in accordance with the firm's credit policy and it is for the purpose of (a) settling a securities transaction on a regulated market in the event of default or late payment by the client, or (b) paying an amount to cover a margin call made on a client. Rules around the entering into of collateral margined transactions also apply.

- Books, Records, Financial Payroll and Management Information

A six year retention period is imposed for a variety of records of an investment business firm including an obligation to retain a complete written record of all investment advice, including oral advice, given to clients as well as "all records required to demonstrate compliance with these Regulations". These are quite stringent requirements and it is important that firms are aware of them and have (and apply) an appropriate record retention policy.

- Telephone Recordings

Where a firm records telephone conversations, it is required by Regulation 13 to retain them for a period of at least 6 months and, where the firm has reasonable cause to believe that the telephone recording is or might be relevant to a complaint, disciplinary action or investigation, it is required to retain the telephone recording until it ceases to be of relevance. That means in practice that, not only do you have to retain the recording for the initial 6 months but you may also need to carry out an analysis to determine whether or not you have such "reasonable cause" thereafter.

Part 4: Fund Administrator Requirements

Part 4 of the Regulations sets out requirements relating to fund administrators, including organisational requirements, outsourcing requirements, requirements relating to the check and release of the final NAV, management of outsourcing risks (there are numerous rules regarding outsourcing) and certain miscellaneous requirements. These need to be read in conjunction with the Central Bank's latest guidance and Q&A document.

These requirements include:

- Directors

  A fund administrator, who is not a sole trader, is required to ensure that it has a minimum of two directors who are present in Ireland for the whole of 110 working days in a year. The previous requirement was for a minimum of two Irish resident directors.

- Client Assets

  The rule provides that a fund administrator shall not hold client assets or investor money without the prior written approval of the Central Bank reflecting what was in the prior version of the AIF Rulebook.

- Outsourcing Requirements

  Chapter 2 of Part 4 deals with outsourcing at great length, including a prohibition on outsourcing in certain circumstances. None of the provisions should be of any surprise to fund administrator given that these requirements are taken from Annex II of Chapter 5 of the Central Bank's AIF Rulebook. Rules includes a requirement to notify an outsourcing proposal to the Central Bank; rules relating to the check and release of the final NAV; a prohibition on outsourcing of the maintenance of the shareholder register; management of outsourcing risks including the requirement that a fund administrator retain responsibility for the outsourced administration services; the requirement to have a documented policy on outsourcing; outsourcing to be subject to a written agreement; and rules around chain outsourcing, as well as an obligation to submit an annual outsourcing return to the Central Bank.

- Miscellaneous

  A miscellaneous provision found at the end of Part 4 requires that a fund administrator providing services to an investment fund that is not authorised by the Central Bank must satisfy itself that the prospectus issued by the fund does not state or suggest, directly or indirectly, that the investment is authorised by the Central Bank. This requirement previously appeared within the former Chapter 5 of the AIF Rulebook.

Part 5: Own Funds and Capital Adequacy Requirements for Fund Administrators

Part 5 of the CBI IF Regulations deals with own funds and capital adequacy requirements of fund administrators. The financial controllers of fund administrators will need to pay great attention to these rules.

The CBI IF Regulations are available at the following link:

http://files.irishfunds.ie/1489420236-S.I.-No.-60-of-2017-Central-Bank-Supervision-and-Enforcement-Act-2013-Section-48-1-Investment-Firms-Regulations-2017.pdf

(viii) Central Bank issues recommendations in relation to Fund Administration Firms outsourcing activities

On 7 March 2017, the Central Bank issued a letter to all Fund Administration Firms in relation to outsourcing of administration activities. The Central Bank note that their existing outsourcing requirements are designed so that Fund Administration Firms maintain a consistent standard of oversight of Outsourcing Service Providers ("**OSPs**") and retain ultimate responsibility for outsourced activities.

During 2016, the Central Bank carried out a review of outsourcing arrangements focussing on the scale of outsourcing activities together with the oversight and governance arrangements in place in respect of such outsourced activities.

The Central Bank found that the extent of outsourcing among larger Irish Fund Administrators is extensive and is continuing to grow, with the Central Bank noting that levels of between 48% to 61% of fund administration activities were carried out by Full Time Equivalents ("**FTEs**") located in OSPs as at the end of 2015. The Central Bank has noted the following key observations:

- Firms under review outsourced on average to 10 locations;
- Firms under review outsourced primarily to other group entities; and
- Firms under review were subject to a concentration exposure to one or multiple outsourced locations, with these primarily related to two foreign jurisdictions.

The Central Bank is of the opinion that the level of outsourcing observed in its review is likely to be at or close to the outer limit of what is appropriate for the industry. As a result of this, the Central Bank is in the process of conducting a review of outsourcing across all financial sectors.

The Central Bank notes that outsourcing activities presents challenges for firms as they remain responsible under and are obliged to comply with the Outsourcing Requirements. Concern exists regarding the standards and/or arrangements in place in order to adequately oversee all outsourced activities. The Central Bank noted the following key observations in relation to governance and oversight of outsourced activities:

- Not all firms under review demonstrated that comprehensive outsourcing records are maintained;
- In general, OSPs are not regulated, or if they are regulated, are not regulated in the same way as Fund Administrators in Ireland; and
- The majority of firms under review have no tolerance levels set in respect of the amount of outsourcing permitted for a specific Fund Administration activity.

The Central Bank notes that outsourcing is a key area in relation to operational risk and is now integral to the business model of a significant number of Irish Fund Administrators.

Therefore, it is important for firms to concentrate on having strong controls in place around the governance and oversight of all outsourcing arrangements.

Following completion of its review the Central Bank intends to issue recommendations to assist Fund Administrators who outsource certain of their activities.

The letter to industry can be viewed at the following link:

https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/funds-service-providers/fund-administrators/industry-letter---review-of-outsourcing-of-fund-administration-activities-7-march-2017.pdf

(ix) Central Bank publishes Consultation Paper on Methodology to Calculate Funding Levies

On 27 March 2017, the Central Bank published a consultation paper in relation to a proposed new methodology to calculating funding levies in respect of credit institutions, investment firms, fund service providers and EEA insurers ("**CP 108**"). The consultation paper proposes that the industry funding levy for banks be calculated according to the ECB methodology.

The Central Bank notes that the current regime for calculating fees can create inconsistencies in relation to the levy charged as the levy is based off impact categories which are assigned based on scores received following completion of the Central Bank's online reporting system. However, the use of impact categories to levy credit institutions, investment firms and fund service providers results in threshold effects whereby a movement between impact categories gives rise to a substantial increase or decrease in the levy.

The changes proposed in CP 108 remove the threshold effect by introducing continuous levying. The Central Bank note that for investment firms and fund service providers this would be achieved by calculating levies as a linear function of individual firms' impact scores; and for credit institutions, continuous levying would be achieved by using a modified ECB Methodology for levy calculations.

For EEA entities who passport into Ireland it is proposed that such entities will be subject to an industry funding levy which will be representative of the engagement of the Central Bank and the costs in respect of supervising such entities..

The Central Bank is seeking views on the proposed methodologies, with the deadline for responses being 28 April 2017.

The full consultation paper is available to view at the following link:

http://www.centralbank.ie/docs/default-source/publications/Consultation-Papers/cp108/cp-108-new-methodology-to-calculate-funding-levies.pdf?sfvrsn=4

(x) Central Bank change of address

Effective from 3 April 2017, the Central Bank's postal address will change to either of the following:

Central Bank of Ireland New Wapping Street North Wall Quay Dublin 1	or	Central Bank of Ireland PO Box 559 Dublin 1

The Central Bank's existing telephone numbers and email addresses will remain in use.

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

(i) European Parliament votes to reject Delegated Regulation amending list of high-risk third countries under MLD4

On 19 January 2017, the European Parliament voted to reject Delegated Regulation which would have served to amend the European Commission's list of high-risk third counties under the Fourth Money Laundering Directive ((EU) 2015/849) ("**MLD4**"). The authority of the European Commission to vote and decide upon high risk third countries is contained in Article 9(2) of MLD4.

It should be noted that it is the view of the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") and the Committee on Civil Liberties, Justice and Home Affairs ("**LIBE**") that the proposed number of high-risk third countries is not sufficient and should be broadened to include countries which engage in tax crimes.

The press release detailing the decision is available at the following link:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20170113IPR58027/20170113IPR58027_en.pdf

(ii) Department of Finance published Information note in relation to Beneficial Ownership Regulations

On 31 January 2017, the Department of Finance published an Information Note in relation to the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (SI No. 560 of 2016) (the "**Beneficial Ownership Regulations**") as they relate to corporate and other legal entities incorporated in Ireland. Such regulations took effect in Ireland on 15 November 2016 as a result of MLD4.

The Beneficial Ownership Regulations stipulate that most Irish companies are required to take reasonable steps in order to hold adequate, accurate and current information in relation to the beneficial ownership of the company on an internal register. The Department of Finance note that there is currently progress on establishing a centralised register in

relation to the beneficial ownership of companies in Ireland, however it is expected such register will not be publically available until later in the year.

The rationale behind the Beneficial Ownership Regulations is to ensure that there is a natural person who can be identified as the owner of the company; usually this is clear however in some cases the structure of the company may make it difficult to identify the beneficial owner(s) of the company. In such instances and where all options to identify the beneficial owner(s) have been exhausted, it is permitted that a senior member of management be added to the register.

The register of each company must comply with the Beneficial Ownership Regulations and contain specific information in respect of each beneficial owner/member of senior management:

- Name, date of birth, nationality and residential address;
- A statement of the nature and extent of the interest held by each beneficial owner;
- The date on which each natural person was entered into the Register;
- The date on which each natural person ceased to be a beneficial owner (if applicable).

It is important to note that failure by a relevant entity or company to comply with their obligations under the Beneficial Ownership Regulations risk committing an offence and is liable, on summary conviction, to a fine not exceeding €5,000. In addition to this, an individual who fails to comply with the Beneficial Ownership Regulations risks committing an offence which similarly to a company or relevant entity, may be liable on summary conviction to a fine of €5,000.

The Information Note issued by the Department is available at the following link:

http://www.finance.gov.ie/sites/default/files/Beneficial_Ownership_Information_Note_Jan_2017.pdf

(iii) European Data Protection Supervisor reacts to MLD5 proposals

On 2 February 2017, the European Data Protection Supervisor ("**EDPS**") published an opinion in relation to the proposed Fifth Money Laundering Directive ("**MLD5**").

For the purposes of the opinion, the EDPS takes into account the original MLD5 proposal of the European Commission of July 2016, together with the adapted text of the Council of the EU of December 2016. The EDPS examines MLD5 with a view to one's fundamental rights to privacy and data protection. In addition, the principles of necessity and proportionality in relation to the obtaining and usage of personal data are at the fore in the EDPS's examination of MLD5.

It is the opinion of EDPS that MLD5 takes a stricter approach to efficiently countering money laundering and terrorism financing in comparison to MLD4. The EDPS notes that

MLD5 introduces policy purposes other than countering money laundering and terrorist financing such as specifically targeting tax evasion, the fight against financial crime and enhanced corporate transparency. The EDPS is concerned that the expansion of the purposes of data processing under MLD5 beyond that of AML/CTF brings with it a degree of uncertainty for data controllers in terms of justifying the purpose behind gathering such personal data.

The EDPS is of the opinion that the proposed amendments depart from the risk based approach adopted under MLD4.

In addition to above, the EDPS is further concerned in relation to the proposed broadening of access to beneficial ownership information by national competent authorities and the general public. Such broadening of access is intended to ensure and improve enforcement of tax obligations. The EDPS is of the opinion that, dependent on the roll out of such provisions, that a lack of proportionality may exist which would result in unnecessary risks for the individual rights to privacy and data protection.

In the opinion, EDPS advises that it was not consulted by the European Commission prior to the publishing of the MLD5 proposal, although its opinion was sought by the Council.

The opinion is available at the following link:

https://edps.europa.eu/sites/edp/files/publication/17-02-02_opinion_aml_en.pdf

(iv) Central Bank publishes guidance note for completion of the Anti-Money Laundering, Countering the Financing of Terrorism and Financial Sanctions Risk Evaluation Questionnaire

On 9 February 2017, the Central Bank published a guidance note to assist those credit and financial institutions which are required to submit a Risk Evaluation Questionnaire ("**REQ**") to the Central Bank.

The Central Bank operates a risk-based system whereby institutions selected to complete the REQ must do so in the specified time period and to the format which is requested by the Central Bank.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) requires institutions to have in place AML/CFT preventative measures, together with policies, procedures and processes to address such. The REQ acts as a mechanism to confirm such measures are in place and are of adequate nature.

The guidance note can be viewed at the following link:

https://www.centralbank.ie/docs/default-source/Regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/guidance/req-guidance-final-pdf.pdf?sfvrsn=4

(v) Joint Committee of ESAs opinion on money laundering and terrorist financing risks

On 20 February 2017, the Joint Committee of the European Supervisory Authorities ("**ESAs**") published an opinion, addressed to the European Commission, on the risks associated with money laundering and terrorist financing affecting the EU's financial sector (the "**Opinion**").

The objective of the Opinion is to provide information to the European Commission in relation to their risk assessment work, together with the ESA's work in respect of ensuring supervisory convergence and a level playing field in relation to anti-money laundering ("**AML**") and counter terrorism financing ("**CTF**"). The Opinion is also intended to assist Member State competent authorities in their application of the risk-based approach to AML and CTF supervision.

Key issues identified in the Opinion include firms' understanding of the money laundering and terrorist financing risk to which they are exposed and the importance of effective implementation, by firms, of customer due diligence policies and procedures. The Opinion also refers to the lack of timely access to intelligence that may aid in the identification and prevention of terrorist financing activities which can cause difficulties for firms, in addition to the differences in the manner in which competent authorities discharge their functions.

The ESAs state that the risks highlighted in the Opinion mean that more has to be done to ensure that the EU's AML and CFT defences are effective. Among other things, the ESAs highlight that:

- Law enforcement agencies should identify ways to work more closely with firms to facilitate the identification of such money laundering/terrorist financing risks;
- Competent authorities should collect AML/CFT supervisory data in a more consistent way to facilitate comparisons and track progress;
- The European Commission, the EU legislators and the ESAs should give further thought to identifying ways in which the ESAs and competent authorities can ensure that the EU's AML/CFT law and the ESAs' AML/CFT guidelines are implemented effectively and consistently in all Member States;
- The Opinion notes that several initiatives are already underway, which, in the short to medium term, will serve to address many of the risks identified. These include proposed amendments to the Fourth Money Laundering Directive ("**MLD5**").

The Opinion has been prepared under Article 6(5) of MLD4, which mandates the ESAs to issue a joint opinion on the risks of money laundering and terrorist financing affecting the EU's financial sector every two years.

The Opinion may be viewed at the following link:

https://www.eba.europa.eu/documents/10180/1749433/Consultation+Paper+on+RTS+on+CCP+to+strengthen+fight+against+financial+crime+%28JC-2017-08%29.pdf/85648168-2059-4b00-a6c8-5dbc321796f5

(vi) ECON and LIBE adopt report on MLD5

On 10 March 2017, the European Parliament published its report in relation to the proposed Fifth Money Laundering Directive ("**MLD5**"), which amends the Fourth Money Laundering Directive ((EU) 2015/849) ("**MLD4**") (the "**Report**"). The European Parliament issued a press release referring to the Report on 28 February 2017.

The press release noted that the Parliament's Economic and Monetary Affairs Committee ("**ECON**") and its Civil Liberties, Justice and Home Affairs Committee ("**LIBE**") have voted to adopt an amended version of their draft report on MLD5. The Report was passed by 89 votes to one with four abstentions. The Report contains a draft Parliament legislative resolution, together with opinions from the Committee on Development, the Committee on International Trade and the Committee on Legal Affairs.

According to the press release, ECON and LIBE also voted by 92 votes to one, with one abstention, in relation to entering into negotiations with the Council of the EU. The Parliament was originally scheduled to give approval in its March plenary session to start trialogue discussions with the Council and the European Commission, however this has been postponed to a future date yet to be confirmed.

The Report is available at the following link:

http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0056&format=PDF&language=EN

(vii) Central Bank AML/CTF briefing to Industry

On 14 March 2017 the Central Bank delivered an AML/CTF briefing to industry in relation to the Central Banks' Money Laundering and Terrorist Financing Risk Assessment and their AML/CTF Supervisory Engagement Model.

In relation to the Risk Assessment, the Central Bank notes that this is based on a sector by sector approach which takes into account categories of inherent risk, incorporating product/service, customer, geography and distribution channels. Together with this, categories of mitigants are taken into consideration, which incorporates quality of risk management and internal control functions and controls.

Such risk based approach assessment criteria result in Investment Firms (other than Asset Managers) and Fund Administrators/Funds being categorised as 'Medium High', with Life Assurance and Investment (Asset Managers) being categorised as 'Medium Low'.

The risk rating assigned impacts upon the AML/CTF Minimum Supervisory Engagement Model, whereby differing procedures exist dependent on the risk rating as outlined below:

Category	Inspection Cycle (Years)	AML/CTF review meetings (Years)	Risk Evaluation Questionnaires (Years)
Medium High ML/TF Risk	5	5	2
Medium Low ML/TF Risk	Spot check and Responsive	Spot check and responsive	3

Data Protection

(i) EU Article 29 Working Party adopts 2017 GDPR Action Plan

On 3 January 2017, the EU article 29 Working Party 29 ("**WP29**"), an independent advisory board specialising in data protection and privacy (originating from Data Protection Directive 95/46/EC), adopted their 2017 action plan in relation to the General Data Protection Regulations ("**GDPR**").

The GDPR comes into effect on 25 May 2018 and will replace the existing EU data protection framework, providing for additional and stronger data protection rights for individuals, and greatly increased obligations on organisations who collect and process personal data.

The 2017 action plan aims to build and advance upon the objectives of the 2016 plan, inclusive of issues such as the right to data portability and the incoming requirement of the position of Data Protection Officer within companies. Focus will also be given to the setting up of the European Data Protection Board ("**EDPB**") structure to preparing the mechanism for the establishment of the 'one stop shop' in relation to data protection and privacy issues within the European Union and the UK (post Brexit).

Going forward, new issues which WP29 intend to progress in 2017 include the creation of guidelines in relation to consent and filing, and transparency. In addition, the WP29 will be working on updating information in relation to data transfers to third countries and the procedures in relation to data breach notifications.

It is the intention of the WP29 to hold a Fablab in April 2017 whereby interested stakeholders may present their views and opinions to the Working Party. In conjunction with the Fablab, the Working Party intends to hold an interactive workshop whereby members of the international data protection community will be invited to converge, become involved and build relationships with their international counterparts.

The action plan is available at the following link:

https://www.huntonprivacyblog.com/wp-content/uploads/sites/18/2017/01/Pressrelease-Adoptionof2017GDPRActionPlan.pdf

(ii) The General Data Protection Regulation – Consultation on Key Concepts

On 16 March 2017, the office of the Data Protection Commissioner ("**DPC**") published an information note referring to the EU Article 29 Working Party's work in preparing guidance on the interpretation and application of key provisions of the GDPR and the DPC's assistance in the process.

To inform the process, the DPC initiated a consultation period seeking submissions from interested individuals and organisations on the following key concepts:

- Consent;
- Profiling;
- Personal data breach notifications; and
- Certification.

The DPC's consultation period ran up to 28 March 2017.

The submissions received will be supplied to the presidency team of the Article 29 Working Party for consideration in the preparation of guidance on the key concepts. However, The DPC will not be summarising or preparing a report of the submissions received.

The information note is available at the following link:

https://www.dataprotection.ie/docs/16-03-2017-GDPR-Call-for-consultation-on-consent-profiling-personal-data-breach-notifications-and-certification/1629.htm

Dillon Eustace
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CONTACT US

Our Offices

Dublin

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

Cayman Islands

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

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501
E-mail: enquiries@dilloneustace.ie
Website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the Regulatory and Compliance team members below.

Breeda Cunningham
E-mail:
breeda.cunningham@dilloneustace.ie
Tel : + 353 1 673 1846
Fax: + 353 1 667 0042

Michele Barker
E-mail: michele.barker@dilloneustace.ie
Tel : + 353 1 673 1886
Fax: + 353 1 667 0042

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 31 March 2017, 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.

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO