Funds Quarterly Legal and Regulatory Update

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DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS, Non-UCITS & Hedge Funds

(i) EU Member States Agree on UCITS V

On 4 December 2013, the European Council issued a press release announcing that its permanent members had agreed a position on the draft UCITS V Directive. The draft UCITS V Directive sets out proposed reforms to the UCITS rules in respect of the depositary function, manager remuneration and administrative sanctions.

In particular, the draft UCITS V Directive:

- Introduces specific provisions on depositary safekeeping and oversight duties;
- Defines the conditions in which safekeeping duties can be delegated to a sub-custodian;
- Sets out a list of entities that are eligible to act as UCITS depositaries;
- Clarifies the depositary's liability in the event of the loss of a financial instrument held in custody;
- Includes provisions on redress for investors;
- Introduces a requirement for UCITS management companies to implement remuneration policies that are consistent with sound risk and effective management and do not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS they manage;
- Introduces a whistleblowing regime; and
- Sets out the administrative sanctions that regulators should be empowered to apply.

This agreement enables trilogue negotiations to start between the European Parliament, Council and Commission with the aim of adopting the draft UCITS V Directive in advance of the European Parliament elections, which are due to be held in May 2014. Failure to reach that deadline leaves open the possibility that a new parliament might re-introduce some of the more controversial aspects of the early UCITS V proposals which were narrowly rejected earlier this year, such as the bonus cap for fund managers.

Once the European Parliament and Council adopts the UCITS V Directive it will be published in the Official Journal of the European Union, and EU member states will have two years from that date to transpose the Directive into national law.

(ii) Central Bank Publishes Revised UCITS Notice 10

In October 2013, the Central Bank of Ireland (the "Central Bank") published a revised UCITS Notice 10, which covers Financial Derivative Instruments. The Notice has been amended in light of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"), pursuant to which counterparties to derivative transactions will be required to begin trade reporting from 12 February 2014 (for more, see the EMIR section).

Paragraph 4 of UCITS Notice 10 has been amended, whereby the counterparty in the case of a subsequent novation of an OTC derivative contract must be:

- A credit institution listed in sub-paragraphs 1.4 (i), (ii) or (iii) of UCITS Notice 9 or an investment firm, authorised in accordance with the Markets in Financial Instruments Directive (Directive 2004/39/EU), (the "MiFID Directive") in an EEA member state, or is an entity subject to regulation as a Consolidated Supervised Entity ("CSE") by the US Securities and Exchange Commission; or
- A central counterparty ("CCP") authorised, or recognised by the European Securities and Markets Authority ("ESMA"), under EMIR or, pending recognition by ESMA under Article 25 of EMIR, an entity classified as a derivatives clearing organisation by the Commodity Futures Trading Commission or a clearing agency by the SEC (both CCP).

Paragraphs 4(iv) – (vi) of the previous UCITS Notice 10 have been deleted. Some of these provisions covered the valuation of OTC derivatives and are redundant following EMIR. Article 11(2) of EMIR requires that OTC derivative contracts not cleared by a CCP be valued using mark-to-market on a daily basis and that where market conditions prevent marking-to-market, reliable and prudent marking-to- model must be used.

UCITS should review their procedures regarding financial derivative instruments to ensure compliance with the revised UCITS Notice 10.

(iii) UCITS Annual Update of Key Investor Information Document Due 19 February 2014

UCITS are required to update their Key Investor Information Document ("KIID") for each sub-fund/standalone fund on an annual basis, within 35 business days of the end of each calendar year. The KIID annual updates must therefore be filed no later than 19 February 2014.

The Central Bank's "Regulatory Reporting Requirements of Irish Authorised Investment Funds" Vol. 2.2 - October 2013 may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/Documents/Guidance%20Note%20Regulatory%20Reporting%20Vol%202.2%20October%20%2013.pdf.

(iv) Change in Central Bank Filing Procedures

The Central Bank has advised that it will now accept by email:

- Country Supplements;
- Consolidated/Extract Prospectuses; and
- Requests for UCITS Attestations.

The associated noting, acknowledgment and replies will also be communicated electronically. It should be noted however that the filing of Country Supplements by email is only possible where there is no other documentation to be submitted alongside the Country Supplement. The relevant email addresses are countrysupplements@centralbank.ie for Country Supplements and fundsmarketing@centralbank.ie for Consolidated/Extract Prospectuses and requests for UCITS Attestations.

(v) Central Bank Publishes Consultation Paper on a UCITS Rule Book

The Central Bank has published Consultation Paper 77 - Consultation on Publication of UCITS Rulebook ("CP77") which proposes publishing a UCITS Rulebook which will consolidate into one document all of the conditions which the Central Bank imposes on UCITS, their management companies and depositaries. In addition, CP77 addresses whether any aspects of the current regulatory regime that come within the discretion of the Central Bank are no longer necessary or appropriate.

The aim for the UCITS Rulebook is to eliminate duplication and text which does not clearly constitute a regulatory requirement. The Central Bank has stated that residual guidance will be published on the Central Bank's website.

Relevant amendments and additions from the UCITS Rulebook will be incorporated into the AIF Rulebook when the AIF Rulebook is next updated in an effort to have consistency between the requirements of the UCITS Rulebook and the AIF Rulebook.

As part of this consultation, the Central Bank is considering three key changes, namely:

1. Removal of the Promoter Approval Process

Reflecting the position adopted for AIFs, the Central Bank is proposing to end imposing a promoter approval process for UCITS and to instead place reliance on the regulatory regime for UCITS management companies. At the same time, it proposes to elaborate on the obligations of directors when a UCITS gets into difficulties, again in similar fashion to its approach for AIFs.

This development will be welcomed, particularly by UCITS sponsors who to date have had to hold and maintain net shareholders funds of Euro 635,000 to satisfy Central Bank Promoter Rules, often significantly in excess of what they are required to have under their home jurisdiction's regulatory requirements. It should also accelerate the UCITS authorisation process.

2. Changes to approach on Regulated Markets

UCITS are permitted to invest in transferable securities and financial derivative instruments which are admitted to or dealt in on regulated markets and on certain other stock exchanges.

The Central Bank's approach to whether a market meets the criteria for being a "regulated market" is currently outlined in its Guidance Note 1/96. Given certain duplication between that Guidance Note and the Eligible Assets Directive, the Central Bank is withdrawing that Guidance Note. As a result, it will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS.

Accordingly, it will be for UCITS investment managers to consider whether a particular market or exchange meets the UCITS Regulations "regulated markets" criteria.

3. Half Yearly Management Accounts

The Central Bank is also proposing to extend the current financial reporting requirements for UCITS management companies and depositaries by requiring the additional <u>submission</u> of half-yearly management accounts covering the <u>second</u> six months of the financial year.

The format of the UCITS Rulebook which the Central Bank is proposing follows closely that of the AIF Rulebook. The proposed UCITS Rulebook contains the following three chapters:

Chapter 1 – Product Requirements;
Chapter 2 – Management Company Requirements; and
Chapter 3 – Depositary Requirements.

Draft versions of each of these chapters form part of CP77.

A Dillon Eustace article on CP77 may be viewed at the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial%20Services/Central%20Bank%20consults%20on%20UCITS%20Rulebook.PDF.

Submissions on CP77 are invited by email or in writing by 28 March 2014. CP77 may be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP77%20Consultation%20on%20publication%20of%20UCITS%20Rulebook/CONSULTATION%20PAPER%20-%20CP%2077%20JAN%202014.pdf.

(vi) ESMA Publishes Updated Q&A on their Guidelines on ETFs and other UCITS issues

On 27 November 2013, ESMA published an updated Q&A document on its Guidelines on ETFs and other UCITS issues (the "Guidelines"). The aim of this Q&A document is to promote common supervisory approaches and practices in the application of the UCITS Directive and the Guidelines. The Q&A document is directed at the various competent authorities but it is also intended to help UCITS management companies by providing clarity on the requirements of the Guidelines.

Two new questions have been added to the updated Q&A document:

- Question 6(m) in the *Collateral Management* section provides that when UCITS reinvest cash collateral, the reinvested cash collateral should be taken into account for the calculation of the investment restrictions applicable to a UCITS; and
- Question 7(i) in the *Financial Indices* section provides that paragraph 59 of the ESMA Guidelines (which provides that that UCITS should not invest in financial indices whose methodologies permit retrospective changes to previously published index values ('backfilling')), does not cover calculation mistakes.

The Q&A document is intended to be continually edited and updated on a regular basis. It can be accessed at the following link:

http://www.esma.europa.eu/system/files/2013-1547_qa_on_guidelines_on_etfs_and_other_ucits_issues.pdf.

(vii) ESMA Guidelines on ETFs and other UCITS issues – Index Related Issues

The IFIA made a submission to the Central Bank on 21 October 2013 relating to the treatment and classification of indices following the coming into force of the of the ESMA Guidelines on ETFs and other UCITS issues (the "Guidelines"). In its submission, the IFIA sought clarification that a distinction should be made in relation to "indices" and "financial indices" and that Part V of the Guidelines (Index-Tracking UCITS) should apply to all indices whereas Part IX of the Guidelines

(Treatment of secondary market investors of UCITS ETFs) should only apply to "financial indices". According to the IFIA's submission, the term "financial indices" constitutes indices which are able to avail of increased diversification limits under the UCITS Regulations; i.e. "financial indices" are in effect a sub-set of the term "indices".

On the 23 December 2013, the Central Bank issued a response to the IFIA advising that there should be no distinction drawn between "indices" and financial indices" for the purposes of applying the Guidelines. In support of this approach, the Central Bank referenced question 7(b) of the ESMA Q&A Document which clarifies that the Guidelines apply to any UCITS investing in financial indices including index tracking UCITS. Unfortunately, the Central Bank considers that Part IX of the Guidelines apply to all indices.

In addition, the IFIA had a concern that there was an inconsistency between Guideline 49[1] and Article 9(2) of the Eligible Assets Directive[2], in relation to how a UCITS may invest in a financial derivative instrument where the underlying financial index does not comply with the 20/35% rule. The Central Bank confirmed in its letter that it does not consider there to be any inconsistency between the Guidelines and the Eligible Assets Directive. In the Central Bank's view, Article 9(2) of the Eligible Assets Directive provides that where an index does not meet with the applicable criteria for indices set out in Article 9(1), but is composed of UCITS eligible assets, then investment by a UCITS in the index is not regarded as a derivative on an index but is regarded as a derivative on the combination of assets (i.e. in the same way as a derivative on a basket of assets).

(viii) ESMA Publishes Updated Q&A on Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS

On 19 December 2013, ESMA published an updated Q&A on risk measurement and calculation of global exposure and counterparty risk for UCITS. A new question was added on how UCITS should calculate their counterparty risk for exchange-traded derivatives and OTC transactions that are centrally cleared under EMIR. The answer provides:

"When calculating the counterparty risk for exchange-traded derivatives and OTC transactions that are centrally cleared, UCITS should look at the clearing model used to determine the existence of counterparty risk and, if any, where the counterparty risk is located. When analysing the clearing model used, UCITS should have regard to the existence of segregation arrangements of the assets

[1] Guideline 49 provides "A UCITS should not invest in a financial index which has a single component that has an impact on the overall index return which exceeds the relevant diversification requirements i.e. 20%/35%. In the case of a leveraged index, the impact of one component on the overall return of the index, after having taken into account the leverage, should respect the same limits".

[2] Article 9(2) of the Eligible Assets Directive (2007/16/EC) provides "Where the composition of assets which are used as underlyings by financial derivatives in accordance with Article 19(1) of Directive 85/611/EEC does not fulfil the criteria set out in paragraph 1 of this Article, those financial derivatives shall, where they comply with the criteria set out in Article 8(1) of this Directive, be regarded as financial derivatives on a combination of the assets referred to in points (i), (ii) and (iii) of Article 8(1)(a)".

and the treatment of claims on these assets in the event of bankruptcy of the clearing member or central counterparty."

The Q&A also provides that ESMA is continuing its work in relation to the calculation of counterparty risk by UCITS for exchange-traded derivatives and centrally-cleared OTC transactions in light of the provisions of EMIR and that ESMA plans to issue more detailed guidance on this issue, dealing with such aspects as the status of the central counterparty and the level of segregation to be put in place by the UCITS, early in 2014.

The updated Q&A may be accessed here:

http://www.esma.europa.eu/system/files/2013-1950_qa_risk_for_ucits.pdf.

(ix) ESMA Publishes Consultation Paper on Diversification of Collateral Provision in its Guidelines on ETFs and other UCITS Issues

On 20 December 2013, ESMA published a consultation paper on revising provisions on diversification of collateral in its Guidelines on ETFs and other UCITS issues (the "Guidelines"). The consultation paper provides that ESMA has been asked by stakeholders on numerous occasions to reconsider its position on the requirements on collateral diversification (paragraph 43(e) of the Guidelines) on the basis that they have a significant adverse impact on UCITS' collateral management policies. Particular attention has been drawn to the consequences for money market funds that place cash into reverse repurchase agreements.

Accordingly, ESMA is seeking views on the merits of revising the requirements on collateral diversification and, should this be necessary, on the best ways to address stakeholders' concerns while retaining the appropriate level of investor protection. Draft revised guidelines are contained in Annex III to the consultation paper.

ESMA requires that comments on the consultation paper (see link below) be provided by 31 January 2014.

http://www.esma.europa.eu/system/files/2013-1974_cp_guidelines_etfs_and_other_ucits_issues_for_publication_0.pdf

European Market Infrastructure Regulation ("EMIR")

(i) ESMA Approves Trade Repositories ("TR's")

ESMA, has to date, approved the registration of six TR's under EMIR. The newly registered TRs for the European Union are:

- ICE Trade Vault Europe Ltd. (ICE TVEL), based in the United Kingdom;
- CME Trade Repository Ltd. (CME TR), based in the United Kingdom;
- DTCC Derivatives Repository Ltd. (DDRL), based in the United Kingdom;
- Krajowy Depozyt Papierów Wartosciowych S.A. (KDPW), based in Poland;
- Regis-TR S.A., based in Luxembourg; and
- UnaVista Ltd, based in the United Kingdom.

The newly approved TR's can be used by the counterparties to a derivative transaction to fulfil their trade reporting obligations under EMIR.

The reporting obligation start date for all asset classes will begin on 12 February 2014; i.e. 90 calendar days after the official registration date. It will be possible to meet the reporting obligation by reporting to any ESMA recognised TR.

Separately, the European Commission has confirmed that it intends to reject ESMA's request to delay the start date for the reporting requirement for exchange traded derivatives. As such, the reporting requirement for all derivatives, however they are traded will come into force on 12 February 2014.

(ii) List of non-EEA CCPs

EMIR requires all non-EEA CCPs offering clearing services to clearing members or trading venues in the EEA to seek recognition from ESMA. In order to continue offering such clearing services, the non-EEA CCPs were required to apply to ESMA for recognition by 15 September 2013. ESMA has published a list, which is not necessarily exhaustive, of non-EEA CCPs which have submitted an application. It is available here -

http://www.esma.europa.eu/system/files/2013-1581_list_of_applicant_tc-ccps_published_on_6_november_2013_v2.pdf.

(iii) Updated ESMA Questions and Answers ("Q&A") on the Implementation of EMIR

ESMA published an updated Q&A on EMIR implementation on 11 November 2013 which was further updated on 20 December 2013. The purpose of the Q&A is to promote common supervisory approaches and practices in the application of EMIR. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical implementation of EMIR.

The table of questions on pages six and seven provides a record of which questions and answers are new or and which have been updated, and includes questions relating to:

- Calculation of the clearing threshold;
- Risk Mitigation techniques for OTC derivative contracts not cleared by a CCP;
- Portfolio Reconciliation;
- Frontloading requirement for the clearing obligation;
- Pension scheme exemption from the clearing obligation;
- Segregation and portability;
- Transparency requirements for central counterparties;
- Reporting of outstanding positions following the entry into force of EMIR (Backloading);
- Reporting to Trade Repositories : Table of fields;
- Reporting of collateral and valuation; and
- Exchange traded derivatives reporting questions.

The updated Q&A can be found at this link;

http://www.esma.europa.eu/system/files/2013-1959_qa_on_emir_implementation.pdf.

(iv) ESMA Publishes Final Draft Technical Standards on the Cross Border Application of EMIR

ESMA issued final draft regulatory technical standards ("RTS") related to derivative transactions by non-European Union (EU) counterparties on 15 November 2013. The RTS provides more detail on the application of EMIR to (i) transactions between non-EU counterparties with a direct, substantial and foreseeable effect within the European Union and (ii) lays down criteria for determining whether contracts should be considered as evading the rules and obligations laid down in EMIR. The draft RTS have been submitted to the European Commission for consideration and the European Commission has three months to decide whether to endorse them.

The document can be found here:

http://www.esma.europa.eu/content/Draft-technical-standards-under-EMIR-contracts-direct-substantial-and-foreseeable-effect-wit.

(v) EMIR Counterparty Classification Tool

The International Swaps and Derivatives Association, Inc. ("ISDA"), the British Bankers Association ("BBA"), the Investment Management Association ("IMA") and Markit announced the launch of the EMIR Counterparty Classification Tool. It is an online service that facilitates compliance with EMIR requirements regarding classification of counterparties to OTC derivatives contracts and application of the relevant standards of the regulatory requirements. Additional information regarding the tool is available at this link;

http://www2.isda.org/emir/.

(vi) Irish Stock Exchange to Provide Pre-Legal Entity Identifiers

All financial organisations, including listed legal entities, will need to comply with new global legal entity identifier ('LEI') requirements. A LEI is a global reference code which uniquely identifies each legal entity that engages in a financial transaction. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage counterparty risk.

The range of entities requiring LEI codes is broad and includes the following:

- All entities listed on an exchange;
- All entities that issue equity, debt or other securities for other capital structures;
- All entities that trade stock or debt, investment vehicles constituted as corporate entities or collective investment funds (including hedge funds, private equity funds, umbrella funds and in certain cases sub-funds where contracts are entered at sub-fund level);
- All financial intermediaries; and
- Banks and finance companies.

In particular, under the EMIR technical standards on format and frequency of trade reporting, all EU counterparties are expected to have a LEI for reporting to trade repositories from 12 February 2014[3]. The Central Bank, as a member of the Financial Stability Board's Regulatory Oversight Committee, has sponsored the ISE in becoming a Pre-Local Operating Unit ("Pre-LOU") with authority to issue pre-LEI codes. It is strongly anticipated that all pre-LEIs that are globally endorsed will transition into LEIs once the LEI governance structure is fully established. Pre-LEI's can be accepted for reporting under EMIR in the EU.

[3] Please see Table 1 of the Annex to Commission Delegated Regulation (EU) No. 148 of 19 December 2012 supplementing Regulation EU No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum data to be reported to trade repositories.

Alternative Investment Fund Managers Directive ("AIFMD")

(i) Central Bank Advises of Deadline for Receipt of AIFM Applications

On 21 October 2013, the Central Bank issued a notice advising that 21 February 2014 has been set as the latest date for receipt of applications by existing businesses seeking authorisation as an AIFM, including those seeking authorisation as an internally managed AIF. Applicants whose assets under management fall below the threshold set out in the AIFMD and who wish to be registered as AIFMs must also submit their applications by 21 February 2014.

The notice includes a reminder that the transitional date for compliance with the European Union (Alternative Investment Fund Managers) Regulations 2013 (the "Irish AIFM Regulations") is 22 July 2014. The Central Bank has advised applicants to submit applications at the earliest opportunity.

(ii) Central Bank Publishes Revised Q&A Documents on AIFMD

On 8 November and 13 December 2013, the Central Bank published revised Q&A documents on AIFMD, the fifth and sixth editions respectively.

The fifth edition Q&A document confirmed that debt issuer SPVs do not need to seek authorisation as or appoint an AIFM, for as long as ESMA is still considering the issue (i.e. as to whether debt issuers SPVs need to seek authorisation as an AIFM). This followed a period of industry consultation, including with the Irish Debt Securities Association (of which Dillon Eustace is a founding member).

The Q&A provides that entities which are either:

(a) Registered Financial Vehicle Corporations within the meaning of Article (1)(2) of the FVC Regulations (Regulations (EC) no 24/2009 of the European Central Bank); or

(b) Financial vehicles engaged solely in activities where economic participation is by way of debt or other corresponding instruments which do not provide ownership rights in the financial vehicle as are provided by the sale of units or shares.

do not need to seek authorisation as, or appoint, an AIFM, unless the Central Bank issues a Q&A replacing the current one advising them to do so. The Central Bank has stated that the current position will stand for so long as ESMA continues its work on this matter.

This statement by the Central Bank is a welcome clarification of their stance in the context of Irish incorporated SPVs, and endorses the generally accepted industry viewpoint in Ireland at the moment that an SPV is outside the scope of the AIFMD regime where investors participate in an SPV by way of debt rather than through shares or units.

However, in the event that an entity is of the view that it would fall under (b) above, but not (a), the Central Bank has indicated in the Q&A that such an entity may consult with the Central Bank by emailing AIFMDsecuritisation@centralbank.ie.

The sixth edition Q&A adds three new questions to the Q&A, ID 1066 - 1068. The three new questions are as follows;

ID 1066

Q. I am an Irish AIFM. Can I delegate portfolio management or risk management to a third country undertaking located in a jurisdiction where there is no cooperation agreement in place between the Central Bank and the relevant competent authority?

A. No. In accordance with Article 20 of the AIFMD the delegate must be authorised for portfolio management in its home jurisdiction. Supervisory co-operation with the home regulator must be ensured. This means that a co-operation agreement which complies with ESMA guidelines must be in place.

ID 1067

Q. I am an internally managed AIF. Can the initial capital requirements referred to in Article 9(1) of the AIFMD and the additional amount of own funds referred to in Article 9(3) be met using shareholder funds?

A. Article 9 does not specify the possible sources of capital for the 'own funds' requirement and does not prohibit internally managed AIFs from using shareholder funds to meet these capital requirements. Internally managed AIFs seeking to use shareholder funds to meet the own funds requirement should refer to Article 9(8) which requires that "Own funds, including any additional own funds as referred to in point (a) of paragraph 7, shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions."

ID 1068

Q. Will AIFM seeking to market other than under an AIFMD passporting arrangement be able to avail of the inward marketing regime as had been provided for in Notice NU 19?

A. Since 22 July 2013 marketing AIF in Ireland is subject to the Irish AIFM Regulations 2013 and specifically to Chapter 7, Chapter 8 and Chapter 9 of those Regulations. Conditions in relation to marketing without a passport are provided for in Regulations 37 and 43 and relate to: (i) authorised EU AIFM marketing non-EU AIF; and (ii) non-EU AIFM marketing EU or non-EU AIF.

In addition the sixth edition Q&A has deleted some questions which are no longer relevant while others have been amended for clarification purposes. In particular question ID 1021 has been amended to provide additional guidance in relation to Article 36 of the AIFMD.

ID 1021 is included in the Depositary services section of the Q&A. The question reads:

> *"May an Irish authorised entity provide the safe-keeping and oversight duties set out in Article 21(7)-(9) of the AIFMD in respect of non-EU AIF as set out in Article 36 (1)(a)? If so is a specific authorisation required?"*

The new answer provided to this question is as follows:

> *"Article 36(1)(a) does not set out eligibility criteria for entities, who will provide the safe-keeping and oversight duties prescribed in Article 21(7), (8) and (9), in respect of non-EU AIF where Article 36 applies.*
> *If an Irish entity proposes to provide the safe-keeping duties set out in Article 21(8) it must have authorisation to provide "custodial operations involving the safe-keeping and administration of investment instruments" under the Investment Intermediaries Act 1995.*
> *Where an entity is only providing one or both of the services referred to in Article 21(7) and Article 21(9), the Central Bank will not issue an authorisation under the IIA.*
> *Also, an Irish entity authorised under the Investment Intermediaries Act 1995, for example to provide fund administration services, may be appointed by an AIFM to provide the services set out in Article 36(1)(a) where these refer to Article 21(7) and 21(9) without seeking additional authorisation. In accordance with Paragraph 1.1, Chapter 1 of the Prudential Handbook for Investment Firms, the entity is required to consult with the Central Bank prior to -*
> *(i) engaging in any significant new activities; or*
> *(ii) establishing new branches, offices or subsidiaries.*
>
> *Submissions to the Central Bank in this regard will be asked to demonstrate their capacity to provide the proposed activities without inappropriate conflicts.*
> *An Irish based entity appointed by an AIFM in accordance with Article 36 to carry out the duties referred to in Article 21(7), (8) and (9) must carry out those duties in accordance with the relevant requirements of Chapter IV of the Level 2 Regulation".*

Questions in the "Application Process" section of the Q&A that relate to the date that the AIFMD became effective (22 July 2013) have been deleted because they are no longer relevant.

ID 1046 relates to non-EU AIFM marketing both EU and non-EU AIF to professional investors in Ireland now that the European Union (Alternative Investment Fund Managers) Regulations 2013 (the

"Irish AIFM Regulations") have been implemented. That question has been updated to provide that the Central Bank will decide early in 2014 the date from which AIFMs subject to the Irish AIFM Regulations must submit first reports. Regulation 43 of the Irish AIFM Regulations requires non-EU AIFM to comply with certain reporting obligations.

ID 1052 on AIFMD Co-operation Agreements has been updated to provide that as at 11 December 2013, ESMA had approved co-operation agreements between EU securities regulators and 45 non-EU authorities, and that the Central Bank has signed all of these agreements other than those with the competent authorities in Maldives and Turkey.

The sixth edition Q&A can be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/AIFMD%20Q%20and%20A%2013%20December%20final.pdf.

(iii) The Central Bank Publishes AIFM Register

The Central Bank has published its AIFM Register on its website. In addition, ESMA will also maintain a central public register identifying each AIFM authorised under AIFMD in accordance with Article 6 of the AIFMD. The Central Bank's AIFM Register contains details in relation to AIFMs authorised or registered by the Central Bank, and will be updated on a monthly basis.

The AIFM Register is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/AIFM%20registers.xls.

(iv) IFIA Publishes Supplementary Guidance Paper on AIFMD Depositary Duties

On 21 October 2013, the Irish Fund Industry Association (the "IFIA") published a supplementary guidance paper 3A (AIFMD Depositary Duties) ("Supplementary Guidance Paper") to the Guidance Paper 3 (Trustee Duties) to reflect the new obligations on depositaries post AIFMD.

The Supplementary Guidance Paper focuses in particular on the cash monitoring function and oversight duties which are specifically set out in the Irish AIFM Regulations and the Commission Delegated Regulation supplementing the AIFMD with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision, and proposes how depositaries should fulfil their cash monitoring and oversight obligations.

The Supplementary Guidance Paper also advises how depositaries should comply with their duties in respect of:

- Subscriptions and redemptions;
- Valuation of shares/units;
- Carrying out the instructions of the AIFM;
- Timely settlement of transactions; and
- AIF's income distribution.

(v) ESMA Publishes Revised Final Guidelines on AIFMD Reporting

On 1 October 2013, ESMA published final guidelines on the reporting obligations for AIFMs under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (the "Final Guidelines"), which was subsequently updated again on 15 November 2013. The Final Guidelines provide clarification on the information that AIFMs should report to national supervisors, the timing of such reporting and the procedures to be followed when AIFMs move from one reporting obligation to another. The Final Guidelines provide for the regular reporting by AIFMs on elements including:

- The breakdown of investment strategies of AIFs;
- The principal markets/ instruments in which an AIF trades;
- The total value of assets under management of each AIF managed;
- The turnover of the AIFs; and
- The principal exposures and most important portfolio concentration of the AIFs.

The Final Guidelines will now be translated into the official languages of the EU. National competent authorities will have two months from the date of the publication of the translations on ESMA's website to confirm to ESMA whether they comply or intend to comply with the Final Guidelines by incorporating them into their supervisory practices.

The revised Final Guidelines as well as the following associated documents are available at the below link:

- AIFMD reporting IT technical guidance (revised);
- Consolidated AIFMD reporting template (revised);
- AIFMD - Reporting - V1.1 (revised);
- AIFMD Reporting - Annex 2 -Tables 1-7; and
- Tables 8-9-10 of Annex 2 of ESMA guidelines on reporting obligation (revised).

http://www.esma.europa.eu/page/Investment-management-0.

(vi) European Commission Adopts Delegated Regulation on Types of AIFMs

On 17 December 2013 the European Commission adopted a Delegated Regulation on regulatory technical standards determining types of alternative investment fund managers.

The Delegated Regulation determines whether an AIFM is an AIFM of open-ended AIF(s) and/or closed-ended AIF(s). An AIFM of an open-ended AIF manages an AIF where the shares or units of which are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents.

The Regulation will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and will be directly applicable in all member states.

The Delegated Regulation may be viewed at the following link: http://ec.europa.eu/internal_market/investment/docs/alternative_investments/131217_delegated-regulation_en.pdf.

(vii) ESMA Publishes Table Detailing AIFMD Memoranda of Understanding/Co-operation Agreements Signed by EU Authorities

On 18 October 2013, ESMA published a table detailing AIFMD Memoranda of Understanding ("MoUs")/Co-operation Agreements which have been signed between EU securities regulators and their global counterparts with responsibility for the supervision of alternative investment funds, including hedge funds, private equity and real estate funds. ESMA updated this table again on 11 December 2013.

MoUs are a key element in allowing EU securities regulators to supervise efficiently the way non-EU AIFMs comply with the rules of the AIFMD, and are a precondition in allowing non-EU AIFMs access to EU markets or to perform fund management activities on behalf of EU managers. They will apply to non-EU AIFMs that manage or market AIFs in the EU and to EU AIFMs that manage or market AIFs in third countries. The arrangements also cover co-operation in the cross-border supervision of depositaries and AIFMs' delegates.

The MoUs have applied from 22 July 2013 and allow for the exchange of information, cross-border on-site visits and mutual assistance in the enforcement of respective supervisory laws.

The table notes that in addition to the MoUs, there are other AIFMD conditions that need to be satisfied in order for the relevant cross-border activity to be permitted in the EU:

- The non-EU country must not be listed as a non-cooperative country or territory in the Public Statement of the FATF; and
- As from the date of application of the passport by a non-EU AIFM, there should be an agreement between the non-EU country and the relevant EU member state that complies

fully with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters.

The table, as updated, may be viewed via the following link:

http://www.esma.europa.eu/content/AIFMD-MoUs-signed-EU-authorities.

(viii) The Central Bank Concludes Co-operation Agreement with the Swiss Regulator

The Central Bank has concluded an agreement on cooperation and the exchange of information with the Swiss Financial Market Supervisory Authority ("FINMA"), regarding the distribution of foreign collective investment schemes in Switzerland to non-qualified investors (retail investors).

Co-operation arrangements are one of the conditions whereby Irish collective investment schemes may be distributed to non-qualified investors in Switzerland.

(ix) The Central Bank Amends the Qualifying Investor AIF Application Forms

The Central Bank has amended its Qualifying Investor AIF ("QIAIF") Application Forms (the "Application Forms"). The Application Forms now provide for the possibility for the QIAIF to set out a procedure to be adopted in relation to unsatisfied redemption requests. The procedure adopted must be applied consistently throughout the life of the QIAIF. This means QIAIFs no longer need to treat unsatisfied redemption requests in priority to subsequent applications.

The sections of the QIAIF Application Forms that were amended are as follows:

- Section 2.12.3 c) (Prospectus);
- Section 3.4.4 c) (Memorandum and Articles of Association);
- Section 3.10.4 c) (Deed of Constitution);
- Section 3.10.4 c) (Trust Deed); and
- Section 9.6.4 c) (Investment Limited Partnership).

The Irish Collective Asset-management Vehicle Bill 2014

On the 20 December 2013, the Minister for Finance published the General Scheme of the Irish Collective Asset-management Vehicle Bill 2014 (the "General Scheme"). An Irish Collective Asset-management Vehicles ("ICAV") is a proposed new fund structure designed to streamline the way in which funds are established and operated. The ICAV proposal is intended to minimise the administrative complexity and cost of establishing and maintaining collective investment schemes in Ireland and allow Ireland to maintain its competitive advantage as a European funds domicile.

Investment funds established as ICAVs will avoid the impact of changes in European and domestic company law which are targeted at trading companies rather than investment funds.

ICAVs will be available as a corporate structure to both UCITS and AIFs.

The General Scheme or "Heads" of the ICAV Bill 2014 are subject to amendment during the Bill's drafting and legislative phases. The General Scheme provides that:

- The ICAV will be created on the fund's authorisation by the Central Bank;
- The ICAV's governing document will be an "instrument of incorporation";
- The directors of an open-ended ICAV may elect to dispense with the holding of an annual general meeting by giving sixty days' written notice to all of the ICAV's shareholders; and
- The winding up provisions applicable to companies will be cross-applied to ICAVs, ensuring that the upcoming Company Law reforms (see the Companies Bill 2012 Update section) relating to winding up will be consistently applied to ICAVs.

The following parts mirror, to a large extent, similar requirements applicable to companies:

- Corporate governance;
- The appointment of auditors; and
- Reorganisation, acquisition, merger and division.

Measures similar to the conversion and migration provisions introduced in 2009 for Part XIII investment companies are to be introduced for ICAVs also.

A key advantage of the ICAV is that it will be able to elect for classification under the US "check the box" taxation rules as 'flow through' for US tax purposes. This will allow U.S. taxable investors to avoid certain adverse tax consequences which would normally apply to passive foreign investment companies.

From an Irish tax perspective, the ICAV will be an "investment undertaking" and therefore taxed in line with existing Irish corporate funds.

The Minister for Finance has stated that he intends to prioritise the drafting of the ICAV Bill 2014. The General Scheme may be viewed via the following link:

http://www.finance.gov.ie/documents/pressreleases/2013/mn278append.pdf.

MiFID

(i) Central Bank to Comply with ESMA's Guidelines on Remuneration Policies and Practises (MiFID)

The Central Bank announced on 25 November 2013 that it intends to comply with ESMA's Guidelines on Remuneration Policies and Practises (MiFID), (the "MiFID Remuneration Guidelines") and that it will notify ESMA accordingly. The MiFID Remuneration Guidelines will come into effect on 28 January 2014. All firms within the scope of the MiFID Remuneration Guidelines are expected to comply with the Guidelines from 28 January 2014 and to take the Guidelines into account when devising their remuneration arrangements.

The MiFID Remuneration Guidelines apply to investment firms and credit institutions that provide investment services. In addition, the MiFID Remuneration Guidelines will apply to UCITS management companies and external AIFMs when they are providing the investment service of individual portfolio management or non-core services within the meaning of Article 6(3)(a) and (b) of the UCITS Directive and Article 6(4)(a) and (b) of the AIFMD; i.e. the MiFID Remuneration Guidelines apply in relation to the provision of investment services listed in Section A of Annex I of the MiFID Directive and ancillary services listed in section B thereof.

The MiFID Remuneration Guidelines may be accessed at the following link:

http://www.esma.europa.eu/system/files/2013-606_final_report_guidelines_on_remuneration_policies_and_practices_mifid.pdf.

(ii) Central Bank Announces New Faster Authorisation Process for MiFID Investment Firms

Following a review of its authorisation process for the authorisation of Investment Firms under the Markets in Financial Instruments Directive ("MiFID") legislation, the Central Bank recently issued details of a more transparent efficient process which will go live on 8 January 2014. This followed an industry consultations process during October and November 2013.

Depending on the Central Bank's determination of the complexity of their business models, applicant investment firms will be streamed along two tracks with the aim that simpler applications will be processed within three months and more complex applications will be processed within six months. The Central Bank advises that within both streams, there are various checkpoints and timing deadlines for the exchange of correspondence.

The Central Bank has also tailored the Application Form for Authorisation as a MiFID Firm to match the risk of an applicant's business model or business strategy and has improved the quality of the MiFID Guidance Note for applicants. These revised documents may be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Pages/authorisation.aspx.

MiFID II Update

The European Parliament has updated its legislative observatory pages and it now proposes to consider the MiFID II legislative proposals in its plenary session to be held on 25 February 2014 (previously this was due to be 9 - 12 December 2013). The likely implementation date of MiFID II will all depend on the outcome of the plenary session in February 2014 (assuming this date will not change again).

The draft MiFID II Legislation is divided into two parts;

(i) A revised Directive which will be an amendment and restatement of MiFID, (the "MiFID II Directive"); and

(ii) A new Regulation which will set out requirements relating to trade transparency and the mandatory trading of derivatives on organised venues, (the "MiFID II Regulation"). It is hoped that the MiFID II Regulation will minimise any scope for divergences in the interpretation of the transparency and transaction reporting provisions.

The main elements of the MiFID II legislative proposals are as follows:

- Enhanced transparency - member states have decided to limit 'dark pool' trading and introduce a new trade transparency regime for non-equities markets;
- More robust and efficient market structures with the introduction of a new type of trading venue, the Organised Trading Facility;
- New safeguards to take account of technological developments such as algorithmic trading or high speed trading;
- Stronger investor protection;

- New rules on corporate governance and managers' responsibility; and

- Enhanced framework for derivatives markets.

Member states generally have two years to transpose a Directive once it enters into force (usually 20 days after its publication in the Official Journal of the European Union). The earliest possible implementation date for the MiFID II Directive is therefore early 2016. EU Regulations can take effect as soon as they are published by the Commission and are binding on all EU member states as soon as they become effective.

CRD IV

(i) Publication of Central Bank Guidance on the Implementation of its Discretions and Options under CRD IV

CRD IV represents the European Union’s implementation of Basel III and comprises of two legislative instruments:

(i) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation EU No 648/2012 (the “CRD IV Regulation”); and

(ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (the “CRD IV Directive”).

The CRD IV Directive entered into force 20 days after its publication in the Official Journal of the EU and therefore entered into force on the 17 July 2013. The CRD IV Directive requires national transposition and this is scheduled to occur via the European Union (Capital Requirements) Regulations 2014, (“S.I. XXX/2014”). The transposition of S.I. XXX2014 is a matter for the Department of Finance. The CRD IV Directive replaces Directive 2006/48/EC (as amended) and Directive 2006/49/EC (as amended) in their entirety.

The CRD IV Regulation will be directly applicable in all member states and will not require national implementing measures. The CRD IV Regulation is applicable from 1 January 2014. The CRD IV Regulation deals with the rules relating to capital, liquidity, leverage, credit operational and market risks, large exposure whereas the CRD IV Directive deals with the rules relating to access to corporate governance, remuneration policies, capital buffers and sanctions.

It is anticipated that S.I. XXX/2014 will repeal the following statutory instruments;

- European Communities (Capital Adequacy of Investment Firms) Regulations 2006 as amended (S.I. 660 of 2006);
- European Communities (Capital Adequacy of Credit Institutions) Regulation 2006 as amended (S.I. 661 of 2006);
- European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 as amended (S.I. 395 of 1992) and
- European Communities (Credit Institutions) (Consolidated Supervision) Regulation 2009 as amended (S.I. 475 of 2009).

A number of competent authority discretions are contained in the texts of both the CRD IV Regulation and the CRD IV Directive. In this regard the Central Bank published a consultation paper in September 2013, which indicated the Central Bank's proposed approach in relation to the provisions contained in CRD IV where the competent authority can or must exercise its discretion. On 24 December 2013, following the aforementioned consultation process, the Central Bank published guidance which specifies the Central Bank's requirements in relation to the implementation of competent authority discretions arising under CRD IV (the "Guidance"). The Guidance will therefore be of relevance to any firm which is caught by the provisions of CRD IV; namely credit institutions (i.e. banks) and certain investment firms (i.e. broker dealers, wealth managers, investment managers, etc).

The Guidance deals with the following aspects of CRD IV;

- Transitional provisions of CRD IV;
- Competent authority discretions relating to the requirements relating to own funds;
- Competent authority discretions relating to the Standardised Approach to credit risk;
- Competent authority discretions relating to the Internal Ratings Based Approach;
- Competent authority discretions relating to specific liquidity discretions;
- Competent authority discretions arising within the sphere of corporate governance as well as an indication of the interplay between these discretions and the Central Bank's Corporate Governance Code for Credit Institutions and Insurance Undertakings (2013);
- Competent authority discretions with respect to leverage; and
- The Central Bank's policy with respect to investment firms which fall outside the definition of "investment firm" which is contained in the CRD IV Regulation.

The Guidance can be found at the following link:

http://www.centralbank.ie/library/Pages/LibraryDocuments.aspx.

(ii) Publication of Final Draft Regulatory Technical Standards on Criteria to Identify Categories of Staff whose Professional Activities Have a Material Impact on an Institution's Risk Profile under CRD IV

Article 92(2) of the CRD IV Directive provides that "*Competent authorities shall ensure that, when establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile, institutions shall comply with the following principles in a manner and to the extent that is appropriate to their size, internal organization and the nature, scope and complexity of their activities*". Article 94(2) of the CRD IV Directive provides that the European Banking Authority ("EBA") is mandated to "*develop draft regulatory technical standards with …. respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on the institution's risk profile as referred to in Article 92(2)*". On the 16 December 2013, the EBA published its final draft regulatory technical standards ("RTS") on criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile. The RTS set out qualitative and quantitative criteria to identify categories of staff who are deemed material risk takers for remuneration purposes in accordance with CRD IV. The EBA has submitted the RTS to the European Commission for adoption and they will enter into force after their publication in the Official Journal of the EU.

The RTS can be found at this link:

http://www.eba.europa.eu/documents/10180/526386/EBA-RTS-2013-11+(On+identified+staff).pdf.

Proposal for a Regulation on Indices Used as Benchmarks in Financial Instruments and Financial Contracts

The European Commission has published a proposal for a Regulation on Indices Used as Benchmarks in Financial Instruments and Financial Contracts. The proposed Regulation is designed to:

- Enhance the robustness and reliability of benchmarks;
- Facilitate the prevention and detection of their manipulation;
- Clarify responsibility for and the supervision of benchmarks by the authorities; and
- Ensure the integrity of benchmarks by guaranteeing that they are not subject to conflicts of interest, that they reflect the economic reality they are intended to measure and are used appropriately.

The proposed Regulation compliments another of the European Commission's proposals to make the manipulation of benchmarks a market abuse offence subject to strict administrative fines. That proposal is contained within the proposed Market Abuse Regulation (see section on Market Abuse).

The proposal covers a broad variety of benchmarks.

The proposed Regulation:

- Improves the governance and controls over the benchmark process;
- Improves the quality of the input data and methodologies used by benchmark administrators;
- Ensures that contributors to benchmarks provide adequate data and are subject to adequate controls;
- Ensures adequate protection for consumers and investors using benchmarks; and
- Ensures the supervision and viability of critical benchmarks.

The European Parliament's Committee on Economic and Monetary Affairs ("ECON") issued a draft report on the proposed Regulation on 15 November 2013. The draft report proposes to:

- Restrict the scope of the proposed Regulation to administrators of benchmarks that administer a benchmark falling in to a qualified benchmarks category;
- Strengthen ESMA's supervisory role in the proposed Regulation;
- Make public all input data and methodologies used in the production of critical or major benchmarks used for substantial retail investment; and
- Provide for a special procedure when the cessation of a benchmark could have negative consequences for financial stability.

The proposed Regulation is scheduled to be considered by the European Parliament from 10 to 13 March 2014, and if adopted, could enter into force in 2016.

The proposed Regulation and the ECON draft report are available via the following links:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0641:EN:NOT

http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-523.055&format=PDF&language=EN&secondRef=01.

Proposal for a Regulation on Money Market Funds

The European Commission published a proposal for a Regulation on Money Market Funds ("MMFs") in September 2013. The proposed Regulation provides for uniform rules for MMFs, either UCITS or

AIFs, established, managed or marketed in the EU, and is designed to ensure that MMFs can better withstand redemption pressure in stressed market conditions by enhancing their liquidity profile and stability.

The proposed Regulation covers:

- Eligible assets;
- Diversification, concentration and credit quality of investment assets;
- Valuation of MMF assets;
- NAV calculation;
- A capital buffer requirement; and
- A prohibition on an MMF from soliciting or financing an external credit rating agency.

The most controversial aspect of the proposed Regulation is the requirement for all short term money market funds with a constant net asset value ('CNAV') to provide for a 3% capital buffer. This requirement amounts to a divergence from the US MMF regime, where the US SEC has focused on liquidity and transparency in order to protect investors and the market. Another controversial aspect of the proposed Regulation is that MMFs will be prohibited from asking credit ratings agencies to rate them.

ECON published a draft report in November 2013 on the proposed Regulation. The draft report proposes several amendments to the proposed Regulation, including:

- A proposal that constant net asset value ("CNAV") MMFs are not to be offered to retail investors;
- The possibility for CNAV MMFs to convert into variable net asset value MMFs within five years of the Regulation entering into force;
- A 31 December 2014 deadline for implementation of a NAV buffer for CNAV MMFs;
- Additional restrictions on the location of third country MMFs and MMF managers;
- A requirement for a transparent remuneration policy for all MMFs; and
- A proposal that MMFs with more than €10 billion in assets under management be supervised directly by ESMA.

The proposed Regulation requires the approval of the European Parliament and Council before it can become effective. MMF UCITS and AIFs will have to submit an application for authorisation as an MMF to their regulators within six months of the proposed Regulation becoming effective, evidencing compliance with the Regulation.

The proposed Regulation is scheduled to be considered by the European Parliament on 15 April 2014 and is available via the following link:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0615:FIN:EN:PDF.

Packaged Retail Investment Products

On 20 November 2013, the European Parliament voted in favour of amendments to the European Commission's proposal for a Regulation on key information documents for packaged retail investment products ("PRIPs"). The Regulation on key information documents for PRIPs (the "KID Regulation") was proposed by the European Commission in July 2012 and forms part of a PRIPs legislative package which it is hoped will help rebuild investor confidence in retail investment products. The KID Regulation will require all investment funds, structured products and some insurance products to put a key information document ("KID") in place.

The legislative package consists of the following:

- A proposed extension of MiFID rules;
- A proposed revision of the Insurance Mediation Directive;
- A proposed amendment to the UCITS Directive; and
- The proposed introduction of a regulation on KIDs for PRIPs.

For the investment funds industry this will be relevant particularly for non-UCITS funds which are sold to retail investors. The KID Regulation, when implemented, will require non-UCITS retail funds to produce a short form KID in a standardised format, summarising the main terms of the product and to provide the KID document to prospective investors generally before a contract is concluded.

The European Parliament's recent amendments to the KID Regulation include the following:

- A requirement for the EBA, EIOPA and ESMA to develop an independent online fund calculator to be included on their websites. The fund calculator should allow investors to compute the reward of a PRIP. Investment product manufacturers and persons recommending or selling investment products would be required to submit relevant data to the relevant European supervisory authority on a quarterly basis.

- A "complexity label" is proposed to be required where the risk-reward profile or the costs are presented in an overly complicated manner or the PRIP invests in underlying assets not commonly invested in by non-professional investors. The proposed complexity label reads as follows:

> "Complexity label: This product is considered to be very complex, and may not be appropriate for all retail investors."

Negotiations on the final text of the KID Regulation will now commence with the European Council. The following link provides access to the European Parliament's proposed amendments to the KID Regulation:

http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2016290%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst16%2Fst16290.en13.pdf

European Long Term Investment Funds

On 13 November 2013, the European Parliament issued a draft report on the European Commission's proposal regarding European Long Term Investment Funds ("ELTIFs"). In June 2013, the European Commission published a provisional version of a legislative proposal for a Regulation on ELTIFs, which means once finalised it will be directly applicable in the law of each member state.

The European Commission defined long-term investment as investment that enhances the productive capacity of the economy. This can include energy, transport and communication infrastructures, industrial and service facilities, climate change and eco-innovation technologies, as well as education and research and development.

It is hoped that ELTIFs might rectify the funding deficit created by the financial crisis and European banks, by channeling household savings, via pension investments, into long-term investment projects sponsored by governments and/or businesses.

In order to qualify as an ELTIF, funds would have to meet certain requirements, some of which are:

(i) A requirement that managers of ELTIFs be authorised as AIFMs; and

(ii) No mandatory minimum investment of €100,000, giving retail investors the opportunity to invest in ELTIFs without a minimum investment.

The European Parliament's draft report on ELTIFs proposes to:

- Increase the scope of the eligible assets to listed small and medium-sized enterprises ("SMEs");
- Introduce a distinction between the redemption rights of retail and professional investors;

- Provide for the possibility of managers changing the life cycle of the ELTIF; and
- Ensure that marketing of ELTIFs across member states is harmonised by restricting member states from requesting additional information to be included in the prospectus.

ELTIFs are designed to meet the needs of institutional investors, such as pension funds and insurance companies, as well as private individuals who are willing to invest their money for a longer period of time.

Prospectus Directive

On 28 October 2013, ESMA published its 20th updated Q&A on the Directive on the prospectus to be published when securities are offered to the public or admitted to trading (the "Prospectus Directive"), revising a number of current market practices and addressing a number of new issues related to the implementation of the Prospectus Directive.

The updated Q&A includes revisions of two previous questions, which deal with:

- Pro forma financial information; and

- The level of disclosure concerning price information for share offerings.

As these revised questions set out changes to current market practices, ESMA has provided a phase-in period of 3 months from the publication of the Q&A for their application, which ESMA says will provide market participants with sufficient time to adjust to the new approaches.

The updated Q&A also addresses a number of new issues under the Prospectus Directive, specifically:

- The agreement of the auditor (in relation to profit estimates);

- The proportionate disclosure regime for prospectuses for rights issues; and

- The proportionate disclosure regime for rights issues and admission to trading.

The purpose of the Q&A is to provide responses to questions posed by the general public and competent authorities in relation to the practical application and proper implementation of the Prospectus Directive. This in turn promotes common supervisory approaches and practices in the application of the Prospectus Directive and its implementing measures across the 28 EU member states.

The revised questions are applicable from 28 January 2014. Closed-ended funds should examine the updated Q&A in order to ensure that they are in compliance prior to its coming into effect on that date.

The following link provides access to the updated Q&A:

http://www.esma.europa.eu/system/files/2013-1537_qa_prospectuses_-20th_updated_version_0.pdf.

Enforcement Priorities for 2013 Financial Statements

ESMA has published its European Common Enforcement Priorities ("Priorities") for 2013, which are to be used by European Economic Area ("EEA") national authorities in their assessment of listed companies' 2013 financial statements.

ESMA published these Priorities in order to promote the consistent application of the International Financial Reporting Standards ("IFRS") across the EEA.

The Priorities refer to the application of IFRS in relation to:

- Impairment of non-financial assets;
- Measurement and disclosure of post-employment benefit obligations;
- Fair value measurement and disclosure;
- Disclosures related to significant accounting policies, judgements and estimates; and
- Measurement of financial instruments and disclosure of related risks.

Listed companies and their auditors should take account of the areas set out in the Priorities when preparing and auditing the IFRS financial statements for the year ending 31 December 2013.

The Priorities may be accessed via the following link:

http://www.esma.europa.eu/system/files/2013-1634_esma_public_statement_-european_common_enforcement_priorities_for_2013_financial_statements_1.pdf.

Credit Rating Agencies Regulation

On 17 December 2013, ESMA published a Q&A document on the implementation of Regulation (EC) No 1060/2009 of the European Parliament and of the Council (as last amended by Regulation (EU) No 462/2013) (the “CRA Regulation”).

The purpose of the document is to provide clarity on the requirements and practice in the application of the CRA Regulation. It provides responses to questions posed by credit rating agencies (“CRAs”) and market participants in relation to the practical application of the CRA Regulation.

Of particular interest are Questions 4 and 6, which deal with investments in CRAs and the prohibition of holding 5% or more of the capital or the voting rights of any other CRA, respectively.

Question 4 deals with Article 6a of the CRA Regulation, which provides specific rules regarding the relations between the CRAs and their shareholders or members. A shareholder or a member of a CRA registered in the EU should not simultaneously hold a participation of 5 % or more in two or more CRAs registered in the EU, unless the credit rating agencies concerned belong to the same group. Article 6a (1) of the CRA Regulation exempts from that rule holdings in diversified collective investment schemes, including managed funds such as pension funds or life insurance. The answer to question 4 provides that Article 6a of the CRA Regulation does not differentiate between EU and non-EU share-holders or members of a credit rating agency. Consequently, Article 6a of the CRA Regulation applies to any CRA shareholder or member of a credit rating agency registered in the EU holding 5% or more of the capital or the voting rights of another CRA registered in the EU regardless of where the shareholder is located.

Question 6 deals with the entry into force of the prohibition of holding 5% or more of the capital or the voting rights of any other CRA (Article 6a(1)(a) CRA). The answer provides that the obligation for CRAs to identify those shareholders holding at least 5% of either the capital or the voting rights entered into force on 20 June 2013, however for any shareholder or member of a CRA which on 15 November 2011 held 5% or more of the capital of more than one credit rating agency, the CRA prohibition under Article 6a(1)(a) applies from 21 June 2014. Consequently, those shareholders or members of a CRA holding 5% or more of the capital or the voting rights of more than one CRA after 15 November 2011 should immediately proceed to reduce (divest) their holding rights in one of the two CRAs under 5% of the capital or voting rights, so that, by 21 June 2014 there should not be any shareholder or member of a EU registered CRA holding 5% or more of the capital or the voting rights of more than one CRA “acquired” on or before 15 November 2011. This requirement does not apply to investments in other CRAs belonging to the same group of CRAs.

ESMA intends to continually edit and update this Q&A document as and when new questions are received. The document may be accessed via the following link:

http://www.esma.europa.eu/system/files/2013-1935.pdf.

Market Abuse

The European Parliament voted on 10 September 2013 to formally endorse the political agreement on a Regulation on insider dealing and market manipulation (the 'Market Abuse Regulation'), subject to alignment with the final political agreement on MiFID II and final revisions to the text of the Market Abuse Regulation. The Market Abuse Regulation, together with a Directive on criminal sanctions for insider dealing and market manipulation, will replace the the Market Abuse Directive (2003/6/EC).

The new framework will:

- Prohibit market abuse occurring across commodity and related derivative markets;
- Explicitly ban the manipulation of benchmarks, such as LIBOR;
- Reinforce the investigative and sanctioning powers of regulators; and
- Extend the scope of the market abuse rules to include all financial instruments which are traded on organised platforms and over the counter.

Final adoption of the Market Abuse Regulation will only take place after political agreement on MiFID II has been reached, since the scope and other aspects of the Market Abuse Regulation depend on the final MiFID II text. The date as of which the Market Abuse Regulation will apply is to be aligned with that of MiFID II. The update on MiFID II is set out in the MiFID II section.

On 14 November 2013, ESMA published a discussion paper setting out its initial views on the implementing measures it will have to develop for the Market Abuse Regulation. The closing date for responses is Monday 27 January 2014. The discussion paper covers ten sections of the Market Abuse Regulation where ESMA is expected to provide input. These are:

- The exemption from market abuse prohibitions;
- Market soundings;
- Indicators and signals of market manipulation;
- Criteria to establish accepted market practises;
- Suspicious transactions and order reports;
- Public disclosure of inside information;
- Insider lists;
- Managers' transactions;
- Investment recommendations; and
- Reporting of violations and related procedures.

The discussion paper may be viewed at the following link:

http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf.

In addition, it was announced in December 2013 that political agreement had been reached between the European Council and Parliament on the proposed new Directive on criminal sanctions for insider dealing and market manipulation (the "proposed new Market Abuse Directive"). The European Council has stated that this agreement means that both the proposed new Market Abuse Directive and the Market Abuse Regulation may be adopted at first reading. The proposed new Market Abuse Directive sets out the market abuse criminal regime and will require national transposition and implementation. It requires member states to:

- Take the necessary measures to ensure that the criminal offences of insider dealing and market manipulation are subject to effective, proportionate and dissuasive criminal sanctions; and
- Impose criminal sanctions for inciting, aiding and abetting market abuse, as well as for attempts to commit such offences.

The European Parliament will consider the proposed new Market Abuse Directive during the 13 - 16 January 2014 plenary session.

The final compromise text of the proposed new Market Abuse Directive is included in a European Council Note, which may be accessed via the following link:

http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2017895%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst17%2Fst17895.en13.pdf.

Transparency Directive

The Central Bank has advised that a Directive to amend the Transparency Directive (the "Amending Directive") (Directive 2013/50/EU) entered into force on 27 November 2013. EU member states have two years from that date to implement any necessitated changes. The original Transparency Directive (2004/109/EC) was implemented into Irish law on 13 June 2007 by the Transparency (Directive 2004/109/EC) Regulations 2007 (the "Regulations").

The original Transparency Directive sought to enhance transparency in EU capital markets in order to improve investor protection and market efficiency. The Regulations established ongoing disclosure requirements for issuers with securities admitted to trading on a regulated market situated or operating within the EU. The Amending Directive aims to

- Make regulated markets more attractive for raising capital for small and medium-sized issuers by simplifying obligations;
- Improve legal clarity and effectiveness, particularly with respect to the disclosure of corporate ownership; and
- Ensure that the sanctions for breach of the transparency requirements are sufficiently dissuasive.

Among the changes introduced by the Amending Directive are the following:

- The requirement on issuers to produce interim management statements will be abolished;
- The publication deadline for half-yearly reports will be extended from two to three months after the end of the relevant reporting period; and
- The notification regime for major holdings of voting rights will be extended to include direct and indirect holdings of financial instruments having the same economic effect as the holding of shares, whether or not they confer a right of physical settlement.

Issuers with securities admitted to trading on a regulated market situated or operating within the EU should:

- Consider at an early stage the impact that the Amending Directive will have on their continuing obligation requirements; and
- Consider what amendments are necessary to current systems and processes to meet the requirements of the Amending Directive.

Proposed Directive on Improving the Gender Balance among NEDs of Listed Companies

On 20 November 2013, the European Parliament voted strongly in favour of adopting the proposed Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (the “Proposed Gender Balance Directive”).

The Proposed Gender Balance Directive will require publicly listed companies to meet a target of a 40% presence of women among non-executive directors (“NEDs”) on their boards by 2020. Small and medium-sized enterprises (companies with less than 250 employees and an annual worldwide turnover of less than €50 million) are excluded from the scope of the proposed directive. Similarly non-listed companies are not affected by the Proposed Gender Balance Directive.

The Proposed Gender Balance Directive contains a 'procedural quota' as opposed to a fixed quantitative one. The so-called procedural quota requires that companies with less than 40% of females among its NEDs make appointments to vacant positions on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, gender-neutral and unambiguous criteria. Priority is to be given to female applicants where qualifications are found to be equal.

Also included in the Proposed Gender Balance Directive is a 'flexi quota' which obliges listed companies to set themselves individual, self-regulatory targets regarding the representation of both sexes among executive directors which should be met by 1 January 2020 (1 January 2018 for public undertakings). Companies will have to report annually on the progress made.

Trilogue negotiations between the European Parliament, Council and Commission will continue on the Proposed Gender Balance Directive. An agreed text of the proposed Directive must be adopted by the European Parliament and by EU member states in the European Council before it becomes law. Ireland will then be given two years to transpose the Directive into Irish law.

As currently drafted, it appears that the Proposed Gender Balance Directive will have little impact for investment funds.

Central Bank of Ireland

(i) Annual PCF Confirmation Return Reporting and Submission Dates

The Central Bank has advised that the reporting and submission dates for Investment Firms/Funds/Fund Service Providers' Annual PCF Confirmation Return are **31 December 2013** and **28 February 2014** respectively.

The Annual PCF Confirmation Return, which has recently been introduced by the Central Bank, is required to be filed by every Regulated Financial Service Provider ("RFSP") in respect of each active PCF holder within the RFSP, confirming that he/she is compliant with the Fitness and Probity Standards and continues to agree to abide by those Standards. The PCF Confirmation Return must be submitted through the Central Bank's ONR System. The requirement of the Board to confirm to the Central Bank upon the re-election/re-appointment of a PCF holder that his/her circumstances have not changed since pre-approval was granted, will also be covered by the completion of this return.

Guidance and a 'How To' guide on completing the return are available on the Central Bank website:

http://www.centralbank.ie/regulation/processes/fandp/Documents/Annual%20PCF%20Confirmation%20Guidance%20Instructions.pdf http://www.centralbank.ie/regulation/processes/fandp/Documents/Quick%20Reference%20Guide%20-%20Annual%20PCF%20Confirmation.pdf.

(ii) Regulatory Transactions Review

The Central Bank published a new "Regulatory Transactions Review" on 31 October 2013. The update covers:

- The Fitness and Probity RSS Feed;
- The new In Situ PCF Return for Credit Unions and other RFSPs yet to make their PCF submission;
- Online Reporting "How-to Guides" and
- The new Annual PCF Confirmation Return.

The Regulatory Transactions Review provides that all Fitness and Probity updates will be provided on the RSS feed only and that in order to stay up to date with Fitness and Probity news and updates, the RSS feed should be subscribed to. RSS (Rich Site Summary) is a method of delivering regularly changing web content which is used by many online publishers. A link to instructions for subscribing to the Central Bank's RSS feed and another link directly to the RSS feed are included in the Regulatory Transactions Review. There is no fee payable in order to subscribe to the RSS feed.

This update is available on the Central Bank website:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Regulatory%20Transactions%20Review%20Issue%207.pdf.

(iii) Inquiry Guidelines and Updated Outline of the Administrative Sanctions Procedure

On 6 November 2013, the Central Bank of Ireland issued Inquiry Guidelines and issued an updated version of the Outline of the Administrative Sanctions Procedure ("Outline"). The Inquiry Guidelines set out the procedures the Central Bank will ordinarily follow when holding an Inquiry under the Administrative Sanctions Procedure, while the Outline provides a general overview of the Administrative Sanctions Procedure.

The Inquiry Guidelines, published pursuant to Section 33BD of the Central Bank Act 1942 (the "1942 Act"), set out the procedures which the Central Bank ordinarily proposes to follow when holding an Inquiry under Part IIIC of the Act. The Central Bank advises that it may be necessary to depart from the Inquiry Guidelines in certain instances where compliance with the Inquiry Guidelines is not appropriate in the circumstances of the individual case.

The Inquiry Guidelines cover:

- The referral to an Inquiry;
- Preliminary Inquiry procedures;
- The Inquiry hearing; and
- The findings of Inquiry Members.
- When an Inquiry will be held in public and when it will be held in private;
- The burden of proof that will be applied is the balance of probabilities (the civil standard);
- Confirmation that a monetary penalty imposed cannot be such as to cause an entity to cease business or an individual to become bankrupt; and
- That a costs order will not be made in favour of a regulated entity if the Inquiry finds that suspected contraventions were not committed.

The Central Bank undertook a public consultation (CP65) on the Inquiry Guidelines in May 2013. Feedback on CP65 and the submissions made to the consultation may be accessed at the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?CPNumber=CP65.

The updated Outline replaces the previous Outline of the Administrative Sanctions Procedure which was published by the Central Bank in October 2005. The Guidelines to the Administrative Sanctions Procedure document, also published by the Central Bank in 2005, have been repealed by the issuance of the Outline and Inquiry Guidelines.

The Outline covers:

- Central Bank investigations;
- Settlement policy and procedure;
- A summary of Inquiry procedures; and
- Sanctions.

Where a concern arises that a prescribed contravention has been or is being committed by a regulated financial service provider, the Central Bank may investigate. A prescribed contravention is a breach of:

- A provision of legislation deemed a designated enactment, including any instrument made thereunder; or
- A code made, or a direction given, under such a provision; or
- Any condition or requirement imposed under a provision of a designated enactment, designated statutory instrument, code or direction; or

- Any obligation imposed on any financial service provider by the Central Bank under the 1942 Act.

The Central Bank may conduct an Inquiry under Part IIIC of the 1942 Act where it suspects on reasonable grounds that a prescribed contravention is being or has been committed.

The Central Bank may, either under a Settlement Agreement or following an Inquiry, impose one or more of the sanctions below on regulated financial service providers and on persons concerned in their management in respect of their participation in the prescribed contravention(s):

- A caution or reprimand;
- A direction to refund or withhold all or part of money charged or paid, or to be charged or paid, for the provision of financial services by a financial service provider;
- A direction to pay the Central Bank a monetary penalty (not exceeding the greater of €10,000,000 or 10% of prior year turnover where the financial service provider is a body corporate or an unincorporated body and not exceeding €1,000,000 where the financial service provider is a natural person and for persons concerned in the management of a financial service provider);
- Disqualification of a person from being concerned in the management of a regulated financial service provider;
- Revocation or suspension of an authorisation;
- A direction to the regulated financial service provider to cease committing the contravention; or
- A direction to pay the Central Bank all or part of the costs incurred by the Central Bank in the investigation of the matter and the holding an Inquiry.

The Outline introduces a new concept called the Early Settlement Discount Scheme. This scheme provides that the Central Bank may discount a monetary penalty by up to 30% where the regulated financial service provider is willing to enter into a Settlement Agreement within the timeframe indicated by the Central Bank in a letter offering the possibility of settlement. If the regulated financial service provider does not avail of the 30% discount during that timeframe, it is possible for them to receive a discount of up to 10% if they confirm their willingness to settle before the Central Bank issues a full notice of Inquiry.

Both the Inquiry Guidelines and the Outline of the Administrative Sanctions Procedure are available on the Central Bank website and may be accessed via the following link:

http://www.centralbank.ie/regulation/processes/EnfI/asp/Pages/ASP.aspx.

(iv) Industry Funding Levy – New Approach and Issuing of 2013 Levy Notices

The Central Bank has commenced issuing the 2013 industry funding levy notices, which are due and payable within 35 days of the date of the levy notice. If a regulated entity does not receive a levy notice, it is still legally obliged to pay the levy calculated in accordance with the appropriate industry funding category in the Central Bank Act 1942 (Section 32D) Regulations 2013 (the "2013 Industry Funding Regulations"). Any such financial service provider should request a copy levy notice by e-mail from funding@centralbank.ie.

The Central Bank has introduced a new approach to calculating the industry funding levy for the entities it regulates. This new approach was flagged in the CP61 consultation paper published in 2012 and the CP61 Feedback Statement published in 2013, where the Central Bank revealed its intention to introduce a revised calculation methodology whereby regulated financial service providers will pay a levy based on the activities in respect of which they have been authorised (industry funding category) and their PRISM impact categorisation. Those entities with the highest impact within an industry funding category will pay the highest levies while those with the lowest impact will pay the least.

The introduction of application fees has been deferred until 2014 to provide an opportunity for further consultation, the introduction of enabling primary legislation where required, and the establishment of service standards by the Central Bank.

The Central Bank's Guide to the 2013 Industry Funding Regulations may be accessed at the following link:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202013.pdf.

(v) Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2013

On the 11 December 2013, the Financial Services Ombudsman Council published the Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2013 (the "Regulations"). The Regulations provide for a scheme of levies on regulated entities to fund the operation of the Financial Services Ombudsman's Bureau for the year ended 31 December 2014.

Under the Regulations, Investment Business Firms (other than Investment Product Intermediaries), Collective Investment Schemes and other service providers, and Exchanges must pay a levy calculated on the basis of 18% of the annual industry funding levy payable to the Central Bank by the financial service provider in 2012 in respect of their liability for the year ended 31 December 2014. A minimum levy of €750 is payable by each provider.

(vi) Revised Protocol between the Central Bank and the Auditors of Regulated Financial Service Providers

On the 23 December 2013, the Central Bank published the revised Auditor Protocol (the "Protocol") between the Central Bank and auditors of Regulated Financial Service Providers following completion of the annual review process.

The Protocol provides a framework between the Central Bank and auditors for exchanging information on a timely basis with the aim of enhancing both the regulatory and statutory audit processes. The Protocol became effective in 2012 and applies to firms rated as High Impact under the PRISM regulatory risk model.

The following key changes have been made to the Protocol:

- The scope of the Protocol was extended to all meetings between auditors and the Central Bank including meetings in relation to non-High Impact firms; and
- The Protocol was updated to reflect recent changes in legislation in the form of the provision in Section 58 of the Central Bank (Supervision and Enforcement) Act, 2013 relating to the limitation of liability in the reporting of certain matters.

The revised Protocol became effective on 1 January 2014 and is available at the following link:

http://www.centralbank.ie/regulation/Documents/The%20Auditor%20Protocol.pdf.

Data Protection

A major overhaul of current EU data protection rules is currently being proposed by the European Commission. In this regard the European Commission presented in January 2012 a legislative package to improve data protection rights within the EU, (the "Data Protection Reform Package"). The Data Protection Reform Package comprises of a draft Directive and draft Regulation. The reforms are chiefly embodied in the draft Regulation.

The key proposals under the Data Protection Reform Package are:

- The right to be forgotten – whereby people can request that their data be deleted if they no longer want it to be processed and there are no legitimate reasons for holding such data;

- Explicit consent – whereby a company could process personal information only after obtaining clear permission from the person who could withdraw his/her consent at any time;

- Profiling (automated analysis of personal data to predict behaviour) – whereby this practice can only be carried out in certain limited circumstances;

- Data portability – whereby a person would have the right to request a copy of all his/her data in electronic form to be transferred to another provider;

- Clear and plain language – whereby data controllers should use clear, plain language adapted to the data subject; and

- Data Protection Officer – whereby companies employing at least 250 employees would be required to appoint a Data Protection Officer.

The European Parliament's Committee on Civil Liberties, Justice and Home Affairs ("LIBE") voted to adopt its position with regards to the Data Protection Reform Package. This vote sets out the European Parliament's position for its negotiations with the European Council and the European Commission (known as the "trialogue" stage). The position adopted by the European Parliament paved the way for the European Council to agree its position in December 2013 and it was originally hoped that all parties could reach agreement before May 2014 (when the European Parliament elections are due to be held). However, the European Council failed to make any progress on its agreed position with regards to the draft Regulation when it met on Friday 6 December 2013. Consequently progress has lost momentum, however it is still hoped that the text of the draft Regulation will be agreed upon in 2014 in which case it would likely come into effect in 2016. Businesses and other organisations which think they might be impacted by the Data Protection Reform Package are, therefore, advised to keep a close eye on these developments.

Anti-Money Laundering/Counter-Terrorism Financing

(i) Fourth Money Laundering Directive

On the 15 November 2013, the Economic and Financial Affairs Council (the "Council") released a press release confirming its progress in reviewing the Commission's proposal published in February 2013 for a draft Fourth Money Laundering Directive (the "proposed Directive") and a draft Regulation on information accompanying transfers of funds (the "draft Regulation").

The proposed Directive, along with the draft Regulation, is aimed at ensuring consistency between EU anti-money laundering rules and the approach followed at international level. The proposed texts are designed to modify the current Third Money Laundering Directive (2005/60/EC) and implement recommendations issued in February 2012 by the Financial Action Task Force ("FATF"), a 34-

member body established by the G7 and regarded as the global standard in combating money laundering and terrorist financing.

At the meeting in November 2013, the Council considered the following outstanding matters –

- Registries for information on beneficial ownership including where such information should be stored, who should have access to it and under what conditions;
- Supranational risk assessment including the role of the European supervisory authorities and of the outcome of risk assessment;
- Supranational monitoring of anti-money-laundering and counter-terrorist financing regimes and the mechanisms to ensure effective implementation; and
- Third country equivalence including how to modify the approach used to determine equivalence of anti-money laundering regimes in third countries.

The Council confirmed its intention to rapidly agree on a general approach to these matters, so that agreement can be reached with the European Parliament before the end of its current term (May 2014).

Based on Article 114 of the Treaty on the Functioning of the European Union, the proposed Directive requires a qualified majority for adoption by the Council, in agreement with the Parliament.

(ii) Investment Funds Anti-Money Laundering Sectoral Guidelines

On the 18 December 2013, the Irish Funds Industry Association (“IFIA”) confirmed that the Investment Fund Anti-Money Laundering Sectoral Guidelines (the “Guidelines”) have been signed off by the Central Bank.

The Central Bank has confirmed that it will have regard to the Guidelines in assessing compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) (the “Act”) by designated persons in the funds sector.

However, it is important to note that the Guidelines should be read in conjunction with the published Core Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the “Core Guidelines”). In addition designated persons must always refer directly to the Act when ascertaining their statutory obligations as the Guidelines are subordinate to the Act and to the Core Guidelines.

The Guidelines are due to be published on the Department of Finance website shortly.

(iii) FATF Identifies Jurisdictions with Deficiencies in AML/CTF

The Financial Action Task Force ("FATF"), as part of its mandate in improving global AML/CFT compliance, has again identified countries with varying levels of compliance with international AML-CFT standards in its document dated 18 October 2013 called "Improving Global AML/CTF Compliance: On-going Process".

The Central Bank has reminded designated persons that they should have regard to this latest FATF document when performing a risk assessment of third countries.

The FATF document is available via the following link –

http://www.fatf-gafi.org/media/fatf/documents/statements/Compliance-18-October-2013.pdf.

Whistleblower Protection

The Protected Disclosures Bill 2013 (the "Bill") was published in July of 2013. This Bill proposes to provide for whistleblower protection in all sectors of the economy. 'Workers' are defined broadly to include employees, contractors, agency staff, trainees and home workers. It is proposed that 'workers' are to be provided with employment and other protections from penalisation for making 'protected disclosures' to certain persons.

An amendment was made to the Bill during the "Report Stage" of the legislative process to provide for the granting of interim relief on foot of a Circuit Court application. The amendment is designed to cater for a situation where a worker has been dismissed for making a protected disclosure and there is a lengthy delay before the unfair dismissal hearing. The Bill proposes to allow workers in that case to apply to the Circuit Court for relief, pending the hearing of their unfair dismissal claim. It is proposed to give the Circuit Court the power to order the employer to reinstate the employee, pending the full hearing of the issue. Compensation may be paid to the worker if an employer fails to comply with the order. This procedure is in line with best practise in other jurisdictions.

Companies Bill 2012 Update

The Companies Bill 2012 was published in December 2012 and is currently going through Dáil Éireann's legislative process. The Committee Stage was completed on 6 November 2013. The Bill will now move on to the Dáil's Report and Final Stages before the Seanad begins its consideration of the Companies Bill 2012.

The Office of the Director of Corporate Enforcement expects that the new Companies Act will commence in early 2015.

The Companies Registration Office ("CRO") is carrying out a survey to identify the best way of providing information to their stakeholders, and has asked stakeholders to complete a short survey to help them with this task.

The survey may be completed at the following link:

https://www.surveymonkey.com/s/66GBNDK.

Irish Taxation Update

(i) Increase in the Applicable Rates for "Chargeable Events" for Certain Irish Investors

While Irish regulated investment funds are not subject to tax on their income and gains, the fund is obliged to deduct withholding tax on certain "chargeable events" for certain Irish investors (not falling within the exempt Irish investor category).

The Finance (No. 2) Act 2013 (the "Act") increased the rates of tax applicable on "chargeable events" to a single rate of 41% for regular distributions (previously subject to a rate of 33%) and any other distributions (previously subject to a rate of 36%).

The rate of tax applicable to an investment fund which is a Personal Portfolio Investment Undertakings ("PPIU") has also increased, from 56% to 60% where correctly declared, and from 74% to 80% where not correctly declared. The corporate policyholder rate remains at 25%.

The above changes take effect from 1 January 2014.

(ii) Shares Listed on the Enterprise Securities Market

The transfer of shares listed on the Enterprise Securities Market ("ESM") of the Irish Stock Exchange is currently subject to stamp duty at the rate of 1%. The Act provides for such transfers to be exempt from stamp duty. This amendment is subject to a commencement order.

(iii) Annual Reporting Requirement 2013

Under new reporting regulations introduced in 2013, certain investment undertakings are now required to make an annual return to Revenue containing details of the values of investments held by certain unit holders.

The reporting requirements will not apply to "excepted unit holders". The definition of "excepted unit holders" is quite broad and includes (i) non-resident investors who have either supplied a non-resident declaration or where the investment undertaking has put in place equivalent measures with the written approval of Revenue, (ii) exempt Irish investors (e.g. Section 110 companies, pension schemes, charities, other investment undertakings, etc.) provided the relevant declarations have been made and (iii) unit holders who hold units through a recognised clearing system.

An investment undertaking is not required to deliver a return for a year where the only unit holders are excepted unit holders, however Revenue request where that is the case that an e-mail should be sent to them notifying the Planning Division accordingly. Therefore, for the large majority of investment undertakings this legislation will have little (if any) impact.

Where however an investment undertaking has unit holders that are not excepted unit holders, a report will be required. The information that must be contained in that report is as follows:

- *Investment undertaking*: Name, registered office address, tax reference number for the investment undertaking and contact details;

- *Unit holder*: Name, address and date of birth (if an individual and if on record) for the unit holders. For the years 2014 onwards, all investment undertakings are required to obtain the Irish tax reference number (if any) of each new unit holder along with documentary proof of same. Under no circumstances should the tax reference number be provided for unit holders' investments made prior to that date.

- *Investment:* The code or number identifying the investment and the value of the investment using the redemption price (or NAV per unit for certain closed ended funds) at 31st December in the tax year or the date of first redemption in the year if earlier.

The first annual report for the 2012 tax year was due for submission to Revenue by 30 September 2013. The annual return for 2013 onwards must be submitted to Revenue by 31 March of the subsequent year (e.g. the return for year ended 31 December 2013 must be submitted by 31 March 2014).

Intermediaries

Where the registered unit holder is an intermediary, reporting obligations may be carried out on the basis that the intermediary is the unit holder. Where however an intermediary acts for a unit holder but who does not hold units, that intermediary should seek the tax reference number from the unit holder when commencing a new investment and pass on the tax reference number information to the investment undertaking.

FATCA Update

On 3 May 2013, Revenue released the Draft Financial Accounts Reporting Regulations 2013 together with supporting Draft Guidance Notes. Revised draft Regulations and Guidance Notes were expected to be issued in late 2013 but have not been released to date. Nonetheless, the revised draft Regulations and Guidance Notes are expected to be issued by the end of January 2014.

Dillon Eustace
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 December 2013, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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