Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 April 2018 – 30 June 2018

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Table of Contents

INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

MiFID II - Irish Developments

(i) Central Bank publishes reporting requirements for MiFID

On 3 May 2018, the Central Bank of Ireland ("**Central Bank**") published a revised edition of its 'Reporting Requirements for Markets in Financial Instruments Directive ("**MiFID**") Investment Firms' ("**MiFID Reporting Requirements**") publication.

The MiFID Reporting Requirements set out a non-exhaustive list of the regulatory reports that MiFID firms are required to submit to the Central Bank on a periodic basis. The requirement to provide regulatory reports emanate from legislative and supplementary requirements, and as advised in writing to firms by the Central Bank from time to time.

The new edition of the relevant MiFID Reporting Requirements is available here.

(ii) Central Bank issues updated forms for MiFID firms

On 28 May 2018, the Central Bank issued updated MiFID forms which are located on its website.

The list of MiFID forms may be accessed here.

(iii) Markets in Financial Instruments Bill 2018 published

On 31 May 2018, the 'Markets in Financial Institutions Bill 2018' was presented to Dáil Eireann at the third stage of the legislative process (the "**Bill**").

The Bill makes provision for indictable offences that carry greater maximum penalties than are permitted by the European Communities Act, 1972 (as amended). For example, if convicted of a contravention of providing an investment service/performing an investment activity without authorisation or if convicted for contravening certain provisions (examples listed below) of Irish MiFID II Regulations this may result in a maximum fine of €10 million or imprisonment for a term of up to ten years or both. These offences include the failure to follow the notification procedure when seeking to make a proposed acquisition, failure to comply with record keeping requirements under the organisational rules, failure to comply with the obligation to act honestly, fairly, professionally and in the best interests of clients, breach of best execution rules/order handling rules and breach of client asset/client monies rules.

The Bill also seeks to revise the definition of "credit" provided for in the Credit Reporting Act, 2013 (the "**Credit Reporting Act**"). The proposed amendment extends the definition of

credit to hire purchase agreements, personal contract plans and leasing agreements where the lender remains the owner of the goods financed.

The Bill also makes provision in relation to the fees payable in respect of the performance of the Central Bank of certain functions and accordingly amends Schedule 2 to the Central Bank Act, 1942 (as amended). The Bill also seeks to amend the definition of "long-term financial service" in the Financial Services and Pensions Ombudsman Act 2017 and repeals section 5 of the Markets in Financial Instruments and Miscellaneous Provisions Act, 2007 (as amended).

The Bill is currently at the third stage of the legislative process and changes have been made to the text of the Bill which was initiated on 11 April 2018. The original text is available here.

The current version of the Bill which was last amended in the Select Committee on Finance, Public Expenditure and Reform, an Taoiseach dated 1 June 2018 is available here.

(iv) Second Edition of Irish Funds' Q&A on the implications of MiFID II for the Irish Funds Industry

On 25 June 2018, Irish Funds published the second edition of its "MiFID II – Implications for the Irish Funds Industry Questions and Answers" ("**MiFID II Q&A**") which sets out some questions and answers specific to MiFID II rules which relate to the Irish funds industry. The first edition was published on 6 September 2017.

The following three questions were added to the latest version of the MiFID II Q&A:

- **Question ID 2.4**: Which relates to the operational considerations to be considered when setting up a Research Payment Account;

- **Question ID 4.2**: Which concerns third party delegations and relates to a scenario where a MiFID firm delegates some or all of its portfolio management activities or independent investment advisory activities (or other investment services) to a third country investment manager, and covers whether that third country manager must comply with the MiFID II investor protection rules, such as the rules around receipt of inducements; and

- **Question ID 5.1**: Which relates to the appointment of a MiFID firm to carry out portfolio management services and the subsequent reporting requirements under Article 25(6) of the MiFID Directive. Specifically in relation to the reporting requirements that arise when carrying out portfolio management services for an umbrella fund.

For further information please find a copy of the MiFID II Q&A here.

MiFID II - European Developments

(i) ESMA publishes updated MiFID II Q&A on Transparency

During the period 1 April 2018 to 30 June 2018, the European Securities and Markets Authority ("**ESMA**") published updated versions of its questions and answers on transparency publication ("**Q&A on Transparency**") under the Markets in Financial Instruments Directive II ("**MiFID II Directive**") and Markets in Financial Instruments Regulation ("**MiFIR**"). There were four questions updated which are all located in Part 2 of the Q&A on Transparency. The updated questions are as follows:

- **Question ID: Part 2 – Question 7** (as updated on 29 May 2018) which relates to when an operator of a request for quote system should provide pre-trade transparency;
- **Question ID: Part 2 – Question 10** (as updated on 29 May 2018) which relates to how Approved Publication Arrangements and Consolidated Tape Providers should make data available free of charge, fifteen minutes after publication and to ensure there is non-discriminatory access to the information;
- **Question ID: Part 2 – Question 11** (as updated on 29 May 2018) which relates to how the field publication date and time should be populated in the case of the use of deferrals or for amendments to trade reports; and
- **Question ID: Part 2 – Question 12** (as updated on 29 May 2018) which relates to how voice trading systems apply to the pre-trade transparency requirements of Article 8 of MiFIR.

A copy of the updated Q&A on Transparency can be accessed here.

(ii) ESMA publishes data regarding the double volume cap under MiFID II and MiFIR

During the period 1 April 2018 to 30 June 2018, ESMA published updated data regarding the double volume cap ("**DVC**") under the MiFID II Directive and MiFIR. The updates were published on the following dates 10 April, 8 May and 7 June this year.

The purpose of the DVC mechanism is to limit the amount of trading allowed under certain equity waivers to ensure the use of such waivers does not harm price formation for equity instruments. The data files published by ESMA provide the information needed for the implementation of the DVC mechanism. This includes the identifiers of the instruments and trading venues associated with a suspension of the relevant waivers, and the period in which the DVC will be applicable.

The data files can be accessed here.

(iii) ESMA issues updated Q&A on MiFID II and MiFIR 'investor protection and topics relevant to intermediaries'

During the period 1 April 2018 to 30 June 2018, ESMA published updated versions of its questions and answers on 'investor protection and topics relevant to intermediaries' publication ("**Q&A on Investor Protection**") under MiFID II Directive and MiFIR. The updates to the Q&A on Investor Protection comprise of:

- **Question ID: Part 1 – 'Best Execution' – Question 18** (as last updated on 25 May 2018) which queries what constitutes 'other liquidity provider' under Recital 7 of Delegated Regulation (EU) 2017/575 ("**RTS 27**");

- **Question ID: Part 11 – 'Client Categorisation' – Question 2** (as last updated 25 May 2018) which relates to when an investment firm should assess whether a private individual investor ("**PII**") may be treated as a professional client under Section II of Annex II of the MiFID II Directive;

- **Questions ID: Part 11 – 'Client Categorisation' – Question 3** (as last updated 25 May 2018) which relates to how an investment firm should determine whether a PII may be treated 'on request' as a professional client for the purposes of Section II of Annex II of the MiFID II Directive;

- **Questions ID: Part 11 – 'Client Categorisation' – Question 4** (as last updated 25 May 2018) which relates to how an investment firm should assess whether a PII has carried out transactions of a "significant size" as is set in the first limb of Section II of Annex II of the MiFID II Directive (i.e. Quantitative Test);

- **Questions ID: Part 11 – 'Client Categorisation' – Question 5** (as last updated 25 May 2018) which covers how an investment firm should determine whether a PII client meets the condition as is set out in Section II of Annex II and the MiFID II Directive (i.e. Quantitative Test) relating to when an investor has been trading for less than a year in the relevant market;

- **Questions ID: Part 11 – 'Client Categorisation' – Question 6** (as last updated 25 May 2018) which relates to how leveraged financial instruments should be accounted for when assessing the client's financial instrument portfolio's size in relation to Section II of Annex II of the MiFID II Directive;

- **Question ID: Part 13 – 'Provision of investment services and activities by third party funding' – Question 1** (as last updated 25 May 2018) which relates to the interpretation of Article 42 of the MiFID II Directive. Please note that the corresponding answer to this question was only subject to minor alterations;

- **Question ID: Part 13 - 'Provision of investment services and activities by third party funding' – Question 2** (as last updated 25 May 2018) which relates to the

interpretation of the words 'new categories of investment products or investment services' in relation to Article 42 of the MiFID II Directive and Article 46 of MiFIR; and

- **Question ID: Part 15 – ' Other issues' – Question 2** (as last updated 25 June 2018) which relates to the supervisory responsibility of competent authorities in host member states when a UCITS management companies or an AIFM provides investment services through a branch.

A copy of the updated Q&A on Investor Protection can be accessed here.

(iv) ESMA publishes updated MiFID II Q&A on 'data reporting'

During the period 1 April 2018 to 30 June 2018, ESMA published an updated version of its questions and answers on data reporting under MiFIR publication ("**Q&A on Data Reporting**").

The updates relate to requirements for submission of transaction reports and reference data under MiFIR (focussing on complex trades and national client identifiers for natural persons), reporting transactions and reference data for instruments where the execution results in a complex trade and how three national identifiers specified in Annex II of Delegated Regulation (EU) 2017/590 ("**RTS 22**") should be represented: the Czech ID, the Liechtenstein ID, and the Romanian ID. The following topics have been updated:

- **Question ID: Part 15 – 'Complex Trades' - Question 1 (a) – (g)** (as updated 25 May 2018) relate to complex trades as defined under Article 12 of RTS 22; and

- **Question ID: Part 16 – 'Transaction Reporting' – Question 2** (as updated 25 May 2018) which relates to the different national identifiers specified in Annex II of RTS 22.

A copy of the updated Q&A on Data Reporting can be found here.

(v) ESMA publishes updated Q&A on Market Structures

During the period 1 April 2018 to 30 June 2018, ESMA published an updated version of its questions and answers on market structures publication ("**Q&A on Market Structures**") in relation to the MiFID II Directive and MiFIR. The following question was updated:

- **Question ID: Part 5 – 'Multilateral and Bilateral Systems' – Question 22** (as updated 29 May 2018) which asks if 'an Organised Trading Facility' can arrange or trade strategies including an equity leg.

A copy of the updated Q&A on Market Structures is available here.

(vi) ESMA publishes three opinions on position limits under MiFID II

On 9 April 2018, ESMA published three opinions on position limits regarding the following commodity derivatives under the MiFID II Directive and MiFIR:

- Feed wheat, available here;
- Jet kerosene, available here; and
- Gasoline, available here.

ESMA agreed with the proposed position limits regarding the aforementioned commodity derivatives, noting that the limits were consistent with the objectives established under the MiFID II rules and the accompanying methodology developed for setting those limits.

The MiFID II Directive provides for all commodity derivatives traded on trading venues and economically equivalent over-the-counter ("**OTC**") contracts to be subject to position limits. ESMA publishes a list of liquid commodity derivatives currently identified by the relevant national competent authorities ("**NCAs**") in order to further assist market participants with the implementation of the MiFID II position limit framework

The list of position limits may be accessed here.

(vii) ESMA publishes letter seeking clarification of the ancillary activity test set out in MiFID II

On 10 April 2018, ESMA published a letter from Steven Maijoor, ESMA Chair, to Valdis Dombrovskis, Vice-President at the European Commission.

Under the MiFID II rules non-financial entities are eligible to an exemption from authorisation as a MiFID firm when their commodity derivative trading activity is ancillary to their main business. Commission Delegated Regulation 2017/592 ("**RTS 20**") provides criteria and tests to establish whether an activity is ancillary in this context.

As is set out in the letter, there is uncertainty regarding whether these tests should be performed at the single entity or at group entity level. The letter seeks clarification from the European Commission on how the ancillary activity criteria set out in Article 2(4) of the MiFID II Directive and RTS 20 are to be interpreted and implemented. More specifically, the letter seeks guidance regarding at which level the tests are to be performed i.e. single or group level.

The letter may be accessed here.

(viii) ESMA updates equity transparency calculations and tick sizes band assessment under MiFID II

On 19 April 2018, ESMA updated its transitional transparency calculations ("**TTC**") for equities and bonds under the MiFID II Directive and MiFIR.

The update relates to the liquidity assessment for bond instruments except for exchange traded commodities ("**ETCs**") and exchange traded note ("**ETNs**"). Trading venues are expected to apply the new results from 23 April 2018.

The TTC update for equity and tick sizes under the MiFID II rules can be accessed here.

On 15 May 2018, ESMA updated its Frequently Asked Questions ("**TTC FAQ**") on 'MiFID II – TTC', where more information on the TCC update may be found.

A copy of the TTC FAQs can be accessed here.

(ix) ESMA publishes first liquidity assessment for bonds under MiFID II pre- and post-trade transparency requirements

On 2 May 2018, ESMA published its first liquidity assessment for bonds under the pre and post trade MiFIR requirements.

The assessment of the European bond market found that, for the first quarter of 2018, 220 bonds were sufficiently liquid to be subject to MiFIR transparency requirements. The results are based on an assessment of quantitative liquidity criteria such as the daily average traded activity and the number of days traded per quarter.

ESMA notes that this number of bonds is lower compared to previous calculations conducted by ESMA due to data completeness and quality issues. As a result, ESMA may issue further updates to the assessment within each quarter.

The results of the assessment have been published on ESMA's Financial Instruments Transparency System, which may be accessed here. An accompanying press release may be accessed here.

(x) ECB publishes opinion on a proposal for a Regulation amending the ESMA Regulation and on a proposal for a Directive amending Solvency II and MiFID II

On 17 May 2018, the European Central Bank ("**ECB**") published an opinion (dated 11 May 2018), on a proposed Regulation amending the ESMA Regulation 1095/2010 and related legal acts and a proposed Directive amending the Solvency II Directive (2009/138/EC) and the MiFID II Directive ("**Opinion**"). The proposed legislation forms part of a package of proposals set out by the European Commission to reform the European System of Financial Supervision.

The ECB expressed its support of the proposed Regulation's aim to contribute to the development of the Capital Markets Union ("**CMU**"), noting the single supervision of at least specific market segments needs to be envisaged in order to ensure consistent enforcement across the European Union. Furthermore, the ECB recommended that consideration be given to the role of the ECB as supervisor of credit institutions under the Single Supervisory Mechanism Regulation.

The ECB made a number of specific observations regarding the role of the ECB in central counterparty ("**CCP**") matters, including support of the revision of ESMA's governance structure and the inclusion of an ECB representative as a permanent non-voting member of ESMA's Board of Supervisors.

The Opinion is available here. ESMA advises that the opinion should be read in conjunction with the ECB Opinion of 2 March 2018 on the proposed Regulation amending the ESRB Regulation 1092/2010 and the ECB Opinion of 11 April 2018 on the proposed Regulation amending the EBA Regulation 1093/2010, available here and here respectively.

(xi) European Commission publishes draft Delegated Regulation amending Delegated Regulation 2017/565 regarding conditions to promote the use of SME growth markets

On 24 May 2018, the European Commission published the text of a draft Delegated Regulation ("**Draft Delegated Regulation**") amending the Delegated Regulation 2017/565 (the "**MiFID II Delegated Regulation**") which supplements the MiFID II Directive as regards certain registration conditions to promote the use of small to medium enterprises ("**SME**") growth markets.

The European Commission has put together a legislative proposal that makes technical adjustments to existing legislation in order to:

- Reduce the administrative burden and compliance costs faced by SMEs when their financial instruments are admitted to trading on an SME growth market;
- Ensure investor protection and market integrity; and
- Increase the liquidity of equity instruments listed on SME growth markets.

The Draft Delegated Regulation, in particular, will replace the current definition of a non-equity issuer, as set out in the MiFID II Delegated Regulation, with a new definition based on an issuance size criterion. This will mean that the requirements that an issuer must satisfy to qualify as an SME are less restrictive.

It will also introduce flexibility regarding the requirement upon non-equity issuers to issue a half yearly financial report, thus facilitating a level playing field between non-equity issuers on SME growth market and those on the regulated market that are already exempted from this requirement.

The draft text and an accompanying explanatory memorandum is available here. The European Commission provided that the draft text was open to feedback until 21 June 2018.

(xii) European Commission publishes draft Delegated Regulation seeking to amend Delegated Regulation on requirements for investment firms

On 24 May 2018, the European Commission published a draft Delegated Regulation amending Regulation 2017/565 which supplements certain MiFID II organisational requirements and operating conditions for investment firms.

The draft Delegated Regulation seeks to make amendments in relation to organisational requirements and operating conditions for investment firms in order to take into account the environmental, social and governance investment objectives of clients, when investment firms are providing investment advice or portfolio management.

The European Commission was seeking feedback from stakeholders on the proposal until 21 June 2018.

The draft Delegated Regulation may be accessed here.

(xiii) ESMA publishes final report on guidelines on certain aspects of MiFID II suitability requirements

On 28 May 2018, ESMA published its final report on guidelines on certain aspects of the MiFID suitability requirements (the "**Final Report**").

The assessment of suitability is a key obligation for investor protection. In accordance with the obligations set out in the MiFID II Directive and the MiFID II Delegated Regulation, investment firms providing investment advice or portfolio management have to provide suitable personal recommendations to their clients or have to make suitable investment decisions on behalf of their clients.

The guidelines aim to enhance clarity and foster convergence on a number of issues, and build on the MiFID I suitability requirements issued by ESMA in 2012. The issues addressed in the Final Report include:

- Taking into account the recent technological developments of the advisory market e.g. the provision of 'robo-advice';
- Building on the NCAs' experience on the application of suitability requirements; and
- Taking into account the outcome of studies in the area of behavioural finance.

Once the guidelines have been translated and published on ESMA's website, a two-month period will be triggered. During this two month period NCAs must notify ESMA whether they comply or intend to comply with the guidelines.

The Final Report is available here.

(xiv) ESMA publishes updates on technical reporting instructions on transaction reporting under MiFIR

On 15 June 2018, ESMA published an updated version of its Technical Reporting Instructions, relating to transaction reporting under MiFIR.

Instructions include updates on reporting instructions, validation rules and XML schemas. Updates have been made to the examples in order to align with the Technical Reporting schemas.

A copy of the updated Technical Reporting Instructions is available here.

A copy of the log of changes is available here.

(xv) Competent Authorities professional secrecy requirements interpreted by ECJ

On 19 June 2018, the Court of Justice of the European Union ("**ECJ**") handed down a decision to the case Bundesanstalt für Finanzdienstleistungsaufsicht v Baumeister (Case C-15/16) (the "**Decision**").

The Decision pivoted on the interpretation of "confidential information" under Article 54(1) of MiFID I and to the extent the professional secrecy obligation is imposed on national competent authorities.

The ECJ held that there is no unconditional obligation on competent authorities to maintain all information provided to a competent authority relating to a firm subject to supervision under MiFID I as confidential as such information does not automatically qualify as confidential information covered by the obligation to maintain professional secrecy in the legislation. The ECJ also detailed the circumstances where confidential information provided to competent authorities will qualify as information covered by the obligation to maintain professional secrecy.

A copy of the Decision is available here.

(xvi) ESMA published statement on LEI requirements under MiFIR

On 20 June 2018, ESMA published a statement on Legal Identity Identifiers ("**LEIs**") requirements under MiFIR. The statement confirms that the transition period allowing for the introduction of the use of LEIs will cease on 2 July 2018 and will not be extended.

The transitional period was introduced to allow investment firms provide investment services that trigger the obligation to submit a transaction report to clients who had not as of yet obtained an LEI code, under the condition that before providing such a service the investment firm obtained the necessary documentation from the relevant client to apply for an LEI on behalf of the client.

The temporary period was introduced due to the fact that not all firms succeeded in obtaining LEIs in time for the MiFID II start. All reporting firms will now have to use LEIs to identify such clients when reporting trades under MiFIR.

To ensure a high degree of supervisory convergence and the full application of MIFIR, ESMA and the NCAs are coordinating on the development of an appropriate and proportionate common supervisory action plan focused on compliance with the LEI reporting requirements under the respective MiFIR provisions.

Furthermore on 27 June 2018, the ESMA Executive Director, Verena Ross, delivered a speech on the subject of MiFID II and LEIs, in which she outlined the implementation of LEI rules in Europe, in light of the requirements envisaged in MiFID II.

In the speech the importance of the LEI rules in the context of financial markets was stressed with the importance noted to both regulators and all investors.

The statement is available here and Verena Ross' speech is available here.

(xvii) Speech by ESMA Chair on MiFID II implementation

On 21 June 2018, ESMA published a speech delivered by its chair, Stephen Maijoor, ("**Chair of ESMA**") entitled 'MiFID II Implementation – Achievements and Current Priorities' ("**Speech**").

The Speech delivered reflected on the achievements of the implementation of the MiFID II regime. The Chair of ESMA noted the smooth implementation and made some of the following observations:

- The trade transparency requirements have not disrupted financial markets, to date;
- The Double Volume Cap mechanism has resulted in a dramatic reduction in the volume of transactions in dark pools;
- The new tick size regime has delivered on its ambitions; and
- The 'steady and substantial' increase in Legal Entity Identifier ("**LEI**") use.

The Chair of ESMA also outlined in his speech areas where improvement was needed and provided that this issue is high on ESMA's agenda. The following matters were mentioned:

- ESMA's data quality issues with the Double Volume Cap Mechanism, where (i) all the necessary and correct data has not been submitted by trading venues and/or (ii) due to the ESMA IT system;

- The uneven playing field between Systematic Internalisers and trading venues, however it was provided that a proposed amendment to the Delegated Regulation (EU) 2017/587 ("**RTS 1**") currently with the European Commission will remedy this; and

- Issues surrounding the 'Tick Size Regime' regarding third countries.

For further information please find a copy of the Speech here.

(xviii) Clarification on 'Ancillary Activity Test' from MiFID II

On 22 June 2018, a letter (dated 31 May 2018) from the European Commission's Vice President – Valdis Dombrovskis addressed the ESMA Chair, was issued which sought to clarify the exemption set out in Article 2(1)(j) of the MiFID II Directive. The letter was a response to the Mr. Maijoor's request for clarification on this exemption.

The letter clarifies the application of the ancillary activity test ("**Test**") contained in Article 2(1)(j) of the MiFID II Directive and in particular discusses the application of the Test to commercial group structures. Among other things the letter outlines that:

- To benefit from Article 2(1)(j)'s exemption a firm that deals in both of the activities for which a person may obtain an exemption (i.e. on own account and in the provision of investment services for commodity derivatives) such a person is required to pass the Test for both roles, thus passing the Test with respect to one of the activities outlined above will not qualify the person for exemption under MiFID II;

- Under Article 2(1)(j) the MiFID II activities undertaken by a firm are compared with the commercial activities of the firm or the firm's group; and

- Each person within such a group that engages in either of the activities will need to be tested.

For further information please find a copy of the letter here.

(xix) EFAMA publish response to Commission's draft legislative proposal on sustainable finance amending MiFID II

On 27 June 2018, the European Fund and Asset Management Association ("**EFAMA**") published a response to the European Commission's draft legislative proposals in relation to the sustainable finance initiative and MiFID II suitability requirements ("**Response**").

Before providing their comments on the European Commission's draft legislative proposal to amend MiFID II Delegated Regulation 2017/565 ("**Proposal**"), EFAMA stated their strong support for the promotion of sustainable finance in the Response. EFAMA also provided their comments on the draft legislative proposal.

The Response makes general comments on the proposed legislation regarding the impact on wider distribution of financial instruments, the sequence of actions and the wider economic implications and what such proposed changes will mean in practice i.e. what are distributors meant to do with the information in their investment processes.

The Response also considers the draft legislative proposals in detail and suggests that certain changes be made to the text set out therein.

A copy of the Response is available here.

Capital Requirements Directive IV / V / CRR / CRR II

(i) EBA publishes revised versions of the Single Rulebook Q&A under CRD IV / CRR

During the period 1 April 2018 to 30 June 2018, the European Banking Authority ("**EBA**") updated its interactive Single Rulebook Q&A with thirty-two new questions which related to, among other things, the Capital Requirements Directive IV ("**CRD IV**") and the Capital Requirements Regulation ("**CRR**"). The most recent questions dating from June 2018 alone are set out below:

- **Question ID: 2017_3366** (as last updated on 8 June 2018) relates to Original maturity for off balance sheet items;
- **Question ID: 2016_3057** (as last updated on 8 June 2018) relates to Multiplier of 1.25 to the asset value correlation;
- **Question ID: 2018_3952** (as last updated on 8 June 2018) relates to IFRS 9 Transitional arrangements - Distinction between defaulted and non-defaulted exposures for the calculation provided for in Article 473a(5);
- **Question ID: 2018_3952** (as last updated on 8 June 2018) relates to IFRS 9 Transitional arrangements - Reference date for the regulatory expected loss in Article 473a(5)(c);
- **Question ID: 2017_3255** (as last updated on 15 June 2018) relates to Funding Reliances - Table 2A1 - Insured and uninsured deposits and uninsured deposit-like financial instruments (P 02.01);
- **Question ID: 2016_2568** (as last updated on 15 June 2018) relates to Reporting of funding, obtained to supply credit to the real economy, and validation rule v4137_m; and

- **Question ID: 2017_3675** (as last updated on 22 June 2018) relates to the Impact of a profit and loss transfer agreement under German company law on the eligibility of CET1 instruments for subsidiaries having full discretion on contributing common equity tier 1 capital as defined in Article 26 of the CRR.

A copy of the Single Rulebook Q&A with all thirty-two new questions can be accessed here.

(ii) European Parliament publishes draft report regarding proposed Regulation on the prudential requirements of investment firms

On 11 April 2018, the European Parliament's Economic and Monetary Affairs Committee ("**ECON"**) published a draft report on the proposal for a Regulation on the prudential requirements of investment firms. The proposed Regulation, published by the Commission on 20 December 2017, aims to ensure that investment firms are subject to capital, liquidity and other key prudential requirements and corresponding supervisory arrangements that are adapted to their business yet sufficiently robust enough to capture the risks of investment firms in a prudentially sound manner in order to protect the stability of the EU's financial markets.

According to the draft report, ECON broadly supports the objective pursued by the proposed Regulation. However, the draft report suggests a number of amendments to the text of the proposed Regulation in order to increase regulatory certainty, introduce more flexibility and provide a level playing field for third-country firms.

The suggested amendments include:

- **Own funds requirements:** Amendments to enable competent authorities to allow Class 3 firms to use different instruments to those listed in CRR, to comply with their own funds requirements;

- **Movements between Class 2 firms (non-systemic investment firms) and Class 3 firms:** A number of amendments have been suggested that will ease movements between Class 2 and Class 3. Some of the changes are aimed at providing sufficient time for firms to adapt to the new requirements;

- **Reporting, governance and remuneration:** A number of amendments aim to simplify the rules on reporting, governance and remuneration; and

- **Third country regime and equivalence:** A number of amendments have been made to the equivalence regime, the aim of which is to ensure that EU banks are not placed in a less favourable position than third country investment firms.

ECON's draft report may be accessed here. The Commission proposed Regulation may be accessed here.

(iii) EBA publishes draft guidelines on specification of types of exposures to be associated with high risk under the CRR

On 17 April 2018, the EBA published a consultation paper on specification of types of exposures to be associated with high risk under Article 128(3) of the CRR.

The draft guidelines aim to clarify the notion of investments in venture capital firms and private equity as referred to in Article 128(2) of the CRR and specify which other types of exposures should be considered as high risk and under which circumstances by way of application of Articles 128(3) of the CRR.

The EBA considers the issue of the draft guidelines to be of benefit in order to ensure detection of high risks within banks before transposition of Basel III. Furthermore, the EBA notes that the guidelines aim to encourage a harmonised and consistent application of Articles 128(2) and (3) of the CRR.

The EBA has invited comments on all the proposals put forward in the draft guidelines. The consultation period runs until 17 July 2018 and the draft guidelines are available here.

(iv) EBA publishes final report on draft Implementing Standards amending

On 17 April 2018, the EBA published its final report on a revised draft Implementing Technical Standards which seeks to amend Implementing Regulation EU 680/2014 with regard to the supervisory reporting of institutions in relation to prudent valuation under CRR (the "**Draft ITS**").

The CRR mandates the EBA to develop uniform reporting requirements, aimed at collecting information on the compliance by institutions with prudential requirements. The Draft ITS aims to keep the reporting requirements in line with changes in the regulatory framework and with the evolving needs for supervisory authorities' risk assessments.

The Draft ITS seeks to introduce amendments to the Implementing Regulation 680/2014 with regard to the following:

- New requirements as regards reporting of prudent valuation ("**PruVal**") and;
- Updating the reporting requirements on COREP, IP losses, large exposures, leverage ratio and additional monitoring metrics for liquidity (technical amendments).

The report also sets out a summary of responses to the consultation held on the Draft ITS in March 2016, as well as EBA's analysis on the comments received.

The Draft ITS have been submitted to the Commission for endorsement before being published in the Official Journal of the European Union. The Draft ITS will apply from December 2018.

The final report is available here.

(v) European Commission Implementing Regulations amending Solvency II and CRR ITS on mapping credit assessments of ECAIs

On 25 April 2018, the European Commission published the following regulations in the Official Journal of the European Union:

- Commission Implementing Regulation (EU) 2018/633 amending Implementing Regulation (EU) 2016/1800 laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with the Solvency II Directive 2009/138/EC; and

- Commission Implementing Regulation (EU) 2018/634 amending Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions and the credit quality steps set out in CRR (collectively the "**Implementing Regulations**").

The Implementing Regulations were adopted by the European Commission on 24 April 2018, and entered into force on 15 May 2018, following publication in the Official Journal of the European Union.

The Implementing Regulations may be accessed here and here respectively.

(vi) EBA publishes consultation paper on draft guidelines on disclosure of non-performing and forborne exposures

On 27 April 2018, the EBA published a consultation paper on draft guidelines on the disclosure of non-performing and forborne exposures by credit institutions.

The draft guidelines seek to address information asymmetries and foster transparency in this area by specifying the information that credit institutions should disclose and providing uniform disclosure formats. These requirements are applied in a proportionate manner, based on the significance of the credit institution and the level of non-performing exposures ("**NPEs**"). The draft guidelines specify the information related to NPEs, forborne exposures and foreclosed assets that credit institutions should disclose.

The draft guidelines apply to credit institutions that are subject to all or part of the disclosure requirements set out in the CRR.

The closing date for receipt of comments is 27 July 2018 and the consultation paper is available here.

(vii) General Court rules on meaning of "effective director" under CRD IV

The European Union General Court (the "**General Court**") has ruled that the same person may not occupy simultaneously the post of chairman of the board of directors and that of "effective director" in credit institutions that are subject to prudential supervision under CRD IV.

The case concerned the French banking group Crédit Agricole. Four of Crédit Agricole's regional branches wished to appoint the same person to the post of chairman of the board of directors and that of "effective director." The ECB responsible for the prudential supervision of Crédit Agricole, objected to the relevant persons carrying out both functions at the same time, noting that there has to be a separation of the exercise of executive and non-executive functions within a management body.

The General Court subsequently confirmed that the ECB correctly interpreted the concept of "effective director" under CRD IV. The General Court noted that the objective of good governance, pursued by the European Union legislature, would be jeopardised if the chairman of the board of directors in its supervisory function was also responsible for the effective direction of the business of the credit institution.

The judgment is available here and an accompanying press release is available here.

(viii) EBA publishes results of CVA risk monitoring exercise

On 4 May 2018, the EBA published a report outlining the main outcomes of its 2016 Credit Valuation Adjustment ("**CVA**") monitoring exercise ("**CVA Report**"). The exercise was launched to monitor the impact of transactions exempted for the purpose of calculating the CVA risk charge under the CRR.

The CVA Report is based on data submitted by 169 major European Union institutions, representing twenty-seven Member States. The institutions were requested to compute the impact of the reintegration in the scope of their CVA risk charge of transactions currently subject to CRR exemptions.

The outcomes of the 2016 exercise were similar to those of the exercise carried out in 2015, and continue to show the materiality of CVA risks that are currently not capitalised due to the CRR exemptions.

The revised framework for CVA risk forms part of the Basel III post-crisis reforms finalised by the Basel Committee on Banking Supervision in December 2017. The EBA will extend the scope of its 2017 CVA risk monitoring exercise to assess the impact of the CRR exemptions also in the context of the future implementation of the revised CVA standards in the European Union. A press release reported that the EBA has already begun the data collection process for the 2017 CVA risk monitoring exercise, which will be part of its regular Basel III monitoring exercise.

The CVA Report is available here.

(ix) DG for Financial Stability, Financial Services and Capital Markets publishes a letter sent to the EBA seeking advice on potential implications of Basel III reform

On 4 May 2018, Olivier Guersent, Director-General for Financial Stability, Financial Services and Capital Markets ("**FISMA**"), wrote to Andrea Enria, Chairperson of the EBA seeking technical advice on the potential impact of the planned Basel III reforms.

The requests included any potential revisions to the market risk framework, on the EU banking sector and the wider EU economy, and on the possible challenges which would arise for institutions established in the EU on foot on the proposed Basel III reforms.

A copy of the letter may be accessed here.

(x) European Union (Capital Requirements) (Amendment) Regulations published

The European Union (Capital Requirements) (Amendment) Regulations 2018, S.I. No. 150 of 2018 (the "**Regulations**") was published on the Irish statute books on 8 May 2018.

The purpose of the Regulations is to make amendments to the European Union (Capital Requirements) Regulations 2014, S.I. No. 158 of 2014 ("**CRR Regulations**") which transposed the Capital Requirements Directive 2013/36 into Irish law. The amendments to the CRR Regulations include:

- Amendments to some of the definitions set out in the CRR Regulations;
- Notification requirements to the Central Bank if a financial institution no longer fulfills certain conditions when carrying out banking services in Ireland via a branch; and
- A requirement that financial institutions must have in place appropriate procedures for employees to report breaches internally.

The Regulations also make amendments to the refusal of authorisation process followed by the Central Bank under the Central Bank Act 1971 (as amended) and the Building Societies Act, 1989 (as amended).

The Regulations may be accessed here.

(xi) Commission Delegated Regulation regarding RTS for procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk published in Official Journal of the European Union

On 18 May 2018, the Commission Delegated Regulation 2018/728 of 24 January 2018 supplementing Regulation No 575/2013 with regard to regulatory technical standards ("**RTS**") for procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk was published in the Official Journal of the European Union.

The Commission Delegated Regulation specifies the procedures for excluding transactions with non-financial counterparties established in a third country from the own funds requirement for credit valuation adjustment risk.

The Commission Delegated Regulation entered into force on 7 June 2018.

A copy of the Commission Delegated Regulation may be accessed here.

(xii) Commission Implementing Regulation as regards amendments to benchmarking portfolios, reporting templates and reporting instructions under CRD IV published in Official Journal of the European Union

On 18 May 2018, Commission Implementing Regulation 2018/688 amending Implementing Regulation 2016/2070 as regards benchmarking portfolios, reporting templates and reporting instructions under the CRD IV Directive was published in the Official Journal of the European Union.

Implementing Regulation 2016/2070 sets out the technical standards for templates, definitions and IT-solutions to be used by institutions when reporting to the EBA. Implementing Regulation 2018/688 reflects the updates proposed to the reporting standards by the EBA in December 2017 and amends Implementing Regulation 2016/2070 accordingly.

The Implementing Regulation entered into force on 7 June 2018, and may be accessed here.

(xiii) ECON adopts draft reports on CRR II Regulation and CRD V Directive

On 29 June 2018, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") published its report on the proposed Regulation amending the Capital Requirements Regulation ("**CRR**") **–** the CRR II Regulation and the proposed Directive amending the Capital Requirements Directive IV ("**CRD V**") – the ("**Report**"). The Report set out ECON's legislative resolutions to the European Commission's draft text for the proposed legislation.

Both proposed pieces of legislation will continue the process of transposing the international rules already agreed as part of Basel III into European law and aim to enhance financial stability and bank resilience.

The European Parliament will decide whether to adopt the resolutions at its plenary session from 2 July to 5 July 2018. From there trilogue meetings will commence between the European Parliament, Council of the European Union and the European Commission. The European Council agreed its common approach at the end of May.

A copy of the report on the proposed regulation CRR II is here.

A copy of the report on the proposed directive CRD V is here.

The accompanying press release is available here.

International Organisation of Securities Commissions ("**IOSCO**")

(i) IOSCO publishes final report on regulatory reporting and public transparency in the secondary corporate bond markets

On 5 April 2018, the International Organisation of Securities Commissions ("**IOSCO**") published its final report on Regulatory Reporting and Public Transparency in the Secondary Corporate Bond Markets.

The report follows an examination of the global corporate bond markets conducted by IOSCO, specifically focusing on issues related to regulatory reporting, transparency and the collection and comparison of data across jurisdictions.

The report makes a number of recommendations that emphasise the importance of ensuring the availability of corporate bond information, both to regulators in the form of reporting and to the public in the form of transparency requirements.

The report recommends that regulatory authorities ensure they have access to sufficient information to perform regulatory functions. In addition, consistent with IOSCO principles that promote transparency of trading information, the report recommends that regulatory authorities consider steps to enhance pre-trade transparency in corporate bond markets and implement regimes that require post-trade transparency.

The final report may be accessed here.

(ii) IOSCO launches consultation on good practices for audit committees in supporting audit quality

On 24 April 2018, IOSCO published a consultation report on good practices for audit committees in supporting audit quality.

The consultation report has been published with the aim of seeking input to a possible Good Practices Report on how the audit committees of issuers of listed securities can support external audit quality. The consultation has been initiated following findings that indicate a need to improve audit quality and consistency of audit execution.
The consultation report proposes a set of good practices that intend to increase the effectiveness of the audit committee role, including delineating the qualifications and experience that audit committee members should possess. Proposals are also made in relation to the composition of audit committee, the role of the committee in assessing audit quality, and audit committee reporting.

IOSCO has invited stakeholder feedback on the proposals and the consultation is open for comment until 24 July 2018. A copy of the consultation report is available here.

(iii) IOSCO issues press release following 2018 annual conference

Further to its annual conference IOSCO issued a press release on 10 May 2018. Points of note include the following:

- The Board agreed to develop a Support Framework to assist members as they consider how to address the domestic and cross-border issues stemming from Initial Coin Offerings ("**ICOs**") that could impact investor or consumer protection;
- The Board progressed its work on protecting retail investors from the risks stemming from the offer of binary options and other OTC leveraged products, and reviewed proposed measures to help members regulate retail OTC leveraged products;
- The Board discussed exchange traded funds and reviewed the progress of IOSCO's efforts to complete its work on measuring leverage in investments funds;
- Members supported a proposal for a third implementation review of the Principles for the Regulation and Supervision of Commodity Derivatives Markets;
- The Board agreed to establish an information-sharing network among IOSCO members to gain insight into the issues around sustainability, including the details of issuer disclosure and its relevance to investor decision making; and
- The Board agreed to launch a Fintech Network to facilitate the sharing of information, knowledge, and experiences related to FinTech among IOSCO members.

The press release is available here.

(iv) BCBS and IOSCO publish criteria for identifying short-term "simple, transparent and comparable securitisations"

On 14 May 2018, the Basel Committee on Banking Supervision ("**BCBS**") and IOSCO issued criteria for identifying short-term "simple, transparent and comparable securitisations"

(the "**STC criteria**"). On the same day, BCBS issued a standard on Capital treatment for simple, transparent and comparable short-term securitisations, supplemental to the aforementioned criteria.

The STC criteria and accompanying standard aim to assist the financial industry in its development of simple, transparent and comparable short-term securitisations. The STC criteria are non-exhaustive and non-binding. The standard outlines how the short-term STC criteria could be incorporated into the regulatory capital framework for banks, and it takes effect immediately.

The criteria are available here, and the standard is available here.

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

(i) Speech based on PRIIPs Regulation delivered at ESAs' Consumer Protection Day by ESMA Chair

On 22 June 2018, Steven Maijoor, the chairperson of ESMA delivered a speech on the topic of consumer protection at the European Supervisory Authorities ("**ESAs**") Consumer Protection Day ("**Speech**").

The Speech deals with among other things the implementation of the Packaged Retail and Insurance-based Investment Products Regulation ("**PRIIPs Regulation**") and in particular the key information documents. He reports that remedying and identifying implementation issues is an ongoing work in progress by ESAs and lists the scope of the PRIIPs Regulation, performance scenarios and transaction costs as areas the ESAs are currently reviewing.

A copy of the Speech is available here.

(ii) Date of Application of European Parliament's decision to adopt regulation on key information documents

On 27 June 2018, an information note announcing the date of application of the first reading by the European Parliament of the proposal for a 'regulation amending regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application' was published in the Official Journal.

A copy of the Information Note is available here.

(iii) EFAMA publishes paper on PRIIP KID's shortcomings

On 28 June 2018, the European Fund and Asset Management Association ("**EFAMA**") published an Evidence Paper which explains the shortcomings of the new Packaged Retail Investment and Insurance Products ("**PRIIPs**") Key Information Document ("**KID**") rules based on data collected from its corporate members.

The paper concludes that the disclosures made in the KIDs are causing serious detriment to investors by mandating figures, particularly in relation to performance and costs that are confusing and misleading.

In a press release accompanying the Evidence Paper, EFAMA called for the European Supervisory Authorities and the European Commission to immediately revise the PRIIPs Delegated Regulation.

The Evidence Paper is available here.

European Markets Infrastructure Regulation ("**EMIR**")

(i) Technical guidance on reporting critical data elements of OTC derivatives published by CPMI and IOSCO

On 9 April 2018, the Committee on Payments and Market Infrastructures ("**CPMI**") and the International Organization of Securities Commissions ("**IOSCO**") published a report providing technical guidance to authorities on reporting critical data elements of over-the-counter ("**OTC**") derivatives transactions to trade repositories.

The technical guidance relates to harmonised definitions, formats and usage of a set of critical data elements for OTC derivatives transactions excluding unique transaction identifiers and unique product identifiers to be used when reporting the transactions to trade repositories. The IOSCO and CPMI intend that by providing guidelines on these harmonised critical data elements, the G20 goal of having all OTC derivatives contracts harmoniously reported to trade repositories to prevent market abuse is greatly assisted.

For further information a copy of the report can be found here.

(ii) ESMA questions the ability of CCP's to exempt entities from EMIR financial obligations

On 27 April 2018, ESMA published a letter addressed to the European Commission which expressed concerns regarding the application of exemptions applied by CCPs in different Member States to certain clearing members such as government entities or central banks from the financial obligations under Article 41 and 42 of EMIR to provide the CCP with an initial margin and a default contribution. ESMA noted different practices being adopted across European Union CCPs. It also noted differing interpretations of "credit exposures" by national competent authorities rendering a lack of supervisory convergence across the European Union and an uneven playing field.

The letter requested the Commission to clarify whether CCPs are allowed to refrain from collecting margin and default fund contributions from public entities and if so asks whether an amendment to EMIR would be appropriate.

A copy of the letter can be found here.

(iii) ESMA publishes official translations of ESMA Guidelines on transfer of data between trade repositories

On 27 April 2018, ESMA published translations of the ESMA Guidelines on transfer of data between Trade Repositories ("**Guidelines**") in each of the official languages of the European Union.

National competent authorities to which these Guidelines apply must now notify ESMA whether they comply or intend to comply with the Guidelines within two months.

The translated Guidelines can be found here.

(iv) LEI Regulatory Oversight Committee publish their second progress report on the global LEI system and regulatory uses of LEI

On 2 May 2018 a second progress report on the global Legal Entity Identifier ("**LEI**") system and regulatory uses of the LEI was published by the LEI Regulatory Oversight Committee ("**Progress Report**").

The Progress Report, dated 30 April 2018, relays its observations using the following headings:

- **Completion of the Global Legal Entity Identifier System ("GLEIS") governance framework**: All active LEI issuers have now been accredited by GLEI Foundation;
- **GLEIS is providing richer information**: by the inclusion of information based on the "relationship among entities" and therefore their ultimate parent companies which will assist risk aggregation;
- **Current regulatory uses**: At least 91 regulatory uses have been made of the LEI by authorities in jurisdictions represented on the Regulatory Oversight Committee ("**ROC**");
- **Provides examples of other potential regulatory uses**: to raise awareness of other potential uses for the LEI such as facilitating the monitoring of transactions by legal entities to prevent money laundering and the financing of terrorism;
- **Policy standards under development by the LEI ROC**; and
- **Possibilities for supporting the expansion of the system**: noting that there has been a rapid increase of LEI's registered at the end of 2017 with the figure now exceeding one million.

A copy of the Progress Report can be found here.

(v) CPMI and IOSCO publish Report assessing CCP's compliance with PFMI standards

On 3 May 2018 a report on the 'implementation and monitoring of the principles for financial market infrastructures' ("**PFMI**")("**Report**") was published by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions. The Report documents the results of a follow up level three assessment of 10 derivative CCPs originally assessed in 2016 and expands the sample to 19 globally active and regionally focused CCPs providing services to a broader range of product classes, such as repo, bonds and equities, in addition to derivatives. The Report focuses on:

- Recovery planning;
- Coverage of financial resources; and
- Liquidity stress testing.

The Report notes that progress had been made by participating CCPs who have implemented arrangements consistent with the PFMI however noted that some failed to implement measures in the areas of risk management and recovery planning which is cause for serious concern.

A copy of the Report can be found here.

(vi) ESAs publish two Consultation papers to amend RTS on EMIR clearing obligation and risk mitigation techniques

On 4 May 2018, the European Supervisory Authority launched two consultations to amend the Regulatory Technical Standards ("**RTS**") which implement the European Market Infrastructure Regulation ("**EMIR**"), to amend the clearing obligations and risk mitigation techniques for over-the-counter derivatives not cleared.

The first consultation paper ("**JC 14**") deals with the clearing obligations:

- JC 14 aims at clarifying which arrangements under covered bonds or securitisations adequately mitigate counterparty risk and thus may benefit from an exemption from the clearing obligation.

While the second consultation paper ("**JC 15**") deals with the risk mitigation techniques:

- JC 15 aims at providing the special treatment currently associated with covered bonds to simple, transparent and standard ("**STS**") securitisations however the special treatment will only be extended where a STS securitisation structure meets a specific set of conditions equivalent to those required by covered bonds issuers.

These amendments which were mandated for by the Securitisation Regulation aim to enable specific treatment for STS securitisation to ensure a level playing field with covered bonds. The deadline for responses for both consultations was 15 June 2018.

The draft RTS will now be submitted to the European Commission for endorsement by 18 July 2018 after which they will be considered by the European Parliament and the Council of the European Union. JC 14 can be accessed here and JC 15 can be accessed here.

(vii) ESMA publishes final guidelines on anti-procyclicality margin measures for CCPs under EMIR

On 28 May 2018, ESMA published its final report on the 'guidelines on anti-procyclicality ("**APC**") margin measures for central counterparties under EMIR' ("**Final Report**"). The guidelines were prepared to foster consistent, efficient and effective supervisory practices and to ensure that the application of EMIR is common, uniform and consistent to prevent procyclicality of CCP margins. The Final Report provides information on:

- The monitoring of margin procyclicality;
- Implementation of APC margin measures;
- Disclosures intended to facilitate margin predictability;
- Details the feedback ESMA received to its January 2018 consultation on the guidelines; and
- Indicates how the responses have been taken into account.

From 3 December 2018 the guidelines will apply and will replace amongst other things ESMA's existing CCP Q&A 9(c) which will simultaneously be deleted.
The Final Report also reports that national competent authorities will be required to notify ESMA within two months of the date of publication of the guidelines indicating whether they comply or intend to comply with the guidelines.

For further information please find a copy of the final report here.

(viii) Council of the European Union adopts Decision to add the EMIR Delegated and Implementing Regulations into EEA Agreement

On 4 June 2018, the Council of the European Union published a Decision on the position to be adopted, on behalf of the European Union, within the European Economic Area ("**EEA**") Joint Committee concerning the amendment of Annex IX (Financial Services) to the EEA Agreement' (the "**Decision**") in the Official Journal of the European Union.

The Decision, dated 22 May 2018, has the objective of amending Annex IX (Financial Services) to the EEA Agreement by inserting seventeen delegated regulations and five

implementing regulations of the European Market Infrastructure Regulation into the EEA Agreement.

For further information please find a copy of the Decision here.

(ix) European Parliament adopts the EMIR Refit Regulation

On 12 June 2018, the European Parliament published a press release reporting that it had voted to accept the negotiating mandate prepared by the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") on the proposed Regulation amending the European Market Infrastructure Regulation (the "**EMIR Refit Regulation**").

The EMIR Refit Regulation has the objective of simplifying and ensuring that the clearing rules for small and non-financial counterparties are proportionate and will provide pension scheme arrangements with an interim exemption from the mandatory clearing of derivatives.

The Commission, Council and Parliament will now engage in a three way discussion to reach political agreement on the EMIR Refit Regulation. The Bulgarian Presidency aims to have the legislative text finalised by the end of 2018.

For further information please find a copy of the Parliament's draft text here.

(x) ESMA publishes annual report on supervisory measures and penalties imposed by NCAs under EMIR

On 13 June 2018, ESMA published its first annual report as regards supervisory measures carried out and penalties imposed by national competent authorities ("**NCAs**") under Articles 4, 9, 10 and 11 of EMIR. The report is based on a survey, distributed to the NCAs by ESMA, which sought information as regards their supervisory activities in their enforcement of counterparties compliance with the EMIR requirements.

The report concluded, amongst other things, that:

- While some areas appear highly harmonised such as the sources of information used by NCAs to verify compliance with EMIR provisions, other areas are less harmonised with fines ranging from €120 up to a maximum of €100 million; and

- NCAs appear not to have prioritised supervisory actions as regards third country entities trading contracts with substantial effect in the EU, which would be subject to the clearing obligation if established in the EU, and ESMA notes that this point could be further considered.

The report is available here.

(xi) ESMA publishes updated Q&As on EMIR implementation

During the period 1 April 2018 to 30 June 2018, ESMA published an updated version of its Question & Answers ("**Q&A**") on the implementation of European Market Infrastructure Regulation. The revisions to the Q&As comprise:

- **Trade Repositories ("TR") Q&A 12**: A new Q&A has been inserted regarding the correct date to report where a Maturity date falls on a weekend or a bank holiday;
- **TR Q&A 17**: A new Q&A has been inserted regarding the possibility of reporting post-trade events at position level in addition to the trade level;
- **TR Q&A 28**: A new Q&A has been inserted regarding how Table 2 Field 8 is to be populated for a derivative contract where the underlying is a basket or an index;
- **TR Q&A 37**: A new Q&A has been inserted regarding which competent authorities should have access to the transaction data on derivatives where the underlying identification type is reported with an "X" or a "B";
- **TR Q&A 46**: A new Q&A has been inserted regarding the reporting of energy derivatives, more specifically for a swap on natural gas or electricity, as to how the specific information related to the characteristics of this derivative should be reported;
- **TR Q&A 47**: A new Q&A has been inserted regarding the reporting of deliverable currencies, more specifically how the fields Deliverable currency and Delivery currency 2 should be populated (Table 2 fields 11 and 61); and
- **TR Q&A 48**: A new Q&A has been inserted regarding how the Effective date (Table 2 Field 26) should be reported if it is not specified as part of the terms of the contract;

A copy of the Q&A on the implementation of EMIR can be accessed here.

(xii) European Parliament publishes decision not to object to commission delegated regulation supplementing regulation 648/2012

On 19 June 2018, the European Parliament's 'Non-objection to a delegated act: regulatory technical standards for risk-mitigation techniques for certain OTC derivative contracts' was published in the Official Journal ("**Decision**").

The Decision provides that the European Parliament have decided to waive their right to object to the Commission delegated regulation supplementing Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories with regard to risk mitigation techniques for OTC derivative contracts not cleared by a central counter party.

A copy of the decision is available here.

(xiii) Council of EU publishes revised proposal for compromise text on proposed Regulation to amend ESMA and EMIR Regulations as regards the authorisation and recognition of third-country CCPs

On 27 June 2018, the Council of the European Union published another revised presidency compromise proposal for a consolidated compromise text on the proposed Regulation amending the European Securities and Markets Authority ("**ESMA**") Regulation and European Market Infrastructure Regulation ("**EMIR**") as regards the procedures and authorities involved for the authorisation of CPPs and requirements for the recognition of third-country CCPs ("**Compromise**").

A copy of the Council of the European Union's Compromise is available here.

(xiv) ECON AFCO joint final report on draft decision to increase ECB's regulatory powers of clearing systems published

On 27 June 2018, the joint final report authored by the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") and the Committee on Constitutional Affairs ("**AFCO**") ("**Report**") on the subject of the draft decision amending Article 22 of the Statute of the European System of Central Banks of the European Central Bank ("**ECB**") ("**Statute**") was published.

The Decision involves amending the Statute to provide the ECB with more responsibility in regulating clearing systems for financial instruments by enabling the Eurosystem to monitor and assess risks posed by central counterparties clearing significant amounts of euro-denominated transactions and the ECB to adopt requirements for those CCPs.

The Report contains changes to the previous draft report published in April 2018 by ECON and AFCO however the explanatory statement has not been amended.

A copy of the Report is available here.

Securitisation Regulation

(i) Consultation on guidelines interpreting STS securitisation criteria launched

On 20 April 2018 the European Banking Authority ("**EBA**") commenced a consultation on its draft guidelines (the "**Guidelines**") to clarify and harmonize the interpretation of the requirements for non-asset-backed commercial paper ("**ABCP**") and ABCP securitisations to qualify as simple, transparent and standardized ("**STS**").

The European Central Bank was mandated to develop these guidelines by 18 October 2018 under the Securitisation Regulation. The Guidelines provide advices on the:

- Legal opinion required for the transfer of the underlying exposures;

- Originator and servicers' required expertise;
- Underwriting standards;
- Exposures in default and credit impaired debtors; and
- Dependence on the sale of assets.

The public consultation will close on 20 July 2018.

A copy of the consultation paper on Draft Guidelines on the STS criteria for ABCP securitization can be found here with the consultation paper on Draft Guidelines on the STS criteria for non-ABCP securitization can be found here.

(ii) ESMA Letter to the European Commission detailing feedback from its consultation on the regulatory and implementing technical standards under the Securitisation Regulation

On 24 April 2018, ESMA issued a letter to the European Commission setting out the feedback it had received from its consultation on the regulatory and implementing technical standards on securitisation disclosures prepared by ESMA, as mandated by the European Commission under the Securitisation Regulation.

Apart from concerns raised about the disclosure related transitional provisions in Article 43(8) of the Securitisation Regulation and the templates to be applied, the letter notes that the consultation was mostly positive and informs the European Commission of ESMA's intention to deliver its final report on the technical standards on securitisation disclosures in July 2018.

A copy of the letter can be found here.

Central Clearing Counterparties ("**CCPs**")

(i) Guidance provided by CPMI and IOSCO for supervisory stress testing of CCPs

On 10 April 2018, a guidance on the supervisory stress testing of CCPs was published by the Committee on Payments and Market Infrastructures ("**CPMI**") and the International Organisation of Securtities Commissions ("**IOSCO**").

The framework will provide authorities with guidance on the design and implementation of supervisory stress tests for CCPs. In particular the guidance is designed to assist tests conducted by multiple authorities examining the potential macro-level impact of a common stress event affecting multiple CCPs.

Such tests will provide information on the interdependencies between markets, CCPs and other entities. The guidance was influenced by the consultation conducted for this guidance in June 2017.

For a copy of the guidance please click here.

(ii) Ninth draft Implementing Regulation extending transitional periods related to own fund requirements for CCP exposures published by the Commission

On 17 April 2018, the European Commission published a draft Implementing Regulation which concerns the extension of the transitional periods related to own funds requirements for exposures to central counterparties ("**CCPs**").

The draft Implementing Regulation extends the transitional periods by an additional six months until 15 December 2018. This is to avoid disruptions to the market and to prevent institutions being subjected to higher own funds requirements during the process of authorisation and recognition of existing CCPs.

The draft Implementing Regulation states that it should enter into force before 16 June 2018, following its publication in the Official Journal.

A copy of the draft Implementing Regulation can be found here.

(iii) New list of CCPs from third countries recognised to offer services and activities in the European Union published

On 18 May 2018, ESMA published a list of third-country CCPs recognised to offer services and activities in the European Union in accordance with Article 88(1) of EMIR.

The list of CCPs can be found here.

(iv) List of CCPs that have applied for recognition under Article 25 of EMIR published

On 19 June 2018, a list, provided for information purposes only, of the CPPs established in countries outside of the European Economic Area and that have applied under Article 25 of EMIR was published. The list will be updated and is emphasised as not necessarily being exhaustive.

A copy of the list is available here.

(v) Opinion on how CPPs should assess liquidity

On 22 June 2018, ESMA published an 'Opinion on Central Counterparties ("**CPP**") Liquidity Risk Assessment under Article 44(1) of Commission Regulation 648/2012' ("**Opinion**") which was addressed to national competent authorities.

The Opinion sets out how CPPs should assess liquidity risk thereby encouraging convergent risk management and control practices across the European Union.

A copy of the Opinion is available here.

Central Securities Depositories Regulation ("**CSDR**")

(i) List of 'relevant authorities' referred to in Article 12(1) of CSDR published by ESMA

On 8 May 2018, ESMA published a list of the 'Relevant Authorities for Central Securities Depositories' referred to Article 12(1) of the CSDR.

A copy of the list can be found here.

(ii) Corrigenda to delegated regulation 2017/391 and 390 published in the Official Journal of the European Union

On 17 May 2018, the Official Journal of the European Union published a Corrigendum to Commission Delegated Regulation 2017/391 ("**Corrigendum to 391**") and a Corrigendum to Commission Delegated Regulation 2017/390 ("**Corrigendum to 390**"), which supplement the CSDR in the following manner:

- **Corrigendum 391:** Provides further specifications to the content to be included when reporting internal settlements regarding regulatory technical standards.
  A copy of Corrigendum 391 can be found here.

- **Corrigendum 390:** Provides further information regarding certain prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services in relation to regulatory technical standards.

  A copy of Corrigendum 390 can be found here.

(iii) European Commission adopts Delegated Regulation to supplement CSDR

On 25 May 2018, the European Commission published the text and annex of the 'Delegated Regulation supplementing the CSDR with regard to regulatory technical standards on settlement discipline' (the "**Delegated Regulation**"). The Delegated Regulation contains the following provisions:

- Specifies the timing and the content of communications between investment firms and their clients in relation to trades that should be settled in the securities settlement systems operated by central securities depositories ("**CSDs**");

- Requires CSDs to take several measures to limit the number of settlement fails;

- Requires CSDs to provide systems enabling them to monitor the number, value and length of settlement fails;
- Requires CSDs to charge cash penalties to users that cause settlement fails;
- Sets out measures concerning mandatory buy-in;
- Specifies the timeframes for the launch of the buy-in process and the delivery of financial instruments following the buy-in process;
- Specifies when CSDs may discontinue its services to users that consistently and systematically cause settlement fails; and
- Specifies the settlement information that CSDs should provide to central counterparties and trading venues.

The next step will be for the Council of the European Union and the European Parliament to consider the Delegated Regulation.

For further information on the Delegated Regulation please find a copy of the text here.

(iv) ESMA publishes updated Q&As on CSDR

On 30 May 2018, the updated version of the Q&As on CSDR was published. The Q&As clarify that, in relation to the investment policy of CSDs, there is a requirement to have "access to assets" on the business day when the decision to liquidate those assets is made.

A copy of the Update is available here.

The Bank Recovery and Resolution Directive ("**BRRD**")

(i) Market responses on Covered Bond Legislative Package published

On 17 May 2018, the European Mortgage Federation ("**EMF**") and the European Covered Bond Council ("**ECBC**") published a paper setting out the feedback from its members in relation to the European Commission's Covered Bond Legislative Package ("**CBL**") as a response to the European Commission's consultation on the matter.

The EMF and ECBC begin by voicing their support for the CBL which aims at completing the European Union's Capital Markets Union. The feedback, which highlights the market's key concerns to be addressed during the legislative debates, grades each concern by degree of seriousness.

Responses were received from fourteen jurisdictions representing 95.7% of the covered bond market outstanding in the European Economic Area. All but two concerns received in relation to the package were in relation to the Directive, of which Article 10 – 'Composition of

the cover pool' proved to be the most contentious due to a perceived lack of clarity regarding what would amount to a "sufficient level of homogeneity of the assets in the cover pool".

The document contains amongst other things, a detailed grid of the four primary concerns from each jurisdiction and proposals on how to remedy same in the legislation.

A copy of the paper can be found here.

(ii) Presidency Compromise to the proposed directive amending BRRD II published

On 22 May 2018, the Presidency Compromise text for the proposal for a directive amending the Bank Recovery and Resolution Directive II - Directive 2014/59 on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26, Directive 2002/47, Directive 2012/30, Directive 2011/35, Directive 2005/56, Directive 2004/25 and Directive 2007/36' ("**Proposal**") was published by the Council of the European Union.

The Proposal, presented in November 2016 comprises of a package of measures designed to reduce risk in the banking industry and in particular implement reforms developed following the financial crisis in 2007-2008 by the international community including committees such as the Basel Committee on Banking Supervision. The compromise agreed by ministers at a meeting of the Economic and Financial Affairs Council related to certain aspects of the Proposal including adjusting the methodology for calculation of the G-SII 'score'.

The next step will see the Council presidency beginning negotiations with the European Parliament.

For further information please find a copy of the Presidency Compromise text here.

Credit Rating Agencies Regulation ("**CRAR**")

(i) ESMA confirms Canada and South Africa will continue to meet Credit Rating Agencies Regulation endorsement requirements

In November 2017, ESMA published an updated methodological framework for the endorsement of credit ratings in its Guidelines on Endorsement (the "**Guidelines**"). This new methodological framework incorporated the requirements introduced by the Credit Rating Agencies Regulation ("**CRA Regulation**") that is due to enter into force for the purposes of endorsement from 1 June 2018.

On 4 April 2018, following an assessment based on this new methodological framework ESMA issued a press release confirming that Canada and South Africa will continue to meet the requirements for endorsement under CRA Regulation from 1 June 2018 and as such, there will be no disruption to European Union registered credit rating agencies' ability to

endorse credit ratings from these jurisdictions following the entry into force of the new requirements.

The Guidelines can be accessed here and the press release confirming that Canada and South Africa will continue to meet the requirements for endorsement can be accessed here.

(ii) Responses to ESMA's Consultation on the "as stringent as" notion re CRAR published

On 26 June 2018, the European Securities and Markets Authority ("**ESMA**") published the responses it received from stakeholders to its Consultation on Draft Guidelines providing supplementary guidance on how to assess the "as stringent as" notion in the CRAR.

The consultation period ran from 27 March to 25 May 2018.

A copy of the responses is available here.

Benchmarks Regulation

(i) Q&As on Benchmarks Regulation Updated

On 24 May 2018, the updated version of ESMA's Q&As on the Benchmarks Regulation was published.

This update amends the last Q&A published in March 2018 and involves the single addition of one Q&A 8.2 which provides that prospectuses should include reference to the register of administrators and benchmarks under Article 29(2) of BMR.

A copy of the updated Q&A is available here.

(ii) ESMA speech on benchmark stability and integrity

On 31 May 2018, Steven Maijoor, Chair of ESMA, made a speech titled "Towards benchmark stability and integrity" at the Annual Conference of the International Capital Market Association in Madrid.

The speech focused on the development and future of benchmarks regulation in the European Union.

A copy of the speech is available here.

(iii) ESMA updates its webpage concerning the register under the Benchmarks Regulation

In June 2018, the ESMA updated its webpage on benchmarks regarding the publication of the register of administrators and third country benchmarks in accordance with Article 36 of Regulation 2016/1011 (the "**Benchmarks Regulation**").

It is expected that a web-based register interface will be available from the third quarter of 2018 but in the interim, the latest registers information will be published daily in comma-separated values format and will be available here.

(iv) European Central Bank publish consultation paper on euro risk-free rates on assessment of candidate euro risk-free rates

On 21 June 2018, the European Central Bank ("**ECB**") published a consultation paper by the working group on euro risk-free rates on the assessment of candidate euro risk-free rates with the consultation closing on 13 July 2018.

The euro risk-free rate will replace the Euro Overnight Index Average ("**EONIA**"), which will no longer meet the standards of the Benchmarks Regulation as of 2020 with three new candidate euro risk-free rates being:

- The euro short-term rate ("**ESTER**"): the new wholesale unsecured overnight bank borrowing rate which the ECB will produce before 2020;
- GC Pooling Deferred: a one-day secured, centrally cleared and general collateral repo rate: and
- RepoFunds Rate: a one-day secured, centrally cleared combined general and specific collateral repo rate.

A copy of the consultation paper can be accessed here.

(v) Trade associations publish IBOR Global Benchmark Transition Report

On 25 June 2018, the Association of Financial Markets in Europe ("**AFME**"), International Capital Market Association ("**ICMA**"), International Swaps and Derivatives Association, Inc. ("**ISDA**"), and the Securities Industry and Financial Markets Association ("**SIFMA**") and its asset management group ("**SIFMA AMG**") published the IBOR Global Benchmark Transition Report.

The report assesses the issues involved with benchmark reform, and makes recommendations on steps firms can take to prepare for the transition from interbank offered rates ("**IBORs**") to alternative risk-free rates ("**RFRs**").

The report, which was based on a survey of 150 banks, end users, infrastructures and law firms in 24 countries, shows that:

- There is a gap between high levels of awareness of benchmark reform and concrete steps being taken to transition from the IBORs to alternative RFRs;
- Several key issues are identified as being important for a successful and orderly transition, including the need for market participants to develop new cash products and liquidity in derivatives and futures referencing the RFRs. Corporate and financial end users believe a forward-looking term structure for the RFRs is necessary; and
- There is an appetite for regular, globally coordinated information from the RFR public-/private-sector working groups, as well as further clarity on the preferred end state for each IBOR.

The report is available here, and an accompanying press release is available here.

(vi) ESMA updates its webpage concerning the register under the Benchmarks Regulations

On 26 June 2018, ESMA updated its webpage on benchmarks regarding the publication of the register of administrators and third country benchmarks in accordance with Article 36 of Regulation (EU) 2016/1011 (the "**Benchmarks Regulation**").

It is expected that a web-based register interface will be available from the third quarter of 2018 but in the interim, the latest registers information will be published daily in Comma Separated Values format and will be available here.

(vii) FSB RCG for Europe discuss macroeconomic and financial market developments

On 27 June 2018, the Financial Stability Board ("**FSB**") Regional Consultative Group ("**RCG**") for Europe met in Florence, Italy. Topics discussed at the meeting included:

- An update as regards the FSB's 2018 workplan;
- The implementation of EU benchmark legislation; and
- The work being done to transform shadow banking into resilient market-based finance.

A press release issued following the meeting is available here.

Short Selling Regulation ("**SSR**")

(i) ESMA press release on study showing impact of short-selling disclosure on investor behaviour

On 13 April 2018, ESMA published a press release setting out the results of its analysis of net short positions reported under the Short-Selling Regulation ("**SSR**").

The purpose of the SSR is to reduce settlement risks and other risks linked with uncovered of naked short-selling carried out by investors. The study found that the public disclosure of net short positions in EU shares influences investors' behaviour. The analysis shows that of the reported net short positions, the majority concerned UK and German securities. The analysis also shows that short-selling activities are highly concentrated, with 150 investors accounting for more than 80% of reported short positions.

The press release is available here with the report setting out the results of the study may be accessed here, at page 60.

(ii) Q&As on Short Selling Regulation Updated

On 28 May 2018, the updated version of ESMA's Q&As on the Short Selling Regulation was published.

This Q&A updates the previous version published in February 2018. It relates solely to the revision of the question and answer number 10.13 which queries "*Is it permitted – in the context of Article 12, first paragraph, (c) of the Regulation – to meet the requirement to have a locate arrangement by simply referring to an existing "easy to borrow or purchase list"?*

The response further specifies the requirements for "easy to borrow and purchase" lists.

For further information a copy of the Q&A is available here.

European Central Bank ("**ECB**")

(i) Annual Report from the ECB published

On 9 April 2018, the Annual Report for 2017 detailing the tasks and activities of the European System of Central Banks and the Eurosystem's monetary policy was published.

The euro's economic recovery, return of inflation and the resilience of the European financial sector are among the topics covered by the report. The European Central Bank ("**ECB**") also published a feedback document concerning the input from the European Parliament in connection with ECB's annual report for 2016 as part of its resolution.

For further information the report can be found here.

(ii) Public Consultation for cyber resilience oversight expectations

On 10 April 2018, a draft of the Cyber Resilience Oversight Expectations ("**CROE**") for financial market infrastructures ("**FMI**") was published by the European Central Bank ("**ECB**") for public consultation requiring responses by 5 June 2018.

The CROE is based on the guidance on cyber resilience for FMIs published by two global organisations – the Committee on Payments and Market Infrastructures ("**CPMI**") and the International Organization of Securities Commissions ("**IOSCO**") in 2016 (the "**Guidance**"). Its aim is to operationalize and assist the implementation of the Guidance in the euro-system. It purports to do this by providing assessment criteria to be employed by supervisors and steps FMIs may utilize to implement the Guidance and enhance their cyber resilience.

The CROE covers the five primary risk management categories set out in the Guidance i.e. governance, identification, protection, detection and response and recovery and additionally covers components relating to testing, situational awareness, and learning and evolving.

For further information please find a copy of the CROE at the link here.

(iii) 2017 TARGET2-Securities System Annual Report Published

On 27 April 2018, the ECB published their '2017 Annual Report on Target2 Securities ("**T2S**") system' ("**Report**"). The Report provides an overview of the activities of the ECB in 2017 and sets out its trajectory for 2018 which places emphasis on cyber resilience and central security depositories.

For further information please click here to view the Report.

(iv) Risk management in European Union/UK financial services working group established

On 27 April 2018 a press release was published by the European Commission reporting the establishment of a working group on European Union/United Kingdom co-operation on risk management in financial services.

The working group will be convened by the European Central Bank ("**ECB**") and the Bank of England ("**BoE**") on approximately 30 March 2019 with the ECB President and BoE Govenor chairing it. The technical work is separate to the Brexit negotiations.

For further information a copy of the press release can be found here.

(v) ECB framework to test the European financial market's resilience against cyber-attacks

On 2 May 2018, the ECB published the first European Union-wide framework to test and improve the resilience of the financial sector against sophisticated cyber-attacks called the 'European Framework for Threat Intelligence-based Ethical Red Teaming' ("**TIBER-EU**")

The framework document provides an overview of TIBER-EU, the structure of the framework and how it will be implemented across the European Union. It notes that the framework requires close cooperation between national/European Union authorities and financial institutions/infrastructures to establish a programme for performing the threat-intelligence based ethical red teaming test. The test as set out in the document involves stimulating an attack on an entity's critical functions and underlying systems so that the entity subject to the test can assess its ability to protect, detect and respond to such attacks.

A TIBER-EU Knowledge Centre has been established to monitor the framework.

A copy of the document can be found here.

(vi) ECB's Report on the 'Thematic Review on effective risk data aggregation and risk reporting' finds "unsatisfactory" implementation

On 8 May 2018, the ECB published a report setting out their findings of the thematic review conducted on 'effective risk data aggregation and risk reporting' ("**Report**") in twenty-five institutions assessed against the Basel Committee's principles for effective risk data aggregation and reporting ("**BCBS 239 principles**").

The Report analyses compliance with BCBS 239 principles by focusing on the three aspects key to ensuring sound risk management which are IT governance and risk infrastructure, data aggregation and reporting. The Report found that none of the twenty-five Eurozone significant institutions had fully implemented the BCBS 239 principles despite the deadline of the beginning of 2016 being given.
The Report aims at communicating the lessons learnt from the Review and focuses on the key areas of concern and provides examples of observed good practices. The Report also notes that the lack of clarity and responsibility for data quality are the primary culprits for the 'unsatisfactory' results.

A copy of the full Report can be found here.

(vii) Update to SSM fit and proper assessments

On 28 May 2018, an updated guide to 'fit and proper assessments for members of the management bodies of significant credit institutions under the single supervisory mechanism' ("**Update**") was published by the ECB.

The Update incorporates the changes introduced since its publication in September 2017 by the joint European Securities and Markets Authority and European Banking Authority guidelines on the 'assessment of the suitability of members of the management body and key function holders in accordance with the Capital Requirements Directive IV 2013/36' and the Markets in Financial Instruments Directive II 2014/65.

Furthermore the Update details the ECB's supervisory policies, processes and practices when conducting fit and proper assessments.

A copy of the Update is available here.

(viii) ECB publishes opinion regarding proposed Regulation on the establishment of European Monetary Fund

On 25 June 2018, the ECB published an opinion on the European Commission's proposal for a Regulation on the establishment of the European Monetary Fund ("**EMF**") (the "**Opinion**").

The Commission's proposal sets out that the EMF will incorporate and replace the European Stability Mechanism. The proposal intends that the EMF will contribute to safeguarding the financial stability of the euro area, and will also act as a common backstop to the single resolution fund ("**SRF**") to address situations where the SRF proves not to be sufficiently funded by the banking sector.

In its Opinion, the ECB supports the incorporation of the ESM into the EU legal framework. The Opinion states that the ESM should be provided with the financial instruments necessary to achieve its objectives and to fulfil its tasks. Furthermore, in order to effectively apply these instruments, the Opinion emphasises the importance of enhancing the ESM's governance arrangements, in order to achieve swift and credible decision-making procedures, based on high quality independent technical advice.

The Opinion goes on to make specific observations regarding the role of the ECB, the support that the ESM will be tasked to provide to the Single Resolution Board, and renaming the European Stability Mechanism.
The Opinion is available here.

(ix) Methodology for calculating ESTER decided and published by ECB

On 28 June 2018, the European Central Bank ("**ECB**") published a document titled 'Euro Short Term Rate ("**ESTER**") methodology and policies'. The document sets out the means by which ESTER will be calculated and managed.

ESTER is an overnight unsecured interest rate to be calculated by money market statistical reporting. ESTER will begin being published in October 2019.

The accompanying press release reports that, from summer 2018, the Governing Council of the ECB will be releasing the time-lagged publication of daily rate, volume and dispersion

data using the ESTER method of calculation, this publication is to be called pre-ESTER. The first pre-ESTER publication will cover the period of 15 March 2017 to 2 May 2018.

A copy of the document containing the methodology is available here and the accompanying press release is available here.

European Systemic Risk Board ("**ESRB**")

(i) ECB's Opinion approves the Proposed amendment to the ESRB Regulation

On 6 April 2018 the opinion of the European Central Bank ("**ECB**") on the proposed Regulation amending the Regulation on European Union macro-prudential oversight of the financial system which established a European Systemic Risk Board ("**ESRB**") was published in the Official Journal of the European Union.

The ECB's opinion assesses the performance of the ESRB to date, acknowledges the successful role it has played mitigating against financial instability in the market and ultimately supports the limited changes proposed in the new Regulation to increase the ESRB's operational efficiency and effectiveness.

A copy of the ECB's Opinion can be found here.

(ii) ESRB's Recommendation on liquidity and leverage risks in investment firms published in the Official Journal of the European Union

On 30 April 2018, the ESRB published its recommendation on 'liquidity and leverage risks in investment funds' ("**Recommendation**") in the Official Journal of the European Union. The Recommendation provides recommendations in section one of the document and the means for implementation in section two. The recommendations are in relation to:

- Liquidity management tools for redemption;
- Additional provisions to reduce the likelihood of excessive liquidity mismatches;
- Stress testing;
- Undertakings for Collective Investment in Transferable Securities reporting; and
- Guidance on Article 25 of Directive 2011/61.

For further information including the rationale for the Recommendation please find a copy of the document here.

European Commission

(i) European Commission publishes two directive proposals for "New Deal for Consumers"

On 11 April 2018 the European Commission published two directive proposals and a communication to action the Commission's 'New Deal for Consumers' ("**New Deal**").

The New Deal is an initiative to ensure European consumers are benefiting from their rights granted under European Union law. The inadequacy of the current regime was brought to light in the 'Dieselgate' scandal and in two reports – Regulatory Fitness and Performance Programme Fitness Check of European Union Consumer and Marketing law ("**Fitness Check**") and Consumer Rights Directive evaluation ("**CRD Evaluation**") published in May 2017, which conducted an extensive evaluation on existing consumer rules. The two new proposals are based on the recommendations made in the Fitness Check and CRD Evaluation and build on the current legislative framework by amending existing Directives.

- **Proposal 1**

  The first proposal is for a "Directive on better enforcement and modernization of European Union consumer protection rules" ("**Proposal 1**"). Greater online protection for consumers, effective penalties for infringements calculated by percentage of turnover and individual remedies for victims of unfair commercial practices such as aggressive marketing are some of the amendments proposed for the directive. A copy of Proposal 1 can be accessed here; and

- **Proposal 2**

  The second proposal is for "a Directive on representative actions for the protection of the collective interests of consumers, and repealing the Injunctions Directive 2009/22/EC" ("**Proposal 2**"). Proposal 2 will remedy the shortcomings of the Injunctions Directive by introducing stronger sanctions, enabling 'qualified entities' launch representative actions to protect the collective interests of consumers and facilitating redress for consumers who are victims of such infringements by mechanisms such as requiring traders found in judicial proceedings to have breached consumer rights to inform consumers affected by such breaches and explaining to them how to benefit from redress among other actions. Proposal 2 also contains safeguards to prevent the abuse of process by 'qualified entities'. A copy of Proposal 2 can be accessed here.

The proposals also introduce amendments to benefit businesses in areas including the right of withdrawal and information requirements.

The proposals must first be reviewed and approved, amended or rejected by the European Council and Parliament if they are to become Directives.

A Dillon Eustace article on the '*Proposals for a New Deal for Consumers*' can be found here.

(ii) European Commission publishes responses to consultation on Supervisory Reporting

On 23 April 2018 the 381 responses to the European Commission's consultation on the 'fitness check of financial supervisory reporting requirements' published in December 2017 were published. The responses will contribute to efforts improve the usability and consistency of the financial supervisory reporting.

A copy of the responses can be found here.

(iii) Commission's Proposed Directive to Protect Whistle-blowers

On 23 April 2018 the European Commission adopted a draft Directive and published a suite of accompanying documents – Commission Communication, Impact Assessment, Fact Sheet and Frequently Asked Questions on the Commission's new commitment to provide whistle-blowers reporting breaches of European Union law with greater protection.

The Directive will provide protection for whistle-blowers across a broad spectrum of industries including financial services, environmental protection, and corporate tax rules by requiring Member States to:

- Provide safe reporting channels inside the organisation and to public authorities;
- Protect whistle-blowers from dismissal, demotion and other forms of retaliation;
- Inform citizens; and
- Train public authorities.

The accompanying documents explain the benefits to be gained by introducing such legislation particularly to law enforcement agencies in the detection of crime.

The Commission have invited public feedback on the proposed Directive.
A copy of the proposed Directive is available here, alongside an accompanying Commission Communication here, the Impact Assessment here, the Fact Sheet here and the Frequently Asked Questions available here.

(iv) European Commission confirms eco-friendly proposals to be tabled in May 2018

On 23 April 2018, Vice President Dombrovskis, European Commissioner for Financial Stability Financial Services and Capital Markets Union's speech titled 'The Transatlantic

Economy Ten Years after the Crisis: Macro-Financial Scenarios and Policy Responses' was published by the European Commission.

The speech reflected on the response to the crisis by Europe and the United States, reforms introduced as a result and noted the struggle against climate change as a significant challenge facing the world and a high risk to financial stability. Furthermore, he confirmed that legislative proposals regarding a unified European Union classification of sustainable economic activities and imposing an obligation on insurance companies among others to consider environmental factors in investment decisions would be tabled in May 2018.

A copy of the speech can be found here.

(v) European Commission publishes facts and figures on the retail investment product market in Europe

On 24 April 2018, the European Commission published the final report on a study on 'Distribution systems of retail investment products across the European Union'.

The study was commissioned to support further policymaking by the European Union for one of its top ten priorities -"Jobs, Growth and Investment" which aims at stimulating investment for the purposes of job creation. The strategy to achieve this priority includes creating an investment friendly environment so that European savings may be put to better use creating a stronger capital market in the European Union offering businesses greater choice of funding and providing more options and better returns for savers and retail investors.

The study had as its objective the goal of obtaining a sounder understanding of the retail investor market in Europe and the obstacles that consumers face when purchasing investment funds, investment driven life insurance or private pensions. The study's findings included that:

- Consumers have difficulty collecting and contrasting information across a large and diverse range of products;
- Costs for similar products vary significantly across Member States;
- The majority of European investors seek advice from non-independent advisors, such as banks and insurers; and
- FinTech the potential for new distribution models based on FinTech is promising but must be monitored carefully.

This study is the latest of the Commission's initiatives such as its 2015 Green Paper as well as its 2017 Action Plan on Consumer Financial Services to involve consumers in investing their savings in Europe.

A copy of the study can be found here.

(vi) JURI publishes draft report on the law applicable to third-party effects of assignments of claims

On 3 May 2018, the European Parliament's Committee on Legal Affairs ("**JURI**") published a draft report on the proposal for a Regulation on the law applicable to the third party effects of assignments of claims.

The draft report proposes amendments to the Commission proposal, dated 12 March 2018.

The draft report is available here.

(vii) European Parliament's Report and Resolution on Sustainable Finance

On 16 May 2018, the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") published its 'Report on sustainable finance'. The Report contains a motion for a European Parliament Resolution on sustainable finance (the "**Resolution**").

It begins setting out the reasons why such a resolution is necessary naming the G20 commitment to sustainable growth, the Sustainable Development goals of the United Nations and the other commitments made in many other formal settings such as speeches, reports, recommendations and agreements as reasons. The Report continues by setting out specific points that should be included in any such Resolution. These include:

- Calling on the European Commission to come forward with a legislative framework, recognising the proposals put forward in its March 2018 action plan on sustainable finance;
- Suggesting the European Commission introduces legislation establishing a "green finance mark" to be granted to investment, equity and pension products which achieved the highest sustainability standards;
- Calling on the European Commission to use its powers under the PRIIPs Regulation to adopt a delegated act specifying the details of procedures for establishing whether a PRIIP targets specific environmental or social objectives;
- The European Supervisory Authorities should develop guidelines for model contracts between asset owners and asset managers, including the identification and integration of environmental, social and governance risks on behalf of the asset manager; and

- ESMA should be mandated to require credit rating agencies to incorporate sustainability risks into their methodologies.

On 29 May 2018, the provisional edition of the text of the Resolution was published and adopted by the European Parliament. It has been delivered to the European Commission and European Council for consideration. The Resolution addresses a broad range of issues across a wide range of areas.

The sections that are of particular pertinence to the financial sector include:

- The role of the financial services sector as regards sustainability and the policies required for correcting market failures;
- The integration of sustainable finance criteria in all legislation related to the financial services sector;
- Sustainability risks within the prudential framework of capital adequacy rules;
- Labelling systems for financial services; and
- Clarification of the European Supervisory Authorities' mandate.

The Commission has been tasked with publishing regular progress report on the topics identified in the Resolution.

The Report on sustainable finance is available here and the copy of the Resolution is available here.

(viii) Legislative proposals on sustainable finance published by Commission

On 24 May 2018, the European Commission published legislative proposals to reform sustainable finance following up on the first ever Action Plan on Sustainable Finance of March 2018.

Environmental, social and governance ("**ESG**") considerations will be integrated into investment and advisory processes across all sectors under the proposed reforms while also making it easier and less costly for investors to identify which investments are sustainable. The Commission has published the following documents in relation to this effort:

- A legislative proposal for a regulation on the introduction of a framework to enable sustainable investment, introducing an European Union-wide taxonomy of environmentally sustainable activities;

- A legislative proposal for a regulation on disclosure requirements by institutional investors demonstrating how their investments are aligned with ESG objectives and disclose how they comply with these duties;

- A legislative proposal for a regulation introducing a new category of benchmarks comprising of low carbon benchmarks and positive carbon impact benchmarks reflecting companies' carbon footprint to provide investors' with additional information on an investment portfolio's carbon footprint;

- A draft Delegated Regulation to amend Delegated Regulations made under Markets in Financial Instruments Directive II 2014/65 which requires investment firms to ask their clients about their preferences concerning ESG and then to take them into account when advising their clients, for consultation; and

- A draft Delegated Regulation to amend Delegated Regulations made under the Insurance Distribution Directive 2016/97 which requires insurance firms to ask their clients about their preferences concerning ESG and then to take them into account when advising their clients, for consultation.

These proposals will assist the European Union obtain their objective of a more sustainable economy and society by 2030 as agreed in the Paris Agreement.

For further information please find a copy of the proposals here.

(ix) Commission Proposes a Regulation on Sovereign Bond-Backed Securities

On 25 May 2018, a proposal for a Regulation on the sovereign bond-backed securities ("**SBBS**") by the European Commission was published. Feedback from stakeholders is welcome before the deadline of 24 August 2018.

This proposal was adopted by the European Commission so that SBBS could be subjected to the same regulatory treatment as national euro-area sovereign bonds denominated in euro instead of the regulatory treatment of securitisation bonds. The proposal stems from the low risk and high liquidity characteristics of SBBS and their current subjection to unwarranted regulatory obstacles which impede their development. The measures the Commission proposes to introduce in the new Regulation include:

- Establishing a new class of low risk securities backed by a diversified pool of national government bonds;
- Common criteria to label a product SBBS;

- Laying down precise eligibility criteria;

- Issuance and management of SBBSs;

- Use of the designation "Sovereign Bond-Backed Securities"; and

- SBBSs notification and transparency requirements;

The proposed Regulation will require the following:

- The underlying portfolio must contain sovereign bonds from all Member States of the euro area; and

- The senior tranche to be fixed at 70% of the overall SBBS issuance which the remaining 30% may be divided in sub-senior (or subordinate) claims as the issuer believes is best.

Prior to publishing this draft Regulation the Commission conducted and published an Impact Assessment on enabling a regulatory framework for the development of SBBS on 28 January 2018. The report found amongst other things that the development of a market for SBBS could reduce risks to financial stability.

For further information on the Commission's proposed Regulation please find a copy of the text here.

(x) European Commission proposes new Single Market Programme

On 7 June 2018, the European Commission announced its proposed new Single Market Programme, which aims to empower and protect consumers and enable Europe's small and medium-sized enterprises ("**SMEs**") to take full advantage of the Single Market. The Commission is proposing a budget of €4 billion for this programme as part of the next long-term European Union budget, between 2021 and 2027.

The new Single Market Programme aims to:

- Guarantee the enforcement of consumer rights, particularly online;

- Strengthen the support given to small business to scale up and expand across borders;

- Support the safe production of food, improve animal welfare in the European Union, and support the agri-food industry as a leading sector of the European Union economy;

- Enhance the IT tools used by the Commission to enforce competition rules in the digital economy; and

- Provide funding to national statistics institutes for the production and dissemination of European statistics in order to improve decision-making across all policy areas.

The Commission, alongside its announcement, published a number of documents which provide more information on the proposal, including:

- A proposal for a Regulation establishing the Programme for single market, competitiveness of enterprises, including SMEs, and European statistics, available here;
- A factsheet setting out a summary of the proposed new Single Market Programme, available here; and
- A factsheet setting out the successes of the European Union Single Market, available here.

An accompanying press release covering the announcement is available here.

(xi) The European Economic and Social Committee publishes opinion on reforms to the ESAs

On 28 June 2018, the European Economic and Social Committee ("**EESC**") published an opinion on the European Commission proposal to adjust and upgrade the framework of the European Supervisory Authorities ("**ESAs**") to ensure they can assume an enhanced responsibility for financial market supervision (the "**Opinion**").

The Commission proposal sets out specific amendments to the ESA Regulations and various sector acts to reinforce the powers, governance and funding framework of the ESAs, and reconsiders the current scope of the ESAs' mandate in light of the policy objectives of the Capital Markets Union ("**CMU**").

In its Opinion, the EESC generally welcomes the Commission's proposal, and emphasises the importance of the realisation of a smoothly operating CMU.

The Opinion is available here. The Commission proposal is available here.

European Parliament

(i) ESA publishes report on Risks and Vulnerabilities faced by the European Union Financial System for the second half of 2017

On 12 April 2018 the Joint Committee of the European Supervisory Authorities ("**ESAs**") published its report on the 'Risks and Vulnerabilities in the European Union financial system' for the second half of 2017 ("**Report**").The Report focuses on vulnerabilities in the European Union financial system noting that the securities, banking and insurance sectors in the European Union are prone to many risks listing the following containing the most potential to cause instability:

- Valuations and repricing of risk premia;

- United Kingdom's decision to withdraw from the European Union;
- Cyber and Operational risks – Information and Communication Technology risks; and
- Climate change.

To combat the risks identified, the Report contains advice from the ESAs on policy actions that European and National Competent Authorities along with financial institutions may take to reduce their exposure such as supervisory stress testing which may be used as a tool to manage systemic risk.

A copy of the Report can be found here.

(ii) European Commission publishes proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services

On 26 April 2018, the European Commission published a proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services.

The proposed Regulation seeks to address a number of potentially harmful trading practices that may arise as a result of the dependence of businesses on certain online services (e.g. e-commerce market places, software application stores and social media). For example, the European Commission notes that the providers of such services have a scope to engage in practices that may limit business users' sales through them and risk undermining their trust. Such practices include making unexplained changes in terms and conditions without prior notice and the delisting of goods or services and the suspension of accounts without a clear statement of reasons.

The proposed Regulation also seeks to address the potential for harmful ranking practices as a result of the dependence of businesses on online general search engines.

Points of note within the proposed Regulation include:

- Providers of online intermediation services will be required to ensure that their terms and conditions for professional users are easily understandable and easily available; and
- Providers of online intermediation services will be required to set up an internal complaint-handling system.

The European Commission sought feedback from stakeholders on the proposal until 29 June 2018. The proposal may be accessed here.

In addition, Ireland's Department of Business, Enterprise and Innovation sought views on this proposal. The Department sought feedback from stakeholders on the proposal until 22 June 2018, and further details may be accessed here.

ESMA, EBA and ESAs

(i) A multilateral memorandum of understanding reached on co-operation, information exchange and consultation between Joint Committee of ESAs and the EFTA Surveillance Authority

On 27 April 2018 a multilateral memorandum of understanding ("**MMOU**") on the co-operation, information exchange and consultation with the European Free Trade Association ("**EFTA**") Surveillance Authority ("**EFTASA**") was published by the Joint Committee of the European Supervisory Authorities ("**ESAs**").

The MMOU contains practical arrangements for co-operation between EFTASAs and the ESAs in a myriad of situations including on product intervention, breach of European Economic Area ("**EEA**") law and the adoption of specific opinions within EEA-EFTA states.

For more information please find a copy of the MMOU here.

(ii) ESAs publish their Joint Committee Annual Report 2017

On 22 May 2018, the ESAs published their joint annual report namely the 'Joint Committee Annual Report 2017' dated April 2018. The ESA comprises of the European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets Authority.

The Report provides a general outline on the activities of the ESAs in 2017. Of particular note is ESA's progress on combatting money laundering and terrorist financing, the continued efforts to identify risks to financial stability with a focus on Brexit, consumer protection across financial services, their support to the Board of Appeal and its analyses of Big Data in relation to financial innovation.

For further information a copy of the Report is available here.

(iii) ESMA delivers speech on the role of regulation and supervision in developing a genuine European single market

On 24 May 2018, Verena Ross, Executive Director of ESMA delivered a speech on the topic of the 'role of regulation and supervision in developing a genuine European single financial market' (the "**Speech**"). The Speech focused on the following themes:

- **Rationale for convergence and convergence across sectors**: The rationale for supervisory convergence was discussed, stating that the priority will be to nurture supervisory convergence across sectors and in particular across the banking,

insurance, pensions and securities sectors in Europe. ESMA's focus will therefore shift from regulatory to supervisory.

- **Brexit:** It was noted that Brexit raised the importance of supervisory convergence and also renders the implementation of the Regulation amending European Market Infrastructure Regulation ("**EMIR**") – the EMIR Refit Regulation before the United Kingdom leaves the European Union in March 2019 as essential.

- **Tools employed to ensure convergence**: Guidelines and Q&As are supervisory convergence tools utilised significantly by ESMA to assist national regulators and industry stakeholders. Furthermore, the Supervisory Co-ordination Network ("**SCN**") is successfully engaging experts from a wide range of competent authorities dealing with entities from the United Kingdom who are looking to move to Member States in the European Union. The Speech notes that to date the SCN has primarily worked with investment firms and fund managers.

- **Data Management**: ESMA is also in the process of enlarging the scope of its data management and data analysis to support its activities.

A copy of the Speech is available here.

(iv) Update to ESMA Guidelines – State of Play

On 8 June 2018, the European Securities and Markets Authority ("**ESMA**") Guidelines outlining the current 'State of play' in a chart format were updated.

A copy of the chart is available here.

(v) EBA publishes its 2017 Annual Report

On 18 June 2018, the European Banking Authority ("**EBA**") published its 'Annual Report 2017' ("**Report**").

The Report sets out the work undertaken and the achievements of the EBA throughout 2017 referring to its contributions to the regulatory review of the internal ratings based approach and two key discussion papers it published on market risk which are expected to provide the foundations of regulatory products on the revision of counterparty credit risk and market risk frameworks amongst others.

There is also a section dedicated to the 'key areas of focus for 2018' which include preparing for the full implementation of Basel III, continuing ongoing work in relation to non-performing loans and third country equivalence.

For further information please find a copy of the Report here.

(vi) ESMA publishes Annual Report for 2017

On 19 June 2018, ESMA published its Annual Report for 2017. The Annual Report addresses a number of topics, including:

- Promoting Supervisory convergence: implementation of MiFID II and MiFIR;
- Assessing risks to investors, markets and financial stability: focus on data quality;
- Work on completing a single rulebook for EU financial markets: Benchmarks and Capital Markets Union;
- Direct supervision: supervision of Credit Rating Agencies ("**CRAs**") and Trade Repositories ("**TRs**") and their ancillary activities; and
- The work of the Joint Committee, a central point for coordination and exchange of information between the ESAs and the European Commission and the European Systemic Risk Board.

The Annual Report, dated 15 June 2018, is available here.

(vii) ESMA publishes response to European Commission 'Fitness check' consultation

On 22 June 2018, ESMA published its response to the European Commission consultation document 'Fitness check on supervisory reporting.'

The ESMA response is available here.

Market Abuse Regulation ("**MAR**")

(i) European Union Commission publishes proposal for a Regulation amending the Market Abuse Regulation and the Prospectus Regulation as regards the use of SME growth markets

On 24 May 2018, the European Commission published the text of a proposed Regulation to give small and medium enterprises ("**SME**") better access to financing through public markets.
The proposed rules aim to cut red-tape for SME that wish to list and issue securities on SME Growth Markets, a new category of trading venue dedicated to small issuers, and to foster the liquidity of publicly-listed SME shares with the intention of boosting the number of initial public offerings ("**IPOs**") by SMEs.

The main proposed changes to SME listings include:

- Adopting a new definition of debt-only issuers in order to make it easier for trading venues to register as SME Growth Markets;

- Allowing issuers with at least three years of listing on SME Growth Markets to produce a lighter prospectus when transferring to a regulated market; and

- Creating a common set of rules on liquidity contracts for SME Growth Markets across the Member States, in parallel to national rules.

The proposed Regulation will now be discussed by the European Parliament and the Council.

The text of the proposed Regulation is available here. An accompanying press release and set of FAQs are available here and here, respectively.

Prospectus Regulation

(i) ESMA publishes final report on technical advice under the Prospectus Regulation

On 3 April 2018, ESMA issued the final report on technical advice for the new Prospectus Regulation, a follow-up to the three consultation papers issued on the matter in July 2017 (the "**Consultation Papers**").

Specific technical advice was requested by formal mandate by the European Commission in February 2017 which is addressed in section 3 of the report. The particular advices sought related to the:

- Format and content of the prospectus;

- Content, format and sequence of the European Union Growth prospectus; and

- Scrutiny and approval of the prospectus.

The report also provides a summary of feedback received from stakeholders on the Consultation Papers and ESMA's response to proposed amendments to their technical advice contained in same.

The report has been delivered to the Commission for review. A copy of the report can be found here.

(ii) Commission publishes roadmap in relation to a delegated regulation to supplement the Prospectus Regulation

On 24 April 2018, the European Commission published a roadmap on their Commission Delegated Regulation supplementing a Regulation on 'A simplified prospectus for companies and investors in Europe' 2017/1129 ("**Prospectus Regulation**").

The roadmap seeks to inform citizens and stakeholders about the Commission's work in relation to the prospectus initiative and the scope, purpose and timing of the potential new law by setting out the:

- Context: the delegated act to the new Prospectus Regulation will be necessary because certain of its elements need to be clarified in a delegated act to be adopted by the Commission by 21 January 2019;
- Problems the initiative aims to tackle: The delegated regulation will complement the "single prospectus rulebook" to ensure that the Prospectus Regulation is interpreted and applied uniformly by national competent authorities;
- Basis for European Union intervention: The Prospectus Regulation contains articles that empower the Commission to adopt delegated acts;
- Aims of the initiative and how it will achieve same: A harmonised interpretation and application of the technical details of the new Prospectus Regulation, by complementing the policy framework already laid down;
- Consultations: Explains the consultations the Commission has carried out that relate to this legislative proposal to build on the Prospectus Regulation; and
- Evidence base and data collection: Sets out where the evidence was obtained for the initiative.

For further information a copy of the roadmap is available here**.**

(iii) Amendments adopted by European Parliament as regards proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading published in the Official Journal of the European Union

On 13 June 2018, the amendments adopted by the European Parliament on the proposal for a Regulation on the prospectus to be published when securities are offered to the public or admitted to trading was published in the Official Journal.

The amendments were made by the European Parliament to the European Commission proposal, and were adopted by the European Parliament on 15 September 2016.

The amended proposal is available here.

Central Bank of Ireland

(i) FOW Trading Dublin Conference speaker provides insights on the Regulatory Landscape according to the Central Bank's Director of Asset Management Supervision

On 3 May 2018, the Director of Asset Management Supervision of the Central Bank, Michael Hodson, delivered a speech at the Futures and Options World ("**FOW**") Trading Dublin Conference.

Hodson's speech provided an overview of the regulatory landscape highlighting the extensive changes afoot in the financial regulatory services sectors. The speech focused on the most notable changes and is structured as follows:

- **Supervisory convergence:** Notes the importance of supervisory convergence, its role in ensuring a level playing field in regulation and supervision across the European Union, and the attention it has garnered recently. Member States need to be responsive and adapt to these changes which include a Supervisory Coordination Network established by ESMA which has monthly meetings to ensure there is no significant difference in treatment between national competent authorities across the European Union. ESMA has also created the Enforcement Network and a senior supervisors' forum and has published section opinion papers which prompted the Central Bank to update their application forms.

- **Brexit**: Explains the Central Bank's approach to Brexit is guided by their mandate of protecting consumers and safeguarding financial stability. A list of the findings of a survey conducted about the potential cliff effects that would stem from a hard Brexit include a loss of market access, macroeconomic effects, staffing issues and passporting rights.

- **Markets in Financial Instruments Directive 2 ("MiFID II")**: Spoke of the main aims of MiFID II which came into force four months ago, being to improve the standards of service to clients, increase investor protection and to increase the transparency in the market and highlighted the issues observed in the market since it came into being.

- **Market Structures** and work the Central Bank's market surveillance team is undertaking.

- **Other important topics**: in the asset management sector, including CP86, money market funds regulation and the European Commission's proposals for a new prudential regime; and

- **Fintech**: Referred to the Central Bank's review of FinTech and innovation and initiatives that will be introduced.

A copy of the full speech can be found here.

(ii) Deputy Govenor Donnery delivers speech on diversity

On 4 May 2018 Deputy Governor Donnery of the Central Bank delivered a speech at the Central Bank of Malta's fiftieth anniversary conference. The speech pivoted on the need for diversity.

The speech highlights the lack of diversity and the negative financial consequences under the following headings:

- **Diversity needs to start from the top**: A lack of diversity at senior levels was cited as a contributing factor to the issues that lead to the financial crisis and ongoing problems;

- **What the Central Bank of Ireland is doing**: Donnery announced that the Central Bank in its supervisory capacity will begin to challenge firms with a lack of diversity at management level;

- **Should regulation support gender diversity**: While ideally the regulated firms it supervises would voluntarily ensure they have diversity at management level Donnery acknowledges that in the event all supervised firms do not diversify the Central Bank is contemplating imposing diversity requirements at management level; and

- **The European Dimension**: Donnery notes the European Union's commitment to diversity and its positive impact on gender equality.

Furthermore, the Central Bank's first gender pay gap analysis was also unveiled.

For more information a copy of the speech can be found here.

(iii) Gender Pay Gap Report 2018 shows 2.7% difference in pay between men and women at the Central Bank

On 4 May 2018 the Central Bank published its 'Gender Pay Gap Report 2018' (the "**Report**") which contains its first gender pay gap analysis.

The Report echoes Ms. Donnery's speech highlighting the benefit of diversity in the organisation from an economic standpoint. The Report conducted the analysis on annualised base pay of employees as of 1 January 2018.

The Report found that the net income of all males in the Central Bank compared to the net income of all females was 2.7% higher for males – thus it did not relate to different pay for the same job. This figure is attributed to only 39% of directors being female. Other notable findings of the Report included:

- The gender break down in the Central Bank is 50% male and 50% female;

- Women made up 49% of division heads; and

- Women occupy 59% of bank executive and officer roles.

The Report outlined their Diversity & Integration action plan and stated that the Central Bank is undertaking specific actions to address the gender imbalance at senior level.

A copy of the report is available here.

(iv) Central Bank issues update on Supplementary Post Trade Deferral Regime under MiFIR

On 4 May 2018, the Central Bank issued a markets update as regards the supplementary post trade deferral regime under MiFIR.

MiFID II and MiFIR introduced transparency requirements regarding publication of transaction details following execution where firms were required to publish details of trades in almost real-time. However it was recognised that such a requirement was not necessarily always in the best interests of market participants prompting the provision of a discretion for NCAs to be provided for in MiFIR.

Accordingly the Central Bank has advised ESMA of its deferred publication regime.

The Central Bank's deferred publication regime is subject to the prior approval of the Central Bank and is reviewed on a case-by-case basis. Some of the aspects of the Central Bank deferred regime are set out below:

- Does not require the publication of limited details of a transaction (all details with the exception of volume) or the publication of transactions in aggregated form or a combination thereof during the time period of deferral;

- Allows the omission of the publication of the volume of an individual transaction during an extended period of time of four weeks (to be known as "(**a**)");

- For non-equity instruments that are not sovereign debt, allows the publication of several transactions executed over the course of one calendar week in aggregated form for an extended period of four weeks;

- For sovereign debt instruments, allows the publication of the aggregation of several transactions executed over the course of one calendar week in aggregated form for an indefinite period of time (to be known as ("**b**")); and

- For sovereign debt allows for the consecutive application of (a) and (b) above.

The update is available here.

(v) The Central Bank publishes its Annual Report for 2017 revealing a profit of €2.6 billion

On 9 May 2018, the Central Bank published its Annual Report for 2017 ("**Report**"). The Report details the primary achievements and activities undertaken by the Central Bank in 2017 across their central banking, regulatory and operational functions as well as commenting on the implementation of the Central Bank's strategic plans. The Report also provided updates on:

- **Economic Recovery**: Provides that the ongoing recovery is expected to continue at Irish, European and global levels however cautions that Ireland's economy has an inherent vulnerability as a consequence of its highly globalised nature, therefore ongoing vigilance of the Irish macro-financial system is necessary;

- **Brexit**: Highlights the major challenges and risks facing the Irish economy and regulated firms, noting that an increased number of firms establishing a presence in Ireland is expected;

- **Enhanced Resources**: Details the work undertaken in financial regulation and the enhancement of its resources in key areas with improvements also made to its regulatory toolkit;

- **Tracker Mortgage Examination**: Notes that considerable progress was made in 2017 in delivering redress and compensation to over 37,000 customers and provides that completion of the examinations is a high priority of 2018; and

- **Profit**: Discloses the profit of 2017 as €2.6 billion.

A copy of the Annual Report can be found here.

(vi) The Central Bank calls for public's input in its Strategic Plan for 2021

On 9 May 2018, the Central Bank published a document 'Strategic Plan 2019-2021 - We Want Your Views' calling for public input on the following three questions:

- What should be considered by the Central Bank responding to the current and emerging risks in the economy and the wider financial system?

- What should the Central Bank focus on in terms of the regulation of firms and markets?

- What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

The deadline for responses was 8 June 2018.

A copy of the document can be found here.

(vii) CP 120 on Corporate Governance Requirements for Investment Firms and Market Operators

On 10 May 2018, the Central Bank published 'CP 120: Second Consultation Paper on the Corporate Governance Requirements for Investment Firms and Market Operators' ("**CP 120**") inviting feedback from stakeholders before the deadline of 31 July 2018.

CP 120 sets out the proposed corporate governance requirements ("**Requirements**") to address corporate governance deficiencies identified by the Central Bank that undermine board effectiveness, prudent management, good culture, strong risk management and the oversight and safety of firms. The Central Bank intends that by finalizing the Requirements the expected standards of corporate governance in the industry will be clarified.

CP 120 has been described as a scaled back version of CP 94 – the Central Bank's first consultation paper on this topic which was published in 2015. This may be attributed to its preparation in light of the feedback received from CP 94 and by the enactment of the MiFIR and MiFID II and the joint EBA and ESMA Guidelines on the assessment of the suitability of members of the management body and key function holders. The MiFID regime was implemented on 3 January 2018 and introduced many of the proposals contained in CP 94 and consequently to avoid duplication CP 120 omitted their inclusion.

The Requirements set out in CP 120 include the following:

- **Composition of the Board:** The board is required to be of "*sufficient size and expertise*" to "*adequately*" oversee the operations of the firms and shall be comprised of a majority of independent non-executive directors;

- **Chairman:** A chairman must have "*relevant financial services expertise, qualifications and experience, or be required to undertake comprehensive, relevant and timely training*"; and

- **Committees of the Board:** There are three committees CP 120 proposes to introduce as mandatory - an audit, risk and remuneration committee. A firm's obligations to establish these committees varies based on objective criteria such as the firm's rating under the Probability Risk and Impact System ("**PRISM**").

CP 120 provides that the proposals once enacted will only be binding on certain firms. Firms which are classified with a Medium Low PRISM rating or higher must comply and firms designated as Low Impact under PRISM are encouraged to adopt the relevant requirements contained in CP120.

For further information on CP 120 please find a copy of the Consultation Paper here.

(viii) The Central Bank publishes Addendum to Consumer Protection Code 2012

On 23 May 2018, the Central Bank issued an addendum to the Consumer Protection Code 2012. The purpose of the addendum is to give effect to the consequential amendments to the 2012 Code required as a result of the transposition of the Payment Services Directive 2 into Irish law. This Addendum takes effect from 23 May 2018. The following parts of the 2012 Code are now amended:

- **Chapter 1 – Scope**;
- **Chapter 10 – Errors and Complaints Resolution**; and
- **Chapter 12 – Definitions**.

The 23 May 2018 Addendum is available here.

On 20 June 2018, the Central Bank issued a further addendum to the Consumer Protection Code 2012. The purpose of the addendum is to introduce new and amend existing provisions of the 2012 code to give effect to enhanced mortgage transparency and switching measures for consumers. This Addendum takes effect from 1 January 2019.

The 20 June 2018 Addendum is available here.

(ix) Central Bank of Ireland publishes May 2018 edition of Intermediary Times newsletter

On 31 May 2018, the Central Bank published the May 2018 edition of its 'Intermediary Times' newsletter. This edition contains information on the following topics:

- The launch of the Central Bank's FinTech Engagement Initiative, which includes the introduction of an Innovation Hub at the Central Bank;
- Information regarding the appointment of tied agents under the Investment Intermediaries Act, 1995;
- A short piece on the submission of Annual Returns;
- Cyber Security and protecting the firm;
- Pricing complaints; and
- The Investor Compensation Company Limited.

The newsletter aims to highlight topics of interest, new items on the Central Bank's website and regulatory issues that retail intermediary firms need to be aware of.

The newsletter may be accessed here.

(x) Directors acting as designated person required to be approved as PCF-39

On 15 June 2018, the Central Bank published the 'Fund Management Company Directors who act as a designated person' communication (the "**Communication**").

The Communication sets out that a designated person role for managerial functions should be considered separately to the role of director and the Central Bank considers that both roles require a separate fitness and probity assessment.

While the Central Bank did not require directors (PCF-1 or PCF-2) who currently act as a designated person or who were appointed to such a role on or before 30 June 2018 to apply for approval as a PCF-39, for any directors appointed to a PCF-39 role from 1 July 2018 then they will have to apply for approval as PCF-39.

The Communication sets out the procedure for submitting applications under the Central Bank's Fitness and Probity Regime to act as a designated person PCF-39 of a Fund Management Company.

For further information please find a copy of the Communication here.

(xi) Central Bank publishes Macro-Financial Review

On 15 June 2018, the Central Bank published its first Macro-Financial Review of 2018 ("**Review**"), setting out an overview of the health of the macro-financial environment in Ireland and identifying risks to the economy and financial system.

The Review includes observations that the domestic economy is growing significantly however cautions the hazards that may accompany Brexit providing examples such as United Kingdom insurance firms losing their entitlement to do business in Ireland and difficulties banks may face if they need to issue debt through the United Kingdom.

A copy of the Review is available here.

(xii) Consultation Paper on the Central Bank's Market Abuse and Transparency Rules published

On 22 June 2018, the Central Bank published its Consultation Paper titled 'CP-121 Consultation on amendments to Central Bank Market Abuse and Transparency Rules and consolidation into Central Bank (Investment Market Conduct) Rules'.

The Consultation Paper proposes to consolidate into one statutory instrument the Central Bank's transparency rules and market abuse rules subject to certain amendments, pursuant to the Companies Act 2014 and requests feedback from stakeholders in relation to the seven questions asked. The amendments proposed in the Consultation Paper relate to the addition of requirements including a requirement to use Legal entity identifiers to ensure the

effective supervision of transparency law. The Consultation Paper also contains the draft rules in the Annex.

The deadline for responses is 22 September 2018.

A copy of the Consultation Paper is available here.

(xiii) The Central Bank publishes 2018 Report on Protected Disclosures

On 29 June 2018, the Central Bank published its Protected Disclosures Report for 2018. According to the 2018 Report, the Central Bank received 113 protected disclosures during the reporting period 1 July 2017 to 30 June 2018.

The 2018 Report is available here.

(xiv) The Central Bank publishes Markets Update

During the period 1 April 2018 to 30 June 2018 the Central Bank published its newsletter 'Markets Update:

- **Markets Update Issue 7**;
- **Markets Update Issue 8**; and
- **Markets Update Issue 9**.

The Markets Update can be accessed here.

(xv) The Central Bank publishes Guidance Note on Fund Profile reporting requirements

In June 2018, the Central Bank published a Guidance Note to provide information and direction on the completion of the Fund Profile return. The Fund Profile return will replace the Annual Investment Fund Sub-Fund Profile return.

When a Sub-Fund is authorised/approved in Ireland, there is now a requirement to complete a Fund Profile return within 10 working days of the Sub-Fund's authorisation. The Fund Profile return is made through the Central Bank's Online Reporting ("**ONR**") portal.

On an annual basis, a Fund will be required to review each Sub-Fund's profile. Any changes since the last review of the Fund Profile should be updated and the return submitted to the Central Bank via the Central Bank's ONR portal.

The first annual Fund Profile return is required for all Irish authorised Sub-Funds at 30 June 2018 and needs to be filed by 31 August 2018.

The Guidance Note for Fund Profile reporting requirements is available here.

(xvi) The Central Bank's first cyber-fraud fine

Appian Asset Management Limited ("**Appian**") has been fined €443,000 for regulatory failures which, according to the Central Bank, left it exposed to cyber-fraud.

This is the first time that the Central Bank has issued a fine concerning a cyber fraud.

Due to the fraud, €650,000 of client funds was lost. The Central Bank concluded that this fraud resulted from defective controls in three regulatory areas:

- Inadequate policies and procedures to monitor transactions;
- Failure to introduce adequate organisational arrangements to minimise the risk of loss of clients assets due to fraud under the Central Bank's Client Asset Requirements 2007; and
- Failure to ensure that an employee performing a role that might expose Appian to financial, consumer or regulatory risk was fit for that role under the Central Bank's Fitness and Probity regime.

For further information on the Central Bank's focus on cyber risk, please refer to the following briefing issued by Dillon Eustace, available here.

(xvii) Fitness and Probity Standards benefit from suite of guidance documentation from Central Bank

In June 2018, the Central Bank published a suite of documents relating to Fitness and Probity ("**F&P**") Standards. The documents published were as follows:

- 'Fitness and Probity Individual Questionnaire Application Guidance – June 2018' ("**IQ**"): This document is designed to provide regulated financial service providers and applicant firms with assistance when submitting Individual Questionnaires through the Online Reporting System ("**ONR**") of the Central Bank for individuals proposed to hold Pre-Approval Controlled Functions. A copy is available here;
- 'Online individual questionnaire template 2018': This document sets out the questions that make up the online individual questionnaire in PDF form. A copy is available here;
- 'Fitness and Probity – Frequently Asked Questions ("**FAQ**"): This document amends the existing FAQs document at Sections 1.3, 3.6, 5.4 and 6.8. A copy is available here; and
- 'Guidance on Fitness and Probity Standards 2018': This document assists regulated financial service providers comply with their obligations in relation to the F&P Standards as set out in Section 21 of Part 3 of the Central Bank Reform Act 2010

which requires financial service providers to have satisfied themselves on reasonable grounds that the persons performing as Controlled Functions or Pre-approval Controlled Functions are compliant with F&P Standards. A copy is available here.

Euronext

(i) Euronext update their information handbook for audit trail, transaction and other regulatory reporting's under the MiFID II/ MiFIR regime

On 8 May 2018, Euronext updated chapter *3.2 Extract: Audit trail fields* of their information handbook for audit trail, transaction and other regulatory reporting's under the Markets in Financial Instruments Directive II ("**MiFID II**") / Regulation ("**MIFIR**") regime. The handbook outlines the new reporting requirements under MiFID II / MiFIR, the respective technical changes, field description and serves as guidance for trading participants in order to fulfil their reporting obligation.

A copy of the updated handbook can be accessed here.

(ii) Euronext Dublin introduces Release 6.1 to ISE T7 trading platform

On 29 May 2018, Euronext Dublin published its Final Release Notes as regards to ISE T7 Release 6.1 and to introduce Release 6.1 to the ISE T7 trading platform on 18 June 2018.

The ISE T7 Release 6.1 Final Release Notes are available here.

The Market Model for the Electronic Trading System of the Exchange: ISE T7 Release 6.1 is available here.

(iii) Euronext publishes Code of Listing Requirements and Procedures for Investments

On 1 June 2018, Euronext published the sixth release of the 'Code of Listing Requirements and Procedures – Investment Funds'.

A copy of the Code can be found here.

(iv) Euronext Dublin reduces ongoing reporting obligations for UCITS and Irish regulated funds

Revised listing rules issued by Euronext Dublin in June 2018 have substantially reduced certain reporting obligations to better reflect the levels of investor protection within the UCITS and Non-UCITS regulatory regimes.

The reduced reporting obligations will apply to:

- UCITS funds listed on the Main Securities Market ("**MSM**");

- Irish regulated funds listed on the Global Exchange Market ("**GEM**"); and
- Other EU funds subject to equivalent regulation listed on GEM.

A note setting out the reduced reporting requirements in more detail has been published by Dillon Eustace, and is available here. A copy of the updated rules published by Euronext is available here.

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

(i) Summary of responses to the consultation on broadening law enforcement access to centralised bank account registries published by European Commission

On 17 April 2018, a summary of responses to the open public consultation on 'broadening law enforcement access to centralised bank account registries' was published by the European Commission.

The summary of these responses along with a list of the responses can be accessed here.

(ii) Proposal for a Directive to give access to centralised bank account registries

On 17 April 2018, a proposal for a Directive laying down the rules facilitating the use of financial and other information for the prevention, detection, investigation and prosecution of certain criminal offences and appealing Council Decision 2000/642/JHA was published by the Commission ("**Proposal**").

The Proposal provides for direct access to the national centralised bank account registries or data retrieval systems to competent authorities. The Explanatory Memorandum of the Proposal notes that the Proposal is to complement the Fifth Money Laundering Directive which contains a mandatory provision for the establishment of national centralized bank account registries or data retrieval systems in all Member States to which Financial Intelligence Units and Anti-Money Laundering Authorities would have access. The Proposal therefore seeks to enable competent authorities to carry out this mandatory obligation.

For further information on the Proposal please find a link to the document here.

(iii) Ireland publishes Bill to transpose the Fourth Money Laundering Directive

On 24 April 2018, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 ("**Bill**") was approved by the Irish Cabinet on 24 April 2018 and will be presented to the Dáil on 3 July 2018. The Bill will transpose most of the Fourth Money Laundering Directive into Irish law and amends the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013.

The Bill seeks to enact the key provisions of Fourth Money Laundering Directive ("**MLD4**") by placing more onerous obligations in relation to money laundering and terrorist financing on entities including credit and financial institutions, lawyers, accountants and high value goods dealers in the following manner:

- **Conducting risk assessments**: The Bill provides a non-exhaustive list of factors to be considered by financial institutions when assessing the money laundering and terrorist financing risk of a customer or transaction;

- **Due Diligence**: The Bill introduces a requirement for due diligence to be exercised when a money laundering or terrorist financing risk warrants it in addition to the occasions already provided;

- **Policies and Procedures**: More expansive policies and procedures will be required by the designated person for the prevention and detection of money laundering and terrorist financing along with groups of companies having to introduce such policies and procedures group-wide including companies in the group that are not in the European Union;

- **Legal Services** are exempt from requiring anti-money laundering information from client if they are in the process of ascertaining it or if they are representing them in legal proceedings;

- **High Value Goods Dealers**; Reduced cash payment threshold from €15,000 to €10,000 to bring such dealers within the scope of the Directive;

- **Correspondent Relationships** which were already prohibited between banks are now prohibited between financial institutions also;

- **Enforcement**: Changes proposed include a - requirement on designated persons to report transactions connected with high-risk third countries to the Financial Intelligence Units ("**FIU**"), a new Chapter 3A to the 2010 Act is inserted detailing FIUs powers to receive and analyse information and accessing the central beneficial ownership registers of corporations and trusts, an ability on the Garda Siochana to keep the due diligence records beyond the five year period in certain circumstance and an update to the monetary penalties that may be imposed by the Central Bank for anti-money laundering breaches.

The latest copy of the Bill, dated 21 June 2018, is available here. For further information the explanatory memorandum of the Bill can be found here.

(iv) Press Release of FATF's 2018 private sector consultative forum published

On 24 April 2018, a press release detailing the issues discussed at the Financial Action Task Force ("**FATF**") annual private sector consultative forum was published. The forum, held in Vienna on 23 and 24 April 2018, provided private sector representatives the

opportunity to engage directly with the FATF on issues relating to anti-money laundering and counter-terrorist financing issues.

The issues discussed included combatting de-risking, finTech and regTech and the current development of guidance for a risk based approach in the securities and banking sector. An additional summary of the discussions has been published by FATF on the standalone issues of fintech and regtech, which can be found here.

A copy of the press release can be found here.

(v) European Commission adopts Delegated Regulation on Central Contact Points

On 7 May 2018 a Delegated Regulation containing regulatory technical standards ("**RTS**") for central contact points ("**CCP**") under the Fourth Money Laundering Directive ("**MLD4**") was adopted by the European Commission.

The Delegated Regulation aims to ensure legal certainty across the European Union for Member States when determining whether a CCP is required to be appointed for electronic money issuers and payment service providers.

Unless the Council of the European Union or the European Parliament object to it, the Delegated Regulation will enter into force twenty days after it is published in the Official Journal of the European Union.

For further information a copy of the Delegated Regulation is available here.

(vi) FATF Executive Secretary delivers speech on fighting proliferation financing

On 16 May 2018, the FATF Executive Secretary David Lewis, delivered a speech to the Proliferation Security Initiative ("**PSI**") at the High Level Political Meeting 2018 on the 'Best Practices and Guidelines on the Fight Against Proliferation Financing – Strengthening Authorities for Action' ("**Speech**").

Amongst other things the Speech covered:

- How FATF has been equipping countries to support themselves in their fight against financing proliferation which began in 2008 and includes the proliferation of weapons of mass destruction;
- That financial measures are one of the most effective tools to counter proliferation;
- Lessons learnt from the FATF Mutual Evaluation Process in which two common weakness were observed – a lack of inter-agency cooperation and coordination and secondly, that many jurisdictions are only focusing on sanctions' implementation but not preventative measures; and

- The guidance the FATF has been providing to its Members.

For further information please find a copy of the Speech in full here.

(vii) Consolidated Assessment Ratings on the Compliance and Effectiveness of the 2012 FATF Recommendations - Mutual Evaluations Publications

On 18 May 2018, the FATF published a document containing an up-to-date overview of the effectiveness and compliance with their 2012 FATF Recommendations.

A copy of the document can be found here.

(viii) Central Bank publishes Anti-Money Laundering Bulletin – the Investment firm edition

On 30 May 2018, the Central Bank published its fourth issue of its Anti-Money Laundering bulletin ("**Bulletin**").This bulletin focuses on the findings of the Central Bank's supervisory engagements with investment firms. The Central Bank sets out its findings in the following three areas:

- **Anti-money laundering ("AML")/Counter Terrorist Financing ("CTF") Risk Assessments**: Several AML/CFT risk assessments failed to tailor the assessment to the specific money laundering or terrorist financing risks facing the firm, utilising predefined standard group templates, and many were out of date;

- **Politically Exposed Persons ("PEP") screening and transaction monitoring;** Findings included that firms had inadequate controls in place to ensure all customers were subject to regular PEP and Financial Sanction ("**FS**") screening to identify any changes in PEP status, or any potential FS exposure; and

- **Resourcing and training**: There has been a lack of permanence in the position of Head of Compliance with responsibility for AML/CFT resulting in the failure of firms to initiate improvements in their processes or pausing ongoing projects, while many firms rely on a generic training programme alone for AML/CFT and consequently staff are not sufficiently equipped to deal with money laundering or terrorist financing risks.

For further information a copy of the Bulletin is available here.

(ix) EU joins Council of Europe anti-terrorism conventions

On 4 June 2018, two Council Decisions regarding the Council of Europe Convention on the Prevention of Terrorism (the "**Convention**") were published in the Official Journal of the European Union:

- Council Decision (EU) 2018/889 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism, available here.

- Council Decision (EU) 2018/890 of 4 June 2018 on the conclusion, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, available here.

The Convention and its Protocol will enter into force in respect of the European Union on 1 October 2018. The text of the Convention is available here, and the Additional Protocol is available here.

(x) European Commission demonstrates its commitment to the Iran Nuclear Deal through adoption of Delegated Regulation to the Blocking Regulation

On 6 June 2018, the European Commission adopted a draft Delegated Regulation amending the Annex to Council Regulation 'protection against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom' ("**Blocking Regulation**").

The Delegated Regulation will amend the Annex to the Blocking Regulation by including the United States' restrictive measures having extra-territorial application and which are in force at the date of its adoption to the Annex. The Delegated Regulation is a direct response to President Trump declaring that that the United States will withdraw their waiver of their sanctions under the Joint Comprehensive Plan of Action. These sanctions punish both United States companies and persons along with non-United States persons in certain circumstances, where they engage in a commercial relationship with Iran.

The Delegated Regulation by adding the United States' measures to the Annex will protect citizens and undertakings in the European Union from any sanctions contained in the measures listed in its Annex rendering amongst other things any judgment made against European citizens or undertakings in this context unenforceable thereby enabling European companies and citizens to continue doing business with both the United States and Iran without risk of severe penalties being imposed on them by the government of the United States.

Following the adoption by the European Commission of the Delegated Regulation the European Parliament and the Council will now be allotted two months to object to the Delegated Regulation. Where no objection is raised in this time frame the Delegated Regulation will enter force at the beginning of August.

For further information a copy of the Delegated Regulation is available here.

(xi) Directive on countering money laundering by criminal law endorsed by COREPER

On 7 June 2018 the 'Committee of the Permanent Representatives of the Governments of the Member States to the European Union' ("**COREPER**") endorsed the informal trialogue agreement between European Parliament, Council and Commission negotiators for a Directive on countering money laundering by criminal law reached on 30 May 2018.

The proposed Directive will (i) harmonise the definitions and sanctions for criminal offences related to money laundering across the European Union, (ii) bring the European Union law in line with its international obligations and (iii) facilitate more seamless cross-border judicial and police co-operation. Provisions in the proposed Directive include introducing a four year prison sentence for money laundering convictions with judges having the discretion to impose additional sanctions such as fines. Cases linked to organised crime or where the perpetrator committed the crime in their professional capacity will be considered aggravating circumstances. Legal entities will be subject to more stringent sanctions where they are implicated in certain money laundering activities including judicial winding-up.

Before the proposed Directive is enacted the European Parliament's Civil Liberties Committee must vote on the agreed text and then the Directive must be formally adopted by both the European Parliament and Council. It will then enter force twenty days after being published in the Official Journal of the European Union.

For further information please find a copy of the proposed Directive here.

(xii) European Commission publishes report on restrictions on payments in cash

On 12 June 2018, the European Commission published a report that examined the impact of potential cash payment restrictions. The report follows a study commissioned by the Commission on the topic, which found that restrictions on payments in cash would not significantly prevent terrorism financing, but indicated that such restrictions could be useful in combatting money laundering.

The report concluded that at this stage, the Commission is not considering any legislative initiative on this matter. Restrictions on cash payments are a sensitive issue for European citizens, many of whom view the possibility to pay in cash as a fundamental freedom, which should not be disproportionally restricted.

The report is available here.

(xiii) The Fifth Money Laundering Directive to come into force on 9 July 2018

On 19 June 2018, the text of the 'Directive (European Union) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC' ("**MLD5**") was published in the Official Journal of the European Union. This follows the Council of the European Union having adopted MLD5 on 14 May 2018 and the European Parliament voting in plenary to adopt MLD5 on 19 April 2018.

MLD5 fine tunes aspects of the Fourth Money Laundering Directive focusing on countering terrorist financing and increasing transparency in financial transactions. It sets about achieving these twin aims by:

- Introducing Centralised Beneficial Ownership Registers;

- Enhancing due diligence requirements for individuals from 'risky countries';
- Providing access to all citizens to the beneficial register of all companies to quash the corrupt use of letterbox companies created to launder money, hide wealth and avoid paying taxes;
- Extending the scope of industries subject to the MLD5;
- Reducing the threshold to €150 for due diligence requirements on prepaid cards;
- Regulating crypto currencies such as bitcoin;
- Enhancing the powers of European Union Financial Intelligence Units ("**FUIs**"); and
- Providing greater protections for whistle blowers.

On 9 July 2018, MLD5 will come into force thereby requiring Member States to transpose the legislation by no later than 10 January 2020.

A copy of MLD5 is available here and for further information on MLD5, please refer to the following briefing issued by Dillon Eustace, available here.

(xiv) European Parliament and Council reach political agreement on proposed Regulation on the freezing and confiscation of assets across borders

On 20 June 2018, the European Parliament and Council reached political agreement on the European Commission's proposal for an EU Regulation on the freezing and confiscation of assets across borders. Features of the new Regulation include the introduction of:

- A single set of rules on freezing and confiscation orders directly applicable throughout the European Union;
- Standard certificates and procedures to allow for speedy and efficient freezing and confiscation actions;
- A deadline of 45 days for the recognition of a confiscation order and in urgent cases a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders; and
- The general principle of mutual recognition, meaning that all judicial principles in criminal matters taken in one European Union country will normally be directly recognised and, enforced by another Member State.

Following this political agreement, the text of the Regulation will have to be formally approved by the European Parliament and the Council.

A press release by the Council of the European Union setting out the features of the new rules in more detail is available here. A statement by the European Commission welcoming the agreement is available here.

(xv) Outcomes of the FATF-MENAFATF Joint Plenary

Between 24 and 29 June 2018, FATF and the Middle East and North Africa Financial Task Force ("**MENAFATF**") held a series of meetings to discuss how the integrity of the global financial system may be protected.

The meetings brought together delegates from the 203 jurisdictions of the FATF Global Network and from the IMF, World Bank, UN and other partners. The week of meetings concluded with a joint plenary meeting held in Paris. The discussions during the Plenary focused on:

- Counter-terrorist financing;
- Judges and Prosecutors;
- Bahrain and Saudi Arabia; and
- Engagement between FATF and the FinTech and RegTech sectors.

Furthermore, FATF members discussed and approved the priorities for July 2018 to June 2019.

A summary of the Joint Plenary's outcomes may be found here.

(xvi) Council of the European Union endorses agreement on Regulation on controls on cash entering or leaving the Union

On 27 June 2018, the EU's Committee of Permanent Representatives ("**COREPER**") endorsed an agreement between the Council of the European Union and the European Parliament on a draft Regulation aimed at improving controls on cash entering or leaving the Union. It replaces the Cash Controls Regulation (Regulation 1889/2005), which has applied since 2007.

The objective of the Regulation is to ensure that the latest developments in international standards on combating money laundering and terrorism financing developed by FATF are reflected in EU legislation.

The Council and the European Parliament will now need to vote to adopt the draft Regulation after which it will be published in the Official Journal of the European Union.

A press release announcing the agreement is available here. The text of the draft Regulation, dated 25 June 2018, is available here.

(xvii) FATF issues list of jurisdictions subject to its global AML/CFT compliance process

On 29 June 2018, FATF issued a list of jurisdictions that have strategic anti-money laundering ("**AML**")/Counter-Terrorism Financing ("**CTF**") deficiencies for which they have developed an action plan with FATF.

Each jurisdiction has provided a written high-level political commitment to FATF to address the identified deficiencies and FATF will closely monitor the implementation of these action plans. The jurisdictions with strategic deficiencies are as follows:

- Ethiopia;
- Pakistan;
- Serbia;
- Sri Lanka;
- Syria;
- Trinidad and Tobago;
- Tunisia; and
- Yemen;

The following jurisdictions are no longer subject to FATF's on-going global AML/CFT compliance process:

- Iraq; and
- Vanuatu

More information on each of the identified jurisdictions is available here.

(xviii) FATF issues statement regarding DPRK and Iran

On 29 June 2018, FATF issued a public statement on the Democratic People's Republic of Korea ("**DPRK**") and Iran.

- Regarding DPRK, FATF stated that the jurisdiction is subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international

financial system from ongoing and substantial money laundering and financing of terrorism risks; and

- Regarding Iran, FATF stated that the jurisdiction is subject to a FATF call on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.

The statement is available here.

Anti-Corruption Legislation

(i) Criminal Justice (Corruption Offences) Act 2018 enacted

On 5 June 2018, the Criminal Justice (Corruption Offences) Act 2018 ("**Act**") was enacted. The Act forms part of the Government's White Collar Crime package announced in 2017. The Act repeals the seven existing Irish anti-corruption laws, dating from as early as 1889 and as recent as 2010. The Act will replace them with a single comprehensive statute and introduce new offences and stronger penalties including imprisonment for up to ten years, an unlimited fine, forfeiture of any bribe and forfeiture of office and prohibition on seeking office for up to ten years for public officials. The new offences include:

- Trading in influence;
- Corporate liability offence – where a body corporate may be guilty of an offence if anyone acting on behalf of that body is found guilty of a corruption offence;
- The presumption of a corrupt donation is expanded making failures to disclose or return a donation grounds for the presumption to apply – recommended by the Mahon Tribunal;
- The presumption of corrupt gifts is extended to connected persons – recommended by the Mahon Tribunal;
- Intimidation – where a threat of harm is used instead of a bribe; and
- Creating or using false documents – required by most International Conventions.

The Act incorporates the six recommendations of the Mahon Tribunal Report and also includes the recommendations made to Ireland specifically from the Organisation for Economic Cooperation and Development ("**OECD**"), the European Union, the Council of Europe and the United Nations along with international anti-corruption conventions of which Ireland is a member. These conventions include:

- The Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997);

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997);
- Council of Europe Criminal Law Convention on Corruption (1999 and 2003); and
- United Nations Convention Against Corruption (2003).

For further information on the Act please find a copy of the text here and an article on the topic published by Dillon Eustace here.

Data Protection / General Data Protection Regulation ("**GDPR**")

(i) Article 29 Working Party publish updated guidelines on consent for GDPR

On 10 April 2018 the Article 29 Working Party published its final guidance on consent under the General Data Protection Regulation ("**GDPR**") (the "**Guidance**").

The Guidance is an update on the draft guidance published on 28 November 2017 and contains some changes to and/or additional commentary on certain aspects of consent including:

- *Bundling of consent* – The Guidance provides it will not be valid consent merely because there are competing services the user could choose from;
- *Granular consent* – The Guidance provides it is not present where one consent is asked for two different data processing activities;
- *Detriment* – The Guidance adds examples of when detriment will be deemed present from withholding consent;
- *Recapturing consent* – The Guidance changes its position whereby a child's consent would expire if not reaffirmed when they reach the age of 16; the 16 year old will now actively have to withdraw consent.

For more information a copy of the Guidance can be found here.

(ii) Article 29 Working Party publish Guidelines on Transparency for the GDPR

On 11 April 2018 the Article 29 Working Party published guidelines on transparency required under Article 13 and 14 of the GDPR (the "**Guidelines**").

The Guidelines are a revision of the draft guidelines published in December 2017 which were open to consultation. The Guidelines reiterate much guidance provided in the draft guidelines however also contains minor changes and updates on various aspects of transparency including:

- **Naming recipients of data**: This obligation is less onerous than in the draft guidelines and now only requires the name of "meaningful recipients" to be provided to the data subject;
- **International Transfers**: The draft guidelines required all third countries receiving personal data to be named, however now requires "meaningful" detail on third country transfers to be disclosed;

- **Clarity on layered approach**: The Guidelines add an explanation on how the layered approach can be used in a non-digital environment; and

- **Privacy Notices**: The draft guidelines provided practical examples of poor practices that do not satisfy the GDPR's requirement of policies containing "clear and plain language" thus the Guidelines contain examples of good practice.

For more information a copy of the Guidelines can be found here.

(iii) Article 29 Working Party issue Working Document to establish a Co-Operation Procedure for the approval of "Binding Corporate Rules" under the GDPR

On 11 April 2018 the Article 29 Working Party issued a working document setting forth a co-operation procedure for the approval of Binding Corporate Rules ("**BCR**") for controllers and processors under the **GDPR** (the "**Working Document**").

The Working Document aims to provide effective cooperation procedures for Supervisory Authorities in different Member States that are GDPR compliant whilst taking into consideration their past experiences when an application for a Binding Corporate Rules are made. The Working Documents provide a process for identifying the BCR Lead supervisory authority which will be the main point of contact of the undertaking and the cooperation procedure between Supervisory Authorities when approving BCRs.

For further information a copy of the Working Document can be found here.

(iv) European Commission Adopts Recommendation on the Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data

On 11 April 2018 the Article 29 Working Party published their Recommendation on the 'Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data' (the "**Recommendation**").

The Recommendation provides a form to be filled out by data controlling companies seeking approval of their BCRs. The form is constructed in a manner to assist applicants demonstrate how they meet the requirements set out in Article 47 of the GDPR. The form is split into two parts:

- Application form; and

- Background information.

For information on the recommendation and a link to the form please click here.

(v) High Court makes request for a Preliminary Ruling from the CJEU on Model Clauses

On 12 April 2018, the Irish High Court asked the Court of Justice of the European Union ("**CJEU**") for a preliminary ruling on whether the use of "Model Clauses" to facilitate data transfers is legal. The Irish Data Protection Commission posed 11 questions to the CJEU about the way data is transferred outside of the EU in this manner, and whether this is in compliance with EU data protection laws.

The case in question has been taken by the Irish Data Protection Commissioner, and follows a legal challenge by lawyer and privacy campaigner, Max Schrems regarding the transfer of his personal data by Facebook, outside of the EU, by means of "Model Clauses".

A copy of the request made by the Irish High Court to the CJEU is available here.

(vi) Article 29 Working Party publishes Statement on Encryption as a method to protect European citizens' privacy

On 13 April 2018, the Article 29 Working Party published a statement on the impact of encryption on the protection of individuals regarding processing their personal data in the European Union (the "**Statement**").

Law enforcement agencies, whose obligations can require access to encrypted data must ensure that their duties do not reduce the effectiveness of encryption techniques as that can seriously harm the privacy of European citizens. The Statement notes that:

- Strong and reliable encryption is necessary;
- Master keys and backdoors deprive encryption of its utility and cannot be used in a secure manner; and
- Law enforcement agencies should only have proportionate and targeted access under the control of the judiciary to data and should not be provided with 'master keys' or 'backdoors' to carry out their functions.

A copy of the Statement can be found here.

(vii) ESMA requests further clarity on draft guidelines regarding derogations under Article 49 of the GDPR

On 13 April 2018, a response to the Article 29 Working Party's February consultation on draft guidelines on Article 49 of the GDPR was published. The guidelines related to derogations for the transfer of personal data to 'third countries'.

ESMA's response was generally supportive of the draft guidelines however it cautioned that clarifications will need to be made in the guidelines regarding "public interest derogations" and their application to financial supervisors' legal statutes, missions or objectives. As international co-operation between European Union and non-European Union financial supervisors is essential to achieve effective financial supervision, the derogations must be broad enough to enable European Union financial supervisors to fulfil their missions, whilst complying with applicable European Union data protection requirements.

A copy of the response can be found here.

(viii) Press Release on the Article 29 Working Party's April Plenary Meeting Published

On 19 April 2018, a press release was issued by the Article 29 Working Party following its April plenary meeting which highlights the four major topics addressed at the meeting:

- Published documents including guidelines on consent, transparency and the urgency procedure, revised Binding Corporate Rules ("**BCR**") forms and the working document on BCR approval;
- Establishment of a social media working group to develop a long-term strategy to prevent Facebook and Cambridge Analytica scenarios occurring again;
- Adopted an opinion on the interoperability between European Union information systems for borders, visas and police cooperation, a statement on encryption and addressed letters to the European Union Commissioner among others in relation to compliance with the GDPR; and
- Reviewed of ongoing work of Article 29 and its mandates.

A copy of the press release can be found here.

(ix) Position paper published on the 'derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) of the GDPR

On 19 April 2018, the Article 29 Working Party published its position paper on the 'derogations from the obligation to maintain records of processing activities pursuant to Article 30(5) of the GDPR (the "**Position Paper**").

Article 30(5) of the GDPR provides that the obligation to keep a record of processing activities does not apply to organisations employing less than 250 people save for certain circumstances. The Position Paper provides an interpretation of the derogating provision and offers its opinion for when companies with fewer than 250 employees will not benefit from the derogation and be required to maintain a record of processing activities. Such opinions include that the derogation under Article 30(5) is not absolute and will not absolve an organisation from their obligation when processing data in three scenarios:

- Processing that is likely to result in a risk to the rights and freedoms of data subjects;
- Processing that is not occasional; and
- Processing that includes special categories of data or personal data relating to criminal convictions and offences.

The Position Paper provides examples of processing which falls into the above three categories.

A copy of the Position Paper can be found here.

(x) Q&A published for first European Union-wide legislation on cybersecurity – Directive on Security of Network and Information Systems

On 4 May 2018, the European Commission published a Questions and Answers document ("**Q&A**") on the 'Directive on Security of Network and Information systems' (the "**NIS Directive**") to assist Member States transpose the directive by the deadline of 9 May 2018 having come into force in August 2016.

The NIS Directive is the first European Union wide legislation to come into force on cybersecurity. The chief aim of the NIS Directive is to achieve a consistent and high level of cybersecurity of information and network systems across the European Union. The NIS Directive sets about achieving this aim by:

- Increasing Member States' capabilities of ensuring cybersecurity;
- Increasing European Union level cooperation;
- Imposing incident reporting and risk management obligations on operators of essential and digital services.

The Q&A contains answers to the following questions, a summary of some such answers is provided below:

- How are Member States improving their national cybersecurity capabilities?
- How will Member States cooperate under the NIS Directive?
- How does the cooperation group function? What has it achieved so far?
- How does the Computer Security Incident Response Team network function?
- What are operators of essential services, and what will they be required to do?

They include private businesses and public entities which have an important role to provide security in healthcare, transport, energy, banking, financial market infrastructure, digital infrastructure and water supply. They are required to prevent risks, ensure network and information systems are secure and must handle incidents appropriately.

- How will Member States identify operators of essential services?
- Which sectors does the Directive cover? The list includes credit institutions, trading venues, central counterparties and internet exchange points among the sectors covered by the NIS Directive.
- What kind of incidents should be notified by the operators of essential services?
- What are digital service providers and do they have to notify cyber incidents?
- What are the obligations for digital service providers?
- What is the timeline for implementation of the Directive?

The NIS Directive provides Member States until 9 November 2018 to identify the particular entities which will qualify as "operators of essential services" requiring such entities to implement the appropriate security measures.

For more information please find a copy of the Q&A document here.

(xi) Corrigendum revising Article 37 of the GDPR

On 4 May 2018, the European Parliament published a corrigendum to the GDPR.

While the majority of the changes made to the GDPR simply clarify the existing text, it is worth noting that the corrigendum revises Article 37 of the GDPR which relates to the requirement to appoint a data protection officer ("**DPO**") in certain circumstances.

In particular, while the original text of the GDPR indicated that it was necessary for a data controller or a data processor to appoint a DPO where its core activities involved the processing on a large scale of (i) special categories of personal data and (ii) personal data relating to criminal convictions and offences on a large scale, the corrigendum has revised this text to provide that a DPO must be appointed where it processes either category of personal data on a large scale, meaning that a larger number of organisations may now be required to appoint a DPO. In particular the potential impact of this requirement on regulated entities such as funds, fund service providers and investment firms will need to be carefully assessed.

Where it is determined that a DPO is not required, the rationale behind this decision should be recorded and kept on file.

A copy of the corrigendum is available here.

For further information on the corrigendum, please refer to the following briefing issued by Dillon Eustace, available here.

(xii) Data Protection Commission provides information update prior to GDPR coming into force

On 8 May 2018, the Irish Data Protection Commission ("**DPC**") published a 'GDPR – Information Update 8 May 2018' ("**Update**"). The Update provided a brief summary of the changes the GDPR will bring in relation to:

- The requirement to register data processing activities with the DPC and to pay the applicable fee ceased on 25 May 2018;
- The obligation on the DPC to keep a public register of such processing activities also ceased; and
- The Update also provided information on when an organisation will be required to appoint a designated data protection officer ("**DDPO**") and what such organisations will be required to do such as publishing the details about their DDPO.

A copy of the Update is available here.

(xiii) Irish Data Protection Commission gives guidance to data processors and controllers on obligatory contracts under GDPR

On 9 May 2018, the Irish Data Protection Commission published a 'Practical Guide to Data Controller to Data Processor Contracts under the GDPR (the "**Guidance**").

The Guidance is published to assist data controllers ("**Controllers**") and data processors ("**Processors**") to meet their obligation introduced by the GDPR to enter into legally binding contracts governing the processing of personal data when a Controller instructs a Processor is engaged in the processing of personal data on behalf of a Controller. The Guidance provides:

- The context of this obligation;
- The circumstances whereby Controllers and Processors will be obliged to enter into such contracts; and
- A list of the mandatory provisions which must be included in all such data processing contracts such as that the Processor ensures that any person(s) processing personal data is subject to a duty of confidentiality.

For further information please find the Guidance here.

(xiv) New rules on data protection for the European Union's institutions agreed

On 23 May 2018, agreement on a new regulation on the handling of personal data by the European Union's institutions and other bodies, offices and agencies (together the "**Agencies**") was reached by representatives of the Council and Parliament to align with the GDPR entering force on 25 May 2018. Similar to the GDPR, the Regulation guarantees certain rights of data subjects, provides principles to be followed by the Agencies and enhances the role of data protection officers within each European Union institution and that of the European data protection supervisor.

Before the new rules become binding the text will first undergo linguistic revision and must then be formally adopted by the European Council and Parliament.

For further information please find a copy of the text of the new rules here, and a press release in relation to same here.

(xv) Irish Deputy Data Protection Commissioner lists organisations prone to inspection under GDPR

On 23 May 2018, the Data Protection Commission ("**DPC**") published a press release outlining how it will be enforcing the GDPR. The DPC is responsible for monitoring the proper application of the GDPR by all organisations and businesses who have a presence in Ireland. In the press release the DPC outlines:

- The DPC will not operate a grace period after 25 May 2018 when assessing breaches as the GDPR provided for an implementation period of two years before 25 May 2018
- Measures that can be taken by organisations to minimise and mitigate against potential consequences and sanctions arising from breaches of the GDPR.
- The obligation of transparency ensuring that individuals can easily understand what, how and why their data is being processed will be the primary obligation the DPC ensures is complied with.

The DPC outlined that certain organisations will be more prone to close inspection by the DPC. These include organizations engaged in:

- Intensive online tracking and profiling;
- Online internet platforms (including online apps);
- Organisations which process special categories of data such as health or biometric data or other high-risk personal data such as financial and insurance data;

- Companies which use emerging technologies such as Artificial Intelligence and Internet of Things; or
- Companies which are intensively engaged in automated decision making and profiling of individuals.

For further information on how the DPC has strategised to tackle enforcing the GDPR in Ireland please find a copy of the full press release here.

(xvi) Data Protection Act 2018 signed into law by President Higgins

On 24 May 2018, the long awaited Data Protection Act 2018, sponsored by the Minister for Justice and Equality was enacted (the "**Act**"). The Act, comprising of 232 sections will overhaul the regulatory and enforcement framework and aims to give further effect to existing European legislation. In particular there are five primary aspects to this legislation:

- It repeals the Data Protection Act 1988, as amended, save provisions relating to the processing of personal data for national security, defence and international relations of the State;

- It transposes the Police and Criminal Justice Authorities Directive (2016/680) which regulates the processing of personal data by law enforcement authorities;

- It provides for the limited national derogations from obligations imposed in General Data Protection Regulation ("**GDPR**");

- It provides new enforcement powers and mechanisms for the Data Protection Commission; and

- It provides for the consequential amendments to sixty-five Acts of the Oireachtas while revoking other statutory instruments as a result GDPR and this Act.

The Act legislates for the derogations provided in the GDPR, which include:

- Creating the offence of processing personal data of a child under eighteen years of age for the purposes of direct marketing, profiling or micro-targeting;

- Creating a specific right to be forgotten to children;

- Assigning the Irish Data Protection Commissioner with the task of encouraging the development of codes of conduct to ensure children avail of their rights bestowed by GDPR;

- Enabling fines of up to one million euro to be imposed by public bodies and authorities where a breach occurs;

- Equipping the DPC with enhanced investigative and enforcement powers including the power to examine witnesses under oath, conduct oral hearings and strengthen their search and seizure powers;
- Restricting individual rights of legal privilege;

- Permitting the processing of health data for insurance and pension purposes and data relating to criminal convictions and offences in specific circumstances; and

- Establishing several criminal offences that may be tried by summary conviction or by a trial of indictment with the latter providing a sanction of up to €250,000 and/or five years imprisonment.

For further information a copy of Minister Flanagan's commencement order is available here and a copy of the Act is available here.

(xvii) Irish Commissioner for Data Protection welcomes GDPR

On 25 May 2018, Helen Dixon the Irish Commissioner for Data Protection released a statement welcoming the application of the GDPR.

Dixon's statement demonstrated, amongst other things, satisfaction at the awareness of the GPDR in Ireland, noting that a survey conducted in May 2018 showed that 90% of Irish small and medium enterprises were aware of the GDPR showing a two fold increase from the previous year.

A copy of the press release is available here.

(xviii) European Data Protection Board conducts first plenary meeting

On 25 May 2018, the European Data Protection Board ("**EDPB**") – the successor of the Article 29 Working Party, held its first plenary meeting.

The EDPB is comprised of the heads of national supervisory authorities, the European Data Protection Supervisor ("**EDPS**") and a representative of the European Commission. Its role will include safeguarding the consistent application of the GDPR across Europe but will also involve advising the European Commission on matters including the level of data protection available in third countries and will promote cooperation between national supervisory authorities.

The meeting involved electing the Chair and two Vice-Presidents, signing the Memorandum of Understanding ("**MoU**") with the EDPS and adopting a statement on the ePrivacy Regulation. The MoU outlined how the EDPB and the EDPS will cooperate when carrying out their functions in light of the GDPR.

The EDPB also issued a statement on the 'revision of the ePrivacy Regulation and its impact on the protection of individuals with regard to the privacy and confidentiality of their

communications.' The statement calls for the adoption of the new ePrivacy Regulation promptly and comments on the amendments to the ePrivacy Regulation proposed by co-legislators. Such comments included its support for the European Parliament's strengthening of Article 10 requiring privacy by default in respect of software settings and to provide a technical solution for websites to obtain a valid consent. The EDPB however suggests that the Article should also explicitly apply to operating systems of smartphones, tablets, or any other 'user agent', in order to ensure that communication applications can take into account the choices of their users, no matter what technical means are involved.

For further information please find a copy of the press release here, a copy of the MoU here, and a copy of the statement on the ePrivacy Regulation here.

(xix) Draft Guidelines published for consultation regarding certification criteria under the GDPR by EDPB

On 25 May 2018, the EDPB adopted a draft version of the 'Guidelines on certification and identifying certification criteria in accordance with Articles 42 and 43 of the GDPR' (the "**Guidelines**").

The Guidelines have been published for a public consultation with the EDPB welcoming input from all stakeholders before the deadline of 12 July 2018.

A copy of the draft Guidelines is available here.

(xx) EDPB issues Guidelines on derogations under Article 49

On 25 May 2018, the EDPB adopted the final version of the 'Guidelines on derogations applicable to international transfers' (the "**Guidelines**") under Article 49 of the GDPR. The Guidelines which had been subject to a public consultation have integrated some of the responses into the final version. The Guidelines provide amongst other things:

- Practical examples of the derogations under Article 49 of the GDPR and their use e.g. intra-group use;
- Guidance on the "occasional" and "necessity" test; and
- Specifies that derogations that are not strictly limited to "occasional" or "not repetitive" transfers must be interpreted restrictively.

For further information please find a copy of the Guidelines here.

(xxi) Irish Data Protection Commission publishes guidance on limiting data subject rights and the application of Article 23 GDPR

In May 2018, the Irish Data Protection Commission (the "**DPC**") published guidelines as regards limiting data subject rights and the application of Article 23 of the GDPR.

The GDPR, as per Article 23, prescribes a mechanism to permit the restrictions of data subject rights, provided for in Articles 12 – 22 and Article 34 of the GDPR, in particular and specific circumstances.

Section 60 of the Data Protection Act 2018 gives further effect to Article 23 of the GDPR setting out a specific procedure in relation to bodies who wish to make regulations to restrict the rights afforded by the GDPR under Articles 12 – 22 and Article 34.

The DPC states that these guidelines are to be viewed as a support to those organisations that wish to draft regulations to restrict the application of the rights afforded under Articles 12 – 22 and Article 34 of the GDPR.

The guidelines are available here.

(xxii) Data Protection Commission published list for public consultation of all organisations to be subject to mandatory Data Protection Impact Assessments

On 6 June 2018, the Data Protection Commission published a press release notifying parties that they have launched a public consultation on the draft list of processing operations for which a Data Protection Impact Assessment will be mandatory.

Responses must be submitted prior to the deadline of 4 July 2018.

A copy of the press release announcing the consultation is available here and a copy of the consultation paper is available here.

(xxiii) Proposal for a Cybersecurity Act text is agreed within the European Council and is adopted by the Telecommunications Council

On 8 June 2018, the Telecommunications Council adopted a 'general approach on the Cybersecurity Act proposals'. The approved and adopted text was published by the Council of the European Union on 29 May 2018 entitled the 'General Approach' document "to the proposal for a 'Regulation on ENISA the "European Union Agency for Cybersecurity" and repealing Regulation 526/2013 and on Information and Communication Technology cybersecurity certification' (the "**Cybersecurity Act**").

The proposals for the Cybersecurity Act, originally published in September 2017 by the European Commission, consist of measures to address cyber-attacks and to develop stronger cybersecurity within the European Union. The Cybersecurity Act contains two major strands:

- The introduction of a permanent Agency, the 'European Agency for Cybersecurity' which will be a newer version of the 'European Agency for Network and Information Security ("**ENISA"**) and new powers to enable it to provide effective and efficient

support to Member States, European Union institutions and other stakeholders' efforts to enhance the cybersecurity in the European Union; and

- A European cybersecurity certification framework, which will among other things, verify that products and services in the digital world are cyber secure and address the current market fragmentation by allowing cybersecurity certificates issued under particular schemes to be recognised in all Member States.

The European Parliament will now need to consider the revised text of the Cybersecurity Act and is called on to do so before the end of 2018.

The text adopted by the Council is available here and the Statement here.

(xxiv) European Union –United States Privacy Shield called to be suspended

On 12 June 2018, a press release from the European Parliament reported that a slim majority of the Members of the European Parliament's ("**MEPs**") Civil Liberties Committee ("**LIBE**") voted in favour of suspending the European Commission's Privacy Shield agreement with the United States unless they introduce more stringent data protection safeguards by 1 September 2018. The full house is expected to vote on the matter in July 2018. The vote is another consequence of the Facebook-Cambridge Analytica data breach which demonstrated the shortcomings of the Privacy Shield.

While the vote is not binding, it places pressure on the European Commission to take measures to ensure that the United States fully complies with the GDPR.

The press release further disclosed MEPs concern about the recent adoption of the 'Clarifying Lawful Overseas Use of Data Act' by the United States which will provide the United States with far reaching powers including providing access to United States foreign police to the personal data across borders. This has the potential to have severe implications for GDPR.

For further information please find a copy of the press release here.

(xxv) Ministers publish Data Sharing and Governance Bill 2018

On 12 June 2018, the 'Data Sharing and Governance Bill 2018' (the "**Bill**") was published, following approval by the Government. The Bill has the objective of:

- Regulating the sharing of information which includes personal data, between public bodies which occurs extensively at present;

- Regulating the management of information by public bodies;

- Establishing a base of registries;

- Collecting public service information;
- Establishing a data governance board; and
- Providing for related matters.

A copy of the Bill, as initiated on 12 June 2018, is available here. As of 29 June 2018, the Bill is before Seanad Éireann, Third Stage at the first Additional List of Amendments which is available here.

(xxvi) European Parliament, Council and Commission reach political agreement on free flow of non-personal data

On 19 June 2018, the European Parliament, Council and Commission reached a political agreement on new rules that will allow data to be stored and processed everywhere in the EU without unjustified restrictions. The new rules will:

- Ensure the free flow of data across borders, by setting a framework for data storing and processing across the EU, prohibiting data localisation restrictions;
- Ensure public authorities will be able to access data for scrutiny and supervisory control wherever it is stored or processed in the EU; and
- Encourage creation of codes of conduct for cloud services to facilitate switching between cloud service providers under clear deadlines.

A press release announcing the agreement is available here. An accompanying Q&A fact sheet is available here.

(xxvii) Council Decision adopted the amendment of Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 to the EEA Agreement (General Data Protection Regulation)

On 22 June 2018, the Council of the European Union published the Council Decision (EU) 2018/893 of 18 June 2018 on the position to be adopted on behalf of the European Union within the EEA Joint Committee concerning the amendment of Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 to the EEA Agreement (General Data Protection Regulation).

A copy of the Council Decision (EU) 2018/893 can be accessed here.

(xxviii) European Banking Federation co-signs letter on EU cybersecurity certification proposal

On 25 June 2018, the European Banking Federation ("**EBF**") published an open letter on the EU Cybersecurity certification framework proposal. The EBF co-signed the letter alongside seven other industry associations in key areas for jobs and economic development in Europe.

The letter was published in advance of the expected vote on the proposal on 10 July in the European Parliament's Industry, Research and Energy ("**ITRE**") committee. The open letter, in particular, highlights the following points:

- For it to remain a competitive advantage for industry, a voluntary approach to certification is key;
- Conformity assessment methods and requirements should be defined in the EU cybersecurity certification schemes and not in the regulation itself so as to allow for a fit-for-purpose approach according to risks and use cases; and
- The adoption of the EU cybersecurity certification schemes should include a process to ensure that they are aligned or could take part in existing international mutual recognition agreements to ensure that the EU certificates are globally recognised.

The open letter is available here.

(xxix) Update regarding use of IMI for GDPR purposes

On 27 June 2018, the European Data Protection Board ("**EDPB**") published an update on the use of the Internal Market Information System ("**IMI**") for GDPR purposes.

Under the GDPR, the supervisory authorities of the Member States closely cooperate to ensure a consistent application of the GDPR throughout the European Union. The IMI was chosen as the IT platform to support cooperation and consistency procedures under the GDPR.

On 25 May, the first case was initiated in IMI, and shortly afterwards the supervisory authorities started to cooperate via the system. Currently, more than 30 cross-border cases are under investigation.

The update is available here.

The International Swaps and Derivatives Association ("**ISDA**")

(i) Quarterly Update published by ISDA

On 23 April 2018, ISDA published their annual general meeting issue of ISDA Quarterly.

The issue explores the challenges facing market participants and outlines the steps currently being taken to prepare for possible future scenarios as a result of the current changes the derivatives market is experiencing. Among the topics covered in this issue include driving automation, benchmark reforms and Brexit.

For a copy of the full issue please click here.

(ii) Updates to FAQ for SONIA reforms and ISDA Definitions updates definition of GBP-SONIA COMPOUND

On 23 April 2018, ISDA published the fifty-fifth supplement to the 2006 ISDA Definitions ("**Supplement**") and their Frequently Asked Questions on the Sterling Overnight Interbank Average Rate ("**SONIA**") benchmark reforms and the derivatives industry's implementation of the relevant changes ("**FAQ**").

The Supplement sets out the meaning of 'GBP-SONIA COMPOUND' and a copy of same can be found here.

A copy of the updated FAQ is available here.

(iii) ISDA publishes ISDA Future of Derivatives Survey

On 24 April 2018, ISDA published its 'ISDA Future of Derivatives Survey' ("**Survey**") which notes the following observations made of participants in the derivatives market:

- **Optimism**: with 83.3% believing volumes will increase or remain the same over the next three to five years;
- **Concerns**: with the burden and challenges of regulatory compliance being the highest concern and then benchmark reform and Brexit as the second and third greatest concern respectively. Furthermore 63.9% of respondents felt the cost of using derivatives would increase over the next three to five years;
- **New technologies**: including distributor ledgers, artificial intelligence and cryptocurrencies expected to have potential costs savings affecting all areas of the firms' derivatives over the next three to five years by 52% of respondents.

There were in excess of nine hundred responses in total to the Survey.

For further information please find a copy of the Survey here.

(iv) ISDA Margin Survey reports an increase in the initial margin for non-cleared derivatives rise by 22%

On 25 April 2018, the International Swaps and Derivatives Association ("**ISDA**") published their latest 'ISDA Margin Survey Full Year 2017' (the "**Survey**").

The Survey assesses the impact of regulatory and other changes on collateral practices and analyses the quantity and type of initial margin ("**IM**") and variation margin ("**VM**") for non-cleared derivatives and the IM for cleared transactions.

Figures reported include an increase by nearly 22% between the first quarter and year end regarding the amount of IM collected by the 20 largest market participants.
For further information please find a copy of the Survey here.

(v) Clarity provided by guidelines published for the European Union/United States Derivative trading venues

On 26 April 2018, ISDA published a guide to help market participants navigate the regulatory requirements for trading on European Union/United States recognised derivative trading venues (the "**Guide**").

The common approach for certain European Union/United States derivatives trading venues was announced by the European Commission and United States Commodity Futures and Trading Commission in October 2017. To address the questions raised since its inception the Guide uses a frequently asked questions format to address the common queries of market participants.

The Guide also attempts to set out how cross-border trading will work in practice and observes the effect mutual recognition has on the order flow of trades executed, lists the primary benefits and suggests where further alignment would be welcome.

A copy of the Guide can be found here.

(vi) ISDA speech on benchmark reform initiatives

On 15 May 2018, ISDA published a speech delivered by ISDA Chief Executive, Scott O'Malia on the reforms to strengthen the interest rates on benchmarks, namely the benchmark reform initiatives.

The speech emphasises the importance of understanding the changes and their effects and gives an overview of ISDA's work to ensure a smooth transition from the interbank offered rates ("**IBOR**") to risk-free rates. The work includes:

- Publishing an IBOR benchmark transition report in June 2018; and

- Releasing a market-wide consultation on the credit spread methodology and term fixing adjustments that should apply for derivatives fallbacks, i.e. where an IBOR is permanently discontinued.

For more information a copy of the full speech can be found here.

(vii) ISDA's response to European Commission's Claims Proposal and Securities Communication

On 23 May 2018, ISDA published its response ("**Response**") to the European Commission's Proposal for a Regulation on the 'law applicable to the third-party effects of assignments of claims ("**Claims Proposal**") and the Communication from the Commission on the applicable law to the proprietary effects of transactions in securities ("**Securities Communication**") which were both published on 12 March 2018.

The Response is formatted as a letter and contains ISDA's reaction to primarily the Claims Proposal with a few words on the Securities Communication since it is a closely related measure and also forms part of the 2015 Action Plan of Capital Markets Union. The Response focuses on issues contained in the Claims Proposal and Securities Communication that are pertinent to the derivatives market and raises a concern that the intended scope and drafting of Article 4(2) of the Commission Proposal are not sufficiently clear.

For further information on the Response please find a copy of it here.

(viii) Academic Paper on initial margin framework for non-cleared derivatives

On 25 May 2018, ISDA published an academic paper on the regulatory initial margin framework for the non-cleared derivatives market, by Rama Cont, Chair of Mathematical Finance at Imperial College London (the "**Paper**").

The Paper analyses the reasoning for the ten-day liquidity horizon which non-cleared trades are subjected to under the initial margin rules and argues that it is inappropriate noting that cleared trades are only subjected to five days.

The Paper advocates for an alternative method to calculate the length of the liquidation horizon which involves taking into account the size of the position in comparison to the market depth of the asset, the default management process, as well as the size and complexity of trades.

A copy of the Paper is available here.

(ix) ISDA publishes Digital Iteration of the Common Domain Model

On 5 June 2018, ISDA published the first digital representation of the Common Domain Model ("**CDM**").

The ISDA CDM is intended to provide an industry standard blueprint for how derivatives are traded and managed across the lifecycle, and how each step in the process can be represented in an efficient, standardised fashion.

This initial CDM provides a standard digital representation of events and actions that occur during the life of a derivatives trade, expressed in a machine-readable format. Using this common standard will enhance consistency and facilitate interoperability across firms and platforms, irrespective of the programing language ultimately used for each technology.

This CDM covers interest rate and credit derivatives products, along with an initial set of core business events, including 'new transaction', 'rate reset', 'partial termination', 'allocation', 'novation' and 'compression'.

The Common Domain Model is available on the member section of the ISDA website, which may be accessed here.

Brexit

(i) Draft Report on relationships between the European Union and third countries concerning financial services regulation and supervision

On 4 April 2018, the European Parliament published a draft report on 'relationships between the European Union and third countries concerning financial services regulation and supervision 2017/2253' ("**Report**").

The Report notes the lack of consistency in relation to identifying and recognizing equivalence procedures of third countries and therefore calls on the Commission to adopt a legislative act establishing:

- A clear framework for a transparent, coherent and consistent application of equivalence procedures so that a standardized process when determining equivalence is introduced; and
- The review of equivalence decisions to be performed at least once every three years and in public by the relevant European Supervisory Authority.

A copy of the report can be found here.

(ii) Position paper on impact of Brexit on alternative investment industry published by AIMA

A paper on the impact of Brexit on the alternative investment industry was published by Alternative Investment Management Association ("**AIMA**") on 9 April 2018.

The paper was written to highlight the technical points that ought to be addressed before the exit of the United Kingdom from the Single Market on the assumption that the United Kingdom will exit the European Union with European Union legislation ceasing to apply in the United Kingdom.

It sets out (i) important matters to be addressed during the transition period such as the relationship between United Kingdom firms and European Economic Area investors and clients, (ii) the pieces of legislation most pertinent for the United Kingdom's alternative asset management industry and (iii) suggests how the United Kingdom should tackle restructuring their domestic regulatory framework to comply with the existing European Union regulatory requirements. Finally the paper concludes with technical questions to be addressed in the annex.

A copy of the AIMA's position paper can be found here.

(iii) ISDA publishes memoranda on FAQs - Brexit

On 10 April 2018, ISDA published a memoranda called 'Frequently Asked Questions – Brexit' ("**FAQ**"). The FAQs memoranda looks at the following in relation to Brexit:

- **Contractual points under ISDA Documentation**: Questions include whether Brexit amounts to a force majeure and whether Brexit would trigger an event of default or termination event under the ISDA/Futures Industry Association Client Cleared over-the-counter ("**OTC**") Derivatives Addendum;
- **Access to the European Union financial markets**: Questions included the impact on the ability of financial services firms established in the United Kingdom to enter into OTC derivatives with European Union parties and Brexit's impact on European Market Infrastructure Regulation requirements;
- **Collateral**: The effect of Brexit on parties entered into collateral arrangements;
- **Bank Recovery and Resolution Directive**: The additional provisions to be included in ISDA Master Agreements; and
- **Amendments to ISDA Master Agreement and transfers of existing contracts**.

A copy of the FAQs can be found here.

(iv) EBA publishes opinion on preparations for the withdrawal of the United Kingdom from the European Union

On 25 June 2018, the European Banking Authority ("**EBA**") published an opinion on preparations for the withdrawal of the United Kingdom from the European Union (the "**Opinion**"). The Opinion relates to the risk posed by lack of preparation by financial institutions for the withdrawal.

In its Opinion, the EBA asks national competent authorities to ensure that financial institutions take practical steps now to prepare for the possibility that the UK will leave the EU without either a ratified withdrawal agreement or a transition period in place.

In particular, the Opinion aims to ensure that national competent authorities:

- Put in place appropriate plans to mitigate any risks caused by the departure of the UK from the EU without a ratified withdrawal agreement in an appropriate timeframe; and
- Draw attention to the customer protection obligations of financial institutions in these circumstances.

The Opinion is available here.

Office of the Director of Corporate Enforcement ("**ODCE**")

(i) ODCE publishes Annual Report for 2017

On 29 June 2018, the Office of the Director of Corporate Enforcement ("**ODCE**") published its Annual Report for 2017.

The report provides an overview of the ODCE's enforcement activities, including its use of administrative measures, insolvency-related enforcement measures, exercise of statutory investigative and enforcement powers and referrals to the Director of Public Prosecutions that are reflective of the ODCE's strategic shift towards seeking to confront indications of wrongdoing at the more serious end of the spectrum.

A copy of the Annual Report is available here and an accompanying press release is available here.

Gender Pay Gap Information Bill

(i) Ministers publish General Scheme of Gender Pay Gap Information Bill

On 26 June 2018, the General Scheme of the Gender Pay Gap Information Bill was published. This significant Bill will provide that employers with a certain number of employees (which will be set at 50 or more after an initial period of operation for bigger firms) must publish information on the gender pay gap in their firm.

The General Scheme will now be published and submitted to the Joint Oireachtas Committee on Justice and Equality for pre-legislative scrutiny.

The text of the General Scheme is available here.

Dillon Eustace
30 June 2018

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