

**Investment Firms  
Quarterly Legal and  
Regulatory Update**

**Period covered:  
1 October – 31 December 2019**

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## INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

### 1 MIFID II - EUROPEAN DEVELOPMENTS

#### 1.1 ESMA Opinion clarifies application of pre-trade transparency and price determination in frequent batch auctions

On 4 October 2019, the European Securities and Markets Authority (“**ESMA**”) published an opinion on the application of frequent batch auctions (“**FBAs**”) and the double volume cap (“**DVC**”) mechanism (the “**Opinion**”).

By way of background, FBAs are a type of periodic auction trading system for equity instruments under the MiFID II Directive (2014/65/EU) (“**MiFID II Directive**”) and the Markets in Financial Instruments Regulation (600/2014) (“**MiFIR**”). The Opinion reflects the conclusions set out in the ESMA Report on periodic auctions published in June 2019, which identified several shortcomings in the FBA system in the area of pre-trade transparency and price determination.

ESMA clarifies in the Opinion that when a trading venue is operating a FBA system and it begins the auction process, as soon as a potential match has been identified, the pre-trade transparency requirements will apply. The Opinion also sets out examples of several practices which may undermine the price formation process and details three functionalities which would result in non-price forming FBA systems. ESMA have provided that it will monitor developments in the market, including how trading venues adapt their systems to meet the guidance on the operation of FBA systems. The European body in an accompanying press release provided that it will issue further guidance in order to ensure the consistent application of the MiFID II / MiFIR requirements across the European Union (the “**EU**”) with particular focus on transparency and price formation.

A copy of the Opinion and press release can be accessed [here](#) and [here](#).

#### 1.2 ESMA updates Q&As on Investor Protection and Intermediaries Topics

During the period 1 October 2019 to 31 December 2019, ESMA published an updated version of its questions and answers publication “on MiFID II and MiFIR investor protection and intermediaries topics” (“**Q&As on Investor Protection and Intermediaries Topics**”). The updates made to the Q&As on Investor Protection and Intermediaries Topics are set out below:

- **Question ID: Part 1 Best execution – Question 8 (updated on 3 October 2019)**  
this question asks how both the reports arising from the Regulatory Technical Standards (“**RTS**”) set out below should be made available to the public:
  - Data to be published by Execution Venues on the quality of execution of transactions (Commission Delegated Regulation (EU) 2017/575) (“**RTS 27**”); and
  - Annual publication by investment firms of information on the identity of execution venues and on the quality of execution (Commission Delegated Regulation (EU) 2017/576) (“**RTS 28**”).

- **Question ID: Part 9 Information on costs and charges – Question 31 (updated on 4 December 2019)** this question asks how should the ex-post costs and charges disclosure requirements be applied to the service of portfolio management;
- **Question ID: Part 9 Information on costs and charges – Question 32 (updated on 4 December 2019)** this question asks, when providing the MiFID service of portfolio management, how does the investment firm’s obligation to provide ex-post aggregated costs and charges information under Art. 50(9) of the Commission Delegated Regulation (EU) 2017/565 (the “**MiFID II Delegated Regulation**”) relate to the existing reporting obligations under Article 60 of the same Regulation;
- **Question ID: Part 15 Other issues – Question 1 (updated on 3 October 2019)** this question provides that the term “ongoing relationship” is used in various Articles contained in the MiFID II Directive and the MiFID II Delegated Regulation and asks how should this term be understood; and
- **Question ID: Part 17 Product intervention – Question 1 (updated 4 December 2019)** this question asks which national product intervention measures should a firm apply in the case of cross-border provision of investment services.

A copy of the Q&As on Investor Protection and Intermediaries Topics can be accessed [here](#).

### 1.3 ESMA updates Q&As on Market Structures Topics

During the period 1 October 2019 to 31 December 2019, ESMA published updated versions of its questions and answers publication “On MiFID II and MiFIR market structures topics” (the “**Q&As on Market Structures Topics**”). The updates made to the Q&As on Market Structures Topics are listed below:

- **Question ID: Part 3 Direct Electronic Access (“DEA”) and Algorithmic Trading – Question 31 (updated on 5 December 2019)** this questions asks what types of trading systems does the RTS – Specifying organisational requirements of trading venues (Commission Delegated Regulation (EU) 2017/584) (“**RTS 7**”) apply to and are trading venues without auto-matching trading systems or that explicitly prohibit algorithmic trading subject to RTS 7;
- **Question ID: Part 4 The tick size regime – Question 11 (updated on 2 October 2019)** this question asks are periodic auctions systems subject to the tick size regime; and
- **Question ID: Part 5 Multilateral and bilateral systems – Question 9a (updated on 5 December 2019)** this question asks can member preferencing functionalities be used to formalise pre-arranged transactions.

A copy of the Q&As on Market Structures Topics can be accessed [here](#).

### 1.4 ESMA updates Q&As on Transparency Topics

During the period 1 October 2019 to 31 December 2019, ESMA published an updated version of its questions and answers publication “on MiFID II and MiFIR transparency topics” (“**Q&As**”).

on **Transparency Topics**"). The updates made to the Q&As on Transparency Topics are listed below:

- **Question ID: Part 3 Equity transparency - Question 5 (updated on 2 October 2019)** this question asks which large in scale ("**LIS**") threshold should be used to exclude post-trade LIS transactions when calculating the turnover to be used for the average value of transactions calculation, which determines the standard market size ("**SMS**"); and
- **Question ID: Part 4 Non-equity transparency – Question 19 (updated on 5 December 2019)** this question asks how should trading venues convert LIS and size specific to the instrument ("**SSTI**") thresholds into lots under Article 13(9) of RTS – Transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (Delegated Regulation (EU) 2017/583) ("**RTS 2**").

A copy of the Q&As on Transparency Topics can be accessed [here](#).

### 1.5 **ESMA publishes Annual Report on the application of waivers and deferrals under MiFIR**

On 9 October 2019, ESMA published its annual report on the application of waivers and deferrals under MiFIR (the "**Annual Report**"). Under MiFIR, ESMA is required to monitor the application of pre-trade transparency waivers and deferred trade-publication. As part of this mandate, ESMA submits an Annual Report to the European Commission (the "**Commission**") on how equity and non-equity waivers and deferrals regimes are applied in practice.

The Annual Report includes an analysis based on waiver applications received in the course of the 2017 and 2018 and for which ESMA issued an opinion to the relevant national competent authorities ("**NCAs**") before 31 December 2018. It also includes an overview of the deferral regimes applied across the different Member States distinguishing between on-venue and over-the-counter ("**OTC**") applications. The Annual Report analyses the application of:

- Equity waivers;
- The deferral regime to equity instruments;
- Non-equity waivers; and
- The deferral regime to non-equity instruments.

A copy of the Annual Report can be accessed [here](#). ESMA will publish its next Annual Report in 2020.

### 1.6 **ESMA updates Q&As on MiFIR Data Reporting**

During the period 1 October 2019 to 31 December 2019, ESMA published an updated version of its questions and answers publication "On MiFIR Data Reporting" (the "**Q&As on MiFIR Data Reporting**"). Any updates made to the Q&As on MiFIR Data Reporting are listed below:

- **Section 17 – FX forward reporting – Question 1 (updated on 7 October 2019)** this question asks how should a transaction carried out on a trading venue involving an FX forward be reported under Article 26 and Article 27 of MiFIR;
- **Section 18 – Reporting of reference rates not included in RTS 22 & 23 (updated on 6 December 2019)** this question asks for clarity on the reference rate €STR; and
- **Section 21 - Transaction reporting – Question 2 (updated on 7 October 2019)** this question asks how the different national identifiers specified in Annex II of RTS - regulatory technical standards for the reporting of transactions to competent authorities (Delegated Regulation (EU) 2017/590) ("**RTS 22**") are represented.

A copy of the Q&As on MiFIR Data Reporting can be accessed [here](#).

## 1.7 New Regulatory Framework for Investment Firms signed into Law

At the beginning of the year the Council of the European Union (the "**Council**") announced its endorsement of a package of measures, comprised of the proposed Investment Firms Regulation ("**IFR**") and the proposed Investment Firms Directive ("**IFD**"), which are designed to make "the rules applicable to investment firms more proportionate and more appropriate to the level of risk which they take" (see our Articles of January 2019 [here](#) and December 2019 [here](#)).

The IFR and the IFD will, for most existing investment firms, replace the existing prudential requirements for investment firms set out in the Capital Requirements Regulation (575/2013) ("**CRR**") and Directive 2013/36/EU ("**CRD IV**"), and will also amend the MiFID II Directive and MiFIR.

Under the new proposed regulatory regime, certain systemically relevant investment firms which engage in "bank-like" activities and services will be reclassified as "credit institutions" (Class 1) and will be fully subject to the prudential requirements laid down in CRR and CRD IV. All other investment firms which are not considered systemic (Classes 2 and 3) will be subject to a new tailored regime with bespoke and lighter prudential requirements.

In addition, the new proposed regime will tighten the requirements around equivalence decisions taken in relation to third country (i.e. non-EU) investment firms and will grant additional powers to the Commission in this regard.

The new rules were signed by European co-legislators on 27 November 2019 and the IFD and the IFR were published in the Official Journal of the European Union on 5 December, both are expected to come into force 18 months after the 20th day of their publication in the Official Journal.

Therefore the new regime is likely to come into force in late June 2021. Further details in respect of the new regime will continue to emerge by way of technical standards and guidance which the European Banking Authority ("**EBA**") is mandated to provide.

The final text of the IFR can be accessed [here](#) and the final text of the IFD can be accessed [here](#).

## 1.8 ESMA consults on position limits in commodity derivatives

On 5 November 2019, ESMA launched a consultation paper – MiFID II review report on position limits and position management Draft Technical Advice on weekly position reports (the “**Consultation Paper**”). The Consultation Paper analyses the impact of position limits on market abuse and orderly pricing and settlement as well as the impact the position limit regime may have had on less liquid commodity derivative contracts.

The Consultation Paper is seeking stakeholders’ views on some proposed changes to the legal framework in relation to:

- Limiting the scope of commodity derivatives subject to position limits to key contracts;
- Introducing a limited position limit exemption for financial counterparties;
- Enhancing convergence in the implementation of position management regimes by trading venues; and
- Amending the quantitative thresholds that trigger publication of weekly position reports by trading venues so that more transparency is available for commodity derivative contracts traded in the EU27.

The feedback received for the Consultation Paper will be sent to the Commission in its final report with the closing date having past on the 8 January 2020.

A copy of the Consultation Paper can be accessed [here](#).

## 1.9 SMSG advice on ESMA’s Consultation Paper on draft guidelines on certain aspects of the MiFID II compliance function

By way of background, on 15 July 2019 ESMA published a consultation paper on draft guidelines on certain aspects of the MiFID II compliance function requirements (the “**Consultation Paper**”). The Consultation Paper is aimed at enhancing clarity and fostering convergence in the implementation of certain aspects of the new MiFID II compliance function requirements to replace the existing ESMA guidelines on the same topic, which was issued in 2012. The Consultation Paper builds on the text of the 2012 ESMA guidelines and takes into account new requirements under the MiFID II Directive.

On 31 October 2019, the Securities and Markets Stakeholders Group (“**SMSG**”) issued advice to ESMA on the Consultation Paper (the “**Advice**”). The Advice provided that SMSG welcomed the general approach followed by ESMA in not introducing a completely different regime, but rather choose to build upon the text of the 2012 ESMA guidelines by way of refining and supplementing the existing document where necessary.

SMSG queries whether it is advisable to include in the supporting guidelines a reference to specific practices of competent authorities as SMSG believes that the inclusion of such practices in the guidelines can create a behavioural expectation for companies and supervisory authorities. The Advice suggests that should ESMA keep the additional information on the different approaches of the various NCAs in the guidelines, it should be well highlighted in the text through the use of different typefaces that these are merely illustrative indications.

A copy of the Advice can be accessed [here](#).

#### **1.10 EFAMA Response to the ESMA Consultation Paper on guidelines on certain aspects of the MIFID II compliance function requirements**

On 15 October 2019, the European Fund and Asset Management Association (“**EFAMA**”) published its response (dated 14 October 2019) to ESMA’s consultation paper on guidelines on certain aspects of the MIFID II compliance function requirements (the “**Consultation Paper**”).

In the general remarks of its response, EFAMA stated that the compliance function is a crucial function in the asset management industry in that the function is responsible for identifying, assessing, monitoring and reporting on the firm’s compliance risk, among others its obligations under MiFID II.

EFAMA welcomed the review process of the current guidelines as it stated that this could foster further convergence in the implementation of certain aspects of the new MiFID II compliance function requirements.

A copy of the full response can be accessed [here](#).

#### **1.11 ESMA publishes latest Double Volume Cap Data**

ESMA published the updates of the latest set of data regarding the DVC under the MiFID II Directive in the fourth quarter of 2019, specifically on 8 November and 6 December.

The MiFID II Directive introduced the DVC to limit the amount of dark trading in equities allowed under the reference price waiver and the negotiated transaction waiver. The DVC mechanism is set out in Article 5 of MiFIR with the aim of limiting the trading under the reference price waiver (Article 4(1)(a) of MiFIR) and the negotiated transaction waiver for liquid instruments (Article 4(1)(b)(i) of MiFIR) in an equity instrument.

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.

In the updates published on 8 November and 6 December, ESMA amended the suspension files relating to the DVC data which it had originally published on 7 August 2018. The suspension file, which is required under MiFIR, contains a list of International Securities Identification Numbers (“**ISINs**”) which are suspended from trading. As of 6 December, there was a total of 418 instruments suspended.

The data files and the suspension files can be found [here](#).

#### **1.12 ESMA recommends real-time consolidated tape for equity**

Following the launch of a public consultation in the third quarter 2019, ESMA on 5 December 2019, published its first review report on the MiFID II Directive and MiFIR regarding the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments (the “**Report**”).

The Report builds upon the extensive feedback received from a public consultation from market participants representing data users, trading venues and data vendors and also integrates the advice received from the SMSG. The Report contains some of the following sections:

- **Section 2** - which presents the scope of the issues covered in the Report such as the development of prices for pre- and post-trade transparency data and the functioning of consolidated tape;
- **Section 3** - which presents ESMA's assessment and recommendations on the development of prices for market data and the application of the main MiFID II/MiFIR provisions aiming at reducing the cost of market data such as, the requirement to publish market data on a reasonable commercial basis. The requirement to provide market data in a disaggregated format and the requirement to make market data available free of charge 15 minutes after publication; and
- **Section 4** - which presents ESMA's assessment and recommendations of the functioning of the consolidated tape, in particular analysing the reasons for the lack of an equity consolidated tape in today's environment, the availability, the timeliness and the quality of the current data offer for post-trade transparency data in equity markets and the risks of not having an equity consolidated tape. In the Report, ESMA identifies potential success factors for establishing an equity consolidated tape. This section also contains an impact assessment of Brexit on establishing an equity consolidated tape.

ESMA has set out that it considers that currently the reasonable commercial basis ("**RCB**") information provided by trading venues, approved publication arrangements ("**APAs**") and systematic internalisers ("**SIs**") does not enable users to understand market data policies and how the price for market data is set. ESMA has provided that intends to develop supervisory guidance in 2020 to improve the usability and comparability of the information disclosed and it recommends certain targeted legislative changes further reinforcing the current RCB approach.

A copy of the Report can be accessed [here](#).

### 1.13 EBA releases a revised version of the Single Rulebook Q&As – CRR

During the period 1 October 2019 to 31 December 2019, the EBA updated its Single Rulebook Q&As – the CRR Regulation (the "**CRR Q&As**"). We have set out below some of the updates made to the CRR Q&As in the last quarter:

#### Topic - Supervisory reporting

- **Question ID: 2014 1530** (as updated on 4 October 2019) this question relates to the definition of a special purpose vehicle ("**SPV**") as a financial institution;
- **Question ID: 2017 3601** (as updated on 4 October 2019) this question relates to the reporting of interest income and interest expense from hedging derivatives;

- **Question ID: 2015 2284** (as updated on 4 October 2019) this question relates to the financial reporting (“**FINREP**”) Table 2: Interest income & Expense: Derivatives – Hedge accounting, interest rate risk;
- **Question ID: 2017 3553** (as updated on 11 October 2019) this question relates to reporting the gross carrying amount of the credit-impaired financial assets measured at amortised cost (other than purchased or originated credit-impaired financial assets) in the context of the new FINREP framework;
- **Question ID: 2015 1880** (as updated on 13 December 2019) this question relates to supervisory reporting of institutions on "collateral received" and "financial guarantees received" in columns 170 and 180 of template F 19.00;
- **Question ID: 2015 1844** (as updated on 13 December 2019) this question relates to the changes of the counterparty sector in template F 12.00;
- **Question ID: 2014 1464** (as updated on 13 December 2019) this question relates to inconsistency between validation rules and data point model categorisation in template C 08.02 - Col 080; and
- **Question ID: 2014 1661** (as updated on 13 December 2019) this question relates to FINREP in template F9.2.

#### **Topic - Accounting and auditing**

- **Question ID: 2015 2231** (as updated on 4 October 2019) this question relates to retained earnings in common reporting (“**COREP**”)/FINREP.

#### **Topic - Credit risk**

- **Question ID: 2017 3307** (as updated on 4 October 2019) this question relates to how to fill out the COREP C 28.00 for an exposure secured by an insurance wrapper; and
- **Question ID: 2018 4300** (as updated on 15 November 2019) this question relates to the immovable property collateral under the standardised approach & credit risk mitigation principles.

#### **Topic – Market Risk**

- **Question ID: 2018 4021** (as updated on 29 November 2019) this question relates to separate internal models approach approval or summation approach for market risk at consolidated level; and
- **Question ID: 2019 4458** (as updated on 29 November 2019) this question relates to the offset of additional value adjustments against day one profits deferral.

#### **Topic – Other Topics**

- **Question ID: 2018 4260** (as updated on 6 December 2019) this question asks what the definition of a local firm is under article 4(1)(4) of CRR; and

- **Question ID: 2018 3663** (as updated on 13 December 2019) this question asks what the definition of an investment firm is under article 4(1)(2)(c) of CRR.

A copy of the full list of CRR Q&A can be accessed [here](#).

#### 1.14 ESMA amends CRR standard on main indices and recognised exchanges

On 12 December 2019, ESMA issued the Final Report – Amendments to Commission Implementing Regulation (EU) 2016/1646 (the “**Final Report**”). By way of background, the Commission Implementing Regulation (EU) 2016/1646 (the “**Commission Implementing Regulation**”) specifies the main indices and recognised exchanges under the CRR relevant to credit institutions and investment firms subject to prudential requirements and trading venues.

ESMA stated that it had introduced these amendments in order to ensure that the most relevant criteria are applied to specify the main indices, and that the list of recognised exchanges is updated to reflect legislative amendments and changes in market structures.

In addition, ESMA’s amendments seek to provide credit institutions and investment firms with the option to use, as eligible collateral, instruments traded on new European exchanges, as well as instruments traded on third-country exchanges, from those jurisdictions for which the Commission has adopted equivalence decisions.

ESMA included two versions of the amended Implementing Technical Standards (“**ITS**”) in the Final Report due to the uncertainty as to when the UK will leave the EU. The first version includes UK exchanges and is set to be used in case there is a Brexit deal. The second version of the ITS excludes UK exchanges and should be used in case of a no-deal outcome and in the absence of a Commission Equivalence decision in respect of the UK.

The Final Report along with the draft ITS seeking to amend the Commission Implementing Regulation has been submitted to the Commission which now has three months to decide whether to endorse the proposed amendments.

A copy of the Final Report can be accessed [here](#).

#### 1.15 ESMA announces MiFID scheduled publication dates for 2020

On 19 December 2019, ESMA published a calendar for transparency publications in 2020 relating to the transparency and the SI regime under the MiFID II Directive and MiFIR. ESMA has provided that the calendar will assist market participants planning for the next 12 months in that it relates to instruments reference data, transparency calculations and DVC calculations.

ESMA has stated that it will publish for the first-time transparency and SIs calculations for derivatives. During 2019, publications on derivatives were not executed due to data quality problems and the operational impact on ESMA of contingency preparations for the announced no-deal Brexit dates.

In an accompanying press release, it was announced that ESMA and the NCAs are working to publish this information from April 2020. However, it was added that the scope of derivatives classes to be published will not be entirely complete, because of "pending quality issues".

The calendar can be accessed [here](#) and the accompanying press release can be accessed [here](#).

### **1.16 European System of Financial Supervision (“ESFS”) legislative reforms package published in the Official Journal of the European Union**

On 27 December 2019, Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance and the MiFID II Directive and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (the “**Directive**”) was published in the Official Journal of the European Union.

The most pertinent amendment contained in the Directive from a MiFID perspective is the intended shift in the data gathering powers, authorisation and supervision of data reporting service providers (“**DRSPs**”) from NCAs to ESMA. The Directive will transfer the authorisation and supervision of DRSPs to ESMA, save for Approved Reporting Mechanisms or Approved Publication Arrangements that benefit from a derogation under MiFIR.

Accordingly, the provisions relating to the operational requirements for DRSPs and the competence of competent authorities with respect to DRSPs set out in the MiFID II Directive will be deleted and will be reintroduced under MiFIR.

The Directive provides that Member States must apply the measures concerning the amendments to the MiFID II Directive from 1 January 2022.

A copy of the Directive can be accessed [here](#).

## **2 EUROPEAN MARKETS INFRASTRUCTURE REGULATION (“EMIR”)**

### **2.1 ESMA publishes consultation paper on draft technical advice on commercial terms for providing clearing services under EMIR**

On 3 October 2019, ESMA published a consultation paper on its draft technical advice to the European Commission regarding commercial terms for providing clearing services under Regulation (EU) 648/2012 (“**EMIR**”) as revised by Regulation (EU) 2019/834 (the “**EMIR Refit Regulation**”).

The consultation closed on 2 December 2019 and ESMA expects to publish a final report and to submit the technical advice to the European Commission in the first quarter of 2020.

The consultation paper can be accessed [here](#).

### **2.2 ESMA publishes consultation paper on MiFIR alignment following introduction of EMIR Refit Regulation**

On 4 October 2019, ESMA published a consultation paper on the alignment of MiFIR with the changes introduced by the EMIR Refit Regulation. ESMA proposes that the scope of counterparties which are subject to the MiFIR trading obligations for derivatives should be aligned with the scope of counterparties subject to the clearing obligation for derivatives as revised by the EMIR Refit Regulation.

The consultation closed on 22 November 2019 and ESMA is expected to submit its final report to the European Commission in early 2020.

The consultation paper can be accessed [here](#).

### **2.3 EMIR 2.2 Regulation**

On 12 December 2019, the Regulation amending the EMIR supervisory regime for EU and third country central counterparties (“**CCPs**”) (“**EMIR 2.2**”) was published in the Official Journal of the European Union.

EMIR 2.2. introduces new rules on the classification and supervision of CCPs, a new tiering system of classification for third country CCPs and it establishes a CCP Supervisory Committee to manage the new tiering system and promote supervisory convergence.

On 11 November 2019, ESMA published three reports relating to EMIR 2.2 containing technical advice to the European Commission:

- [Final report](#) on criteria for tiering under Article 25(2a) of EMIR 2.2: ESMA proposes a range of indicators to consider in determining a third country CCP’s tiering and provides guidance on what it may consider in this assessment;
- [Final report](#) on comparable compliance under Article 25a of EMIR 2.2: ESMA proposes that tier 2 third country CCPs will be required to evidence how compliance with the requirements applicable in their home country also satisfies the requirements under EMIR 2.2;
- [Final report](#) on ESMA fees for third country CCPs under EMIR 2.2: ESMA proposes the fees to be charged for each category of third country CCP, along with the payment and reimbursement conditions.

ESMA has sent the technical advice to the European Commission so it can assist with the development of corresponding delegated legislation under EMIR 2.2, which the Commission will consult on in due course.

EMIR 2.2 can be accessed [here](#).

### **2.4 Joint Committee of ESAs publishes final report on EMIR RTS on amendments to the bilateral margin requirements**

On 5 December 2019, the Joint Committee of European Supervisory Authorities (“**ESAs**”) published its final report on RTS it has developed under Article 11(15) of EMIR. The proposed draft RTS propose amendments to the Commission Delegated Regulation (EU 2016/2251) on bilateral margining in view of the international framework agreed by the Basel Committee on Banking Supervision (“**BCBS**”) and IOSCO.

In addition, the Joint Committee published joint statement on the introduction of fallbacks in OTC derivative contracts and the requirement to exchange collateral. The Joint Committee is of the view that this is useful to ensure legal certainty on the issue in case, or to the extent, it is not already provided in some jurisdictions.

The final report can be accessed [here](#) and the joint statement can be accessed [here](#).

## 2.5 European Commission adopts two Delegated Regulations supplementing EMIR on risk mitigation techniques

On 16 December 2019, the European Commission adopted a Delegated Regulation supplementing EMIR with regard to RTS on the specification of criteria for establishing the arrangements to adequately mitigate CCP credit risk associated with covered bonds and securitisations and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178. It can be accessed [here](#).

On 17 December 2019, the European Commission adopted a Delegated Regulation amending Commission Delegated Regulation (EU) 2016/2551 which contains RTS supplementing EMIR on risk mitigation techniques for OTC derivative contracts, in connection with certain simple, transparent and standardised securitisations for hedging purposes. It can be accessed [here](#).

The Delegated Regulations will be considered by the European Parliament and the Council of the European Union and will enter into force 20 days after their publication in the Official Journal of the European Union.

## 2.6 Trade Associations publish a master regulatory reporting agreement for reporting under EMIR and SFTR

On 19 December 2019, the Trade Associations (made up of the AFME, the FIA, the ICMA, the ISLA and the ISDA) published a new master regulatory reporting agreement (“**MRRA**”), accompanied by an explanatory memorandum, intended to simply reporting across different EU regulatory regimes.

The MRRA is drafted to cover market participants’ regulatory reporting obligations in respect of derivative transactions under EMIR and/or securities financing transactions under Regulation (EU) 2015/2365 (the “**Securities Financing Transaction Regulation**” or “**SFTR**”), entered into under standard industry documentation.

The MRRA can be accessed [here](#) and the explanatory memo can be accessed [here](#).

## 3 SECURITISATION REGULATION

### 3.1 Delegated and Implementing Acts supplementing the Securitisation Regulation published by the European Commission

A number of Delegated Regulations which supplement Regulation (EU) 2017/2402 (the “**Securitisation Regulation**”) with regard to regulatory technical standards have been published by the European Commission during the period 1 October 2019 to 31 December 2019.

In addition, a number of Commission Implementing Regulations which supplement the Securitisation Regulation with regard to implementing technical standards have been published by the European Commission during this period.

The Delegated and Implementing Acts can be accessed [here](#).

### **3.2 ESMA publishes updated version of Q&As on Securitisation Regulation**

On 15 November 2019, ESMA published an updated version of its Q&As on the Securitisation Regulation.

The updated Q&As can be accessed [here](#).

## **4 BENCHMARKS REGULATION**

### **4.1 European Commission publishes consultation on review of the Benchmarks Regulation**

On 11 October 2019, the European Commission published a consultation on a review of Regulation (EU) 2016/1011 (the “**Benchmarks Regulation**”).

The consultation closed on 6 December 2019 and the European Commission is expected to submit a report to the European Parliament and Council of the European Union by 1 January 2020.

The consultation can be accessed [here](#).

### **4.2 ESMA publishes updated version of its Q&As on the Benchmarks Regulation**

On 11 December 2019, ESMA published an updated version of its Q&As on the Benchmarks Regulation.

The updated Q&As can be accessed [here](#).

## **5 EUROPEAN SECURITIES AND MARKETS AUTHORITY (“ESMA”)**

### **5.1 ESMA publishes final report on draft RTS under Article 25 of the ELTIF Regulation**

On 10 December 2019, ESMA published its final report on draft RTS issued under Regulation (EU) 2015/760 (the “**ELTIF Regulation**”) in respect of European long-term investment funds (“**ELTIFs**”). The report addresses cost disclosure requirements applicable to ELTIF managers.

Upon completion of the review of the Delegated Regulation 2017/653 (the “**PRIIPS Delegated Regulation**”), ESMA will assess the most appropriate way to finalise the draft RTS as regards applicable cost disclosure requirements for ELTIFs. Based on this assessment, ESMA may carry out another round of consultation on the revised proposed RTS.

The report can be accessed [here](#).

## **6 INTERNATIONAL ORGANISATION OF SECURITIES COMMISSIONS (“IOSCO”)**

### **6.1 IOSCO publishes final report on framework for assessing leverage in investment funds**

On 13 December 2019, IOSCO published its final report setting out recommendations for a “two step” framework assessing leverage in investment funds that may pose stability risks as follows:

- Step 1 indicates how regulators could exclude from consideration funds that are unlikely to produce financial stability risks, while identifying a subset of funds for further analysis that may pose such risks.
- Step 2 consists of a risk-based analysis of the subset of funds identified in Step 1. A set of tools for each step is offered, which can be adjusted to the needs of a jurisdiction and the characteristics of funds.

IOSCO shall, incrementally over time, publish an annual report reflecting leverage trends within the asset management industry at the global level. The first report is scheduled to be published in 2021.

The report can be accessed [here](#).

## **7 MARKET ABUSE REGULATION (“MAR”)**

### **7.1 ESMA publishes consultation paper on MAR review report**

On 3 October 2019, ESMA published a consultation paper on the review report of Regulation (EU) 596/2014 (“**MAR**”). The consultation paper covers the scope of MAR and analyses whether it should be extended to include spot FX contracts. It also addresses buy-back programmes, inside information, collective investment undertakings and market surveillance by national competent authorities.

The consultation closed on 29 November 2019 and can be accessed [here](#).

### **7.2 ESMA publishes final report with draft RTS on co-operation arrangements under MAR**

On 8 October 2019, ESMA published a final report containing draft RTS on co-operation arrangements under MAR between national competent authorities and the supervisory authorities of third countries.

ESMA has submitted the draft RTS to the European Commission for endorsement.

A copy of the final report can be accessed [here](#).

## **8 PROSPECTUS REGULATION**

### **8.1 ESMA publishes guidelines on risk factors under the Prospectus Regulation**

On 1 October 2019, ESMA published its final guidelines on risk factors under Regulation (EU) 2017/1129 (the “**Prospectus Regulation**”).

The final guidelines can be accessed [here](#).

### **8.2 ESMA publishes updated list of national thresholds below which the obligation to publish a prospectus does not apply**

On 2 December 2019, ESMA published an updated list of national thresholds below which the obligation to publish a prospectus does not apply.

ESMA’s list can be accessed [here](#).

### 8.3 ESMA publishes updated version of its Q&As on the Prospectus Regulation

On 4 December 2019, ESMA published an updated version of its Q&As on the Prospectus Regulation.

A copy of the Q&As on the Prospectus Regulation can be accessed [here](#).

### 8.4 ESMA publishes final report on draft RTS amending Prospectus Delegated Regulation

On 4 December 2019, ESMA published its final report on the draft RTS which makes minor amendments to Delegated Regulation (EU) 2019/979 (the “**Prospectus Delegated Regulation**”).

The report can be accessed [here](#).

## 9 CENTRAL BANK OF IRELAND

### 9.1 Central Bank’s Derville Rowland delivers speech on the Senior Executive Accountability Regime

On 22 October 2019, Derville Rowland, Director General of the Central Bank of Ireland (the “**Central Bank**”), delivered a speech in relation to the proposed Senior Executive Accountability Regime (“**SEAR**”). In her speech, Ms. Rowland indicates that the Central Bank the proposed SEAR regime will be complimented by enhancements to the current Fitness & Probity (“**F&P**”) regime.

The speech can be accessed [here](#).

### 9.2 Central Bank launches ASP sanctions guidance

On 14 November 2019, the Central Bank launched ASP sanctions guidance, providing detail on the sanctioning factors which it takes into account when imposing sanctions in enforcement cases under its Administrative Sanctions Procedure (“**ASP**”).

The ASP sanctions guidance can be accessed [here](#).

In addition, please see the Dillon Eustace article entitled ‘Central Bank launches ASP Sanctions Guidance’ (15 November 2019) which can be accessed [here](#).

### 9.3 Central Bank publishes updated Minimum Competency Code 2017 and Minimum Competency Regulations 2017 Q&As

On 6 December 2019, the Central Bank published an updated version of its Minimum Competency Code 2017 and Minimum Competency Regulations 2017 Questions and Answers (“**MCC Q&As**”). The updates reflect the entry into force of Directive 2014/17/EU (the “**Mortgage Credit Directive**”), the MiFID II Directive and Directive (EU) 2016/97 (the “**Insurance Distribution Directive**”).

The updates are as follows:

- Q7.4: This has been amended and concerns the application of the Minimum Competency Code (“**MCC**”) and the Minimum Competency Regulations 2017 to (re)insurance

undertakings and intermediaries authorised, licenced or registered by the Central Bank when providing services, either on a freedom of establishment or freedom of services basis, in other EU/EEA member states. While the Central Bank considers that the appropriate competency standards to apply are the corresponding requirements of the member state in which the services are provided, it should be noted that pursuant to the Insurance Distribution Directive, it is necessary for such firms to be able to demonstrate to the Central Bank their compliance with the relevant professional knowledge and competence requirements, and that, where applicable, employees of (re)insurance undertakings and intermediaries undertake fifteen hours of professional training or development per year.

- Q9.5: This is a new question and addresses whether it is possible to complete more than one hour of CPD per year relating to ethics. The Central Bank confirms that, in relation to persons exercising certain controlled functions within a firm, there is a minimum of one hour in ethics to be completed per year. While this is not a limit, the overall CPD completed by an individual must cover a range of the competencies required for the activities undertaken by that individual.
- Question 9.6: This is a new question and clarifies whether modules relating to culture, inclusion and diversity can be included to meet CPD requirements. The Central Bank confirms that these topics would not meet the requirements of the MCC and that while they are important for all regulated firms, they relate to the general operation of the firm rather than the technical knowledge of the individual undertaking a controlled function within the scope of the MCC.

The updated MCC Q&As can be accessed [here](#).

## **10 ANTI-MONEY LAUNDERING (“AML”) / COUNTER-TERRORIST FINANCING (“CTF”)**

### **10.1 Joint Committee of ESAs publishes opinion on money laundering and terrorist financing risks**

On 4 October 2019, the Joint Committee of ESAs published an opinion on current and emerging money laundering and terrorist financing risks affecting the European Union’s financial sector.

The opinion identifies the primary cross-sectoral risks which arise from Brexit, new technologies, virtual currencies, legislative divergence, divergent supervisory practices weaknesses in internal controls, terrorist financing and de-risking. The Joint Committee has also proposed a number of potential mitigating actions for national competent authorities.

The opinion can be accessed [here](#).

### **10.2 Council of the European Union publishes note on the identification of high-risk third countries under MLD4**

On 10 October 2019, the Council of the European Union published a note to COREPER relating to the identification of high-risk third countries under Article 9 of Directive (EU) 2015/849 (“**MLD4**”).

The note attaches an outline by the European Commission of the key elements of a refined methodology for identifying high-risk third countries. These include the following:

- Interaction between the European Union and the Financial Action Task Force (“FATF”) listing processes;
- Enhanced engagement with the third countries, through a staged approach; and
- Consultation with experts of member states at every stage of the process, including consultation with law enforcement agencies, intelligence services and financial intelligence units.

The note can be accessed [here](#).

### **10.3 FATF publishes list of jurisdictions with AML/CFT deficiencies**

On 18 October 2019, the FATF published a list identifying several jurisdictions that have strategic AML/CFT deficiencies. Each jurisdiction has provided a written high-level political agreement to address the identified deficiencies. The jurisdictions are:

- The Bahamas;
- Botswana;
- Cambodia;
- Ghana;
- Iceland;
- Mongolia;
- Pakistan;
- Panama;
- Syria;
- Trinidad and Tobago;
- Yemen; and
- Zimbabwe.

Additionally, the FATF confirmed that three jurisdictions, Ethiopia, Sri Lanka and Tunisia are no longer subject to monitoring. The FATF continues to identify additional jurisdictions, on an ongoing basis, that pose a risk to the international financial system.

The FATF publication can be accessed [here](#).

### **10.4 FATF issues public statement on DPRK and Iran**

On 18 October 2019, the FATF issued a public statement calling on its members and other jurisdictions to apply counter-measures to protect the international financial system from the

ongoing and substantial money laundering and financing of terrorism risks. The specific risks apply to the Democratic Peoples' Republic of Korea (“**DPRK**”) and Iran.

The FATF urges all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the DPRK, including DPRK companies, financial institutions, and those acting on their behalf, and to adopt all measures to facilitate targeted financial sanctions.

In June 2016, the FATF welcomed Iran's high-level political commitment to address its strategic AML/CFT deficiencies. However in October 2019, the FATF noted that there are still items not completed. The FATF urges all jurisdictions to continue to advise their financial institutions to apply enhanced due diligence with respect to business relationships and transactions with natural and legal persons from Iran, consistent with FATF Recommendations.

The FATF publication can be accessed [here](#).

#### **10.5 FATF publishes report on best practices on beneficial ownership for legal persons**

On 25 October 2019, the FATF published a report on best practices on beneficial ownership for legal persons. The report has been published in advance of Directive (EU) 2018/843 (“**MLD5**”) which is required to be transposed by 10 January 2020.

The results of the FATF mutual evaluations indicate that jurisdictions find it challenging to achieve a satisfactory level of transparency regarding the beneficial ownership of legal persons. The paper aims to provide suggested solutions, supported by cases and examples of best practices from delegations.

The paper also identifies suggested key features of an effective system, which include adequate risk assessment; adequacy, accuracy and timeliness of information on beneficial ownership; access by competent authorities; forbidding or immobilising bearer shares and nominee arrangements; and effective, proportionate and dissuasive sanctions.

The paper can be accessed [here](#).

#### **10.6 FATF publishes consultation on draft guidance on digital identity**

On 31 October 2019, the FATF published a consultation on draft guidance on digital identity. The guidance is intended to clarify how digital ID systems can be used to conduct certain elements of customer due diligence in order to help governments, financial institutions and other relevant entities to apply a risk-based approach to the use of digital identification for customer due diligence.

The FATF sought feedback on particular areas and specific proposals regarding the text of the draft guidance. In particular, the FATF sought to hear from financial institutions, virtual asset service providers and other regulated entities.

The consultation closed on 29 November 2019 and can be accessed [here](#).

#### **10.7 BCBS publishes consultation on guidelines on cooperation between prudential and AML/CFT supervision**

On 8 November 2019, the BCBS published a consultation on guidelines on the interaction and cooperation between prudential and AML/CFT supervision.

The proposed guidelines are intended to enhance the effectiveness of the supervision of banks' money laundering and financing of terrorism risk management, consistent with the goals and objectives of the standards issued by the FATF.

The BCBS is welcoming feedback until 6 February 2020. The consultation can be accessed [here](#).

#### **10.8 FATF publishes follow up report on Ireland's AML and CFT measures**

On 12 November 2019, the FATF published a follow-up report and technical compliance re-rating in relation to Ireland's anti-money laundering and counter-terrorist financing measures.

The report provides that Ireland is currently compliant with 17 recommendations of the 40 FATF recommendations and largely compliant with 16 of them. It remains partially compliant with 7 of the 40 recommendations.

Ireland will move from enhanced to regular follow-up and will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

The report can be accessed [here](#).

#### **10.9 Publication of European Union (Money Laundering and Terrorist Financing) Regulations 2019**

On 25 November 2019, the European Union (Money Laundering and Terrorist Financing) Regulations 2019 [S.I. No. 578] (the "**Regulations**") were published. The Regulations amend the primary AML and CFT legislation in Ireland and have been introduced to give further effect to MLD4.

The Regulations came into effect on 18 November 2019 and can be accessed [here](#).

Please see the Dillon Eustace article entitled 'New AML/CFT requirements' (3 December 2019) for further details which can be accessed [here](#).

#### **10.10 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) (Cross Border Crime Agency) Bill 2019**

On 19 December 2019, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) (Cross Border Crime Agency) Bill 2019 (the "**Bill**") completed Dáil Éireann, First Stage (whereby the Bill is initiated or presented to the House). The purpose of the Bill is to establish, on a statutory basis, a cross-border crime agency.

The Bill, when enacted, will amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in order to establish a statutory agency to investigate and report on criminal activity between Northern Ireland and this jurisdiction.

The Bill's progress can be tracked [here](#).

### **10.11 FATF publishes new consolidated assessment ratings**

For the period 1 October 2019 to 31 December 2019, the FATF updated the consolidated assessment ratings which provide a summary of: (1) the technical compliance; and (2) the effectiveness of the compliance, of the assessed parties against the 2012 FATF Recommendations on combating money laundering and the financing of terrorism & proliferation. The FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed [here](#) and the full set of reports for each country can be accessed [here](#).

## **11 DATA PROTECTION / GENERAL DATA PROTECTION REGULATION (“GDPR”) / CYBER SECURITY**

### **11.1 Data Protection Commission publishes FAQs on Brexit**

On 11 October 2019, the Data Protection Commission published Frequently Asked Questions (“**FAQs**”) on Brexit. The FAQs address the potential impact of Brexit, in the context of a “no-deal” scenario, on the data protection obligations of Irish controllers which transfer personal data to the UK.

The Frequently Asked Questions can be accessed [here](#).

### **11.2 Data Protection Commission publishes updated guidance note on personal data breach notifications under GDPR**

On 21 October 2019, the Data Protection Commission published an updated guidance note on personal data breach notifications under the General Data Protection Regulation 2016/679 (“**GDPR**”). The guidance note aims to give practical advice to data controllers on how to handle data breaches and navigate the mandatory data breach notification regime, which was introduced by GDPR in May 2018.

The guidance note is designed to help controllers understand two primary obligations:

- The notification of any personal data breach to the Data Protection Commission (unless the controller can demonstrate that the breach is unlikely to result in a risk to data subjects); and
- The communication of that breach to data subjects, where the breach is likely to result in a high risk to data subjects.

The guidance note can be accessed [here](#).

### **11.3 Reports published by the European Commission and by the European Data Protection Board on third annual joint review of the EU-U.S. Privacy Shield**

On 23 October 2019, the European Commission published its report on the third annual joint review of the functioning of the EU-U.S. Privacy Shield. The review addresses the practical implementation and day-to-day functionality of the Privacy Shield.

The report confirms that the U.S. continues to ensure an adequate level of protection for personal data transferred under the Privacy Shield from the European Union to participating companies in the U.S. Since the second annual review, there have been a number of improvements in the functioning of the framework.

However, the Commission notes that certain steps should be taken to ensure the effective functioning of the Privacy Shield in practice. This includes further strengthening the (re)certification process for companies who want to participate by shortening the time of the (re)certification process; expanding compliance checks, including concerning false claims of participation in the framework; and developing additional guidance for companies related to human resources data.

On 12 November 2019, the European Data Protection Board (“**EDPB**”) published its report on the third annual joint review. The EDPB welcomes the efforts made by the U.S. authorities to implement the Privacy Shield, but notes that substantial compliance checks with the substance of the Privacy Shield’s principles remain concerning.

The Commission report can be accessed [here](#) and the EDPB report can be accessed [here](#).

#### **11.4 Data Protection Commission publishes updated guidance note on Data Protection Impact Assessments**

On 29 October 2019, the Data Protection Commission published an updated guidance note on Data Protection Impact Assessments (“**DPIAs**”). The guidance note is designed to assist data controllers and data processors whose business activities may require them to carry out a DPIA.

The guidance note discusses when a DPIA is required and the benefits of conducting a DPIA. It also provides an overview of the steps involved in carrying out a DPIA.

The guidance note can be accessed [here](#).

#### **11.5 Data Protection Commission publishes FAQs on data subject access requests**

On 30 October 2019, the Data Protection Commission published Frequently Asked Questions (“**FAQs**”) on data subject access requests.

The FAQs address when an individual is entitled to make an access request; what information an individual is entitled to make when they make an access request; and the specific formalities required for a valid access request.

The FAQs can be accessed [here](#).

#### **11.6 Data Protection Commission publishes note on the restrictions on the right to data protection**

On 8 November 2019, the Data Protection Commission published a note on the restrictions on the right to data protection. The note explains that although data protection is a fundamental right set out in Article 8 of the EU Charter of Fundamental Rights, the right to data protection must always be balanced against other fundamental rights. The following are examples of limitations within the data protection rights as set out in the GDPR:

- The right to obtain a copy of your personal information under the rights of access or portability should not adversely affect the rights and freedoms of others.
- Certain data protection rights only apply in certain circumstances. For example, the right to “be forgotten” only applies under certain conditions, such as where the personal data is no longer required for the purpose it was originally collected.
- In certain very limited cases, the GDPR allows organisations to charge a reasonable fee for responding to a request, or even to refuse to act on a request, if the request is “manifestly unfounded or excessive”.

The note can be accessed [here](#).

#### **11.7 EDPB adopts updated guidelines on the territorial scope of the GDPR**

On 12 November 2019, the EDPB adopted updated guidelines on the territorial scope of the GDPR. The guidelines were initially adopted by the EDPB on 16 November 2018 and have been updated to reflect contributions and feedback received in response to a public consultation.

The guidelines can be access [here](#).

#### **11.8 Data Protection Commission publishes guidance for organisations engaging cloud service providers**

On 12 November 2019, the Data Protection Commission published guidance for organisations engaging cloud service providers.

The guidance addresses the obligations on data controllers under the GDPR to process personal data using “appropriate technical or organisational measures” and sets out the security considerations around cloud computing. It also provides information on the key points a cloud service contract should contain.

The guidance can be accessed [here](#).

#### **11.9 EDPB publishes contribution to the consultation on an additional protocol to the Council of Europe Convention on Cybercrime**

On 13 November 2019, the EDPB published a contribution to the consultation on a draft second additional protocol to the Council of Europe Convention on Cybercrime.

The EDPB contribution focuses on a preliminary assessment of the provisional texts published on 1 October 2019 and in particular the new provisions on direct disclosure of subscriber information and on the giving effect to the orders from another party for expedited production of data.

The contribution can be accessed [here](#).

#### **11.10 EDPB adopts guidelines on data protection by design and by default**

On 13 November 2019, the EDPB adopted guidelines on the obligation of data protection by design and by default as set out in Article 25 of the GDPR.

The guidelines cover elements that controllers must take into account when designing the means of processing data, along with how to ensure that only personal data which is necessary for each specific purpose of the processing is processed.

The guidelines can be accessed [here](#).

#### **11.11 Data Protection Commission publishes guidance on the lawful bases for processing personal data**

On 17 December 2019, the Data Protection Commission published guidance on the lawful bases for processing personal data. The guidance aims to assist organisations involved in processing personal data to identify the correct legal basis for such processing, and to

Please see the Dillon Eustace article entitled 'Data Protection Commission issues guidance on the lawful bases for processing personal data' (19 December 2019) for further information which can be accessed [here](#).

The guidance can be accessed [here](#).

#### **11.12 Advocate General delivers opinion on validity of SCCs in Schrems II case**

On 19 December 2019, the Advocate General of the Court of Justice of the European Union (“**CJEU**”) delivered his opinion on a case brought against Facebook Ireland by Max Schrems concerning the transfer of personal data to the United States (case C-311/18) (the “**Schrems II case**”). He recommended that the CJEU uphold the validity of the standard contractual clauses (“**SCCs**”) as a mechanism for transferring personal data outside the European Union.

The Advocate General’s opinion, if followed by the CJEU, will be particularly important in the context of Brexit, with many organisations utilising the SCC’s as part of their Brexit preparations. The CJEU is expected to make its decision within a few months of the Advocate General’s opinion.

The opinion can be accessed [here](#).

## **12 BREXIT**

### **12.1 Guidance note on transfers of Personal Data from Ireland to the UK in the event of a ‘No-Deal’ Brexit**

In October 2019, the Data Protection Commission issued a guidance note on transfers of Personal Data from Ireland to the UK in the event of a ‘No-Deal’ Brexit (the “**Guidance Note**”) to assist those who might transfer personal data to the UK to understand the impact of a ‘No Deal’ Brexit on their data protection obligations. The Guidance Note, includes:

- Steps to determine whether you are a controller that transfers personal data to the UK (including Northern Ireland); and
- The measures required to legally transfer personal data from Ireland to the UK in the event of a ‘No Deal’ Brexit.

A copy of the Guidance Note can be accessed [here](#).

## 12.2 Central Bank publishes updated Brexit FAQs for financial services firms

On 3 October 2019, the Central Bank published updated Brexit FAQs for financial services firms. The FAQs provide general information to financial services firms considering relocating their operations from the UK to Ireland. The FAQs are regularly updated as the Brexit negotiations progress.

The FAQs can be accessed [here](#).

## 12.3 Implementing Decision amending Commission Implementing Decision on temporary equivalence of UK CCPs published in Official Journal

On 19 December 2019, the European Commission adopted an Implementing Decision (the “**Amending Decision**”) amending Commission Implementing Decision (EU) 2018/2031 (the “**Temporary Equivalence Decision**”) concerning the temporary equivalence of the UK’s regulatory framework for CCPs under EMIR.

The Amending Decision replaces the current provisions concerning expiry in the Temporary Equivalence decision and extends the temporary recognition for UK CCPs to 31 January 2021 in the case of a no-deal Brexit.

On 23 December 2019, the Amending Decision was published in the Official Journal of the European Union.

The Amending Decision can be accessed [here](#).

## 13 SUSTAINABLE FINANCE

### 13.1 European Commission publishes frequently asked questions on the IPSF

On 18 October 2019, the European Commission published frequently asked questions on the International Platform on Sustainable Finance (“**IPSF**”). The frequently asked questions set out the scope and objectives of the IPSF, along with addressing the reasons behind its establishment.

The frequently asked questions can be accessed [here](#).

### 13.2 Regulations on sustainability-related disclosures and low carbon benchmarks published in Official Journal

On 8 November 2019, the Council of the European Union adopted the following Regulations:

- Regulation on disclosures relating to sustainable investments and sustainability risks in the financial services sector (the “**Disclosure Regulation**”); and
- Regulation amending the Benchmarks Regulation as regards low carbon benchmarks and positive carbon impact benchmarks (the “**Low Carbon Benchmarks Regulation**”).

The Regulations were published in the Official Journal of the European Union on 9 December 2019 and entered into force the following day.

The Disclosure Regulation can be accessed [here](#) and the Low Carbon Benchmarks Regulation can be accessed [here](#).

### **13.3 The European Parliament and Council of the European Union reach political agreement on Taxonomy Regulation**

On 17 December 2019, the European Parliament and the Council of the European Union reached political agreement on the proposed Regulation on the establishment of a framework to facilitate sustainable investment (the “**Taxonomy Regulation**”).

On 18 December 2019, the Council of the European Union published an “I” item note attaching the final compromise text of the proposed Taxonomy Regulation. In addition, on that date, the European Commission published Q&As on the Taxonomy Regulation.

The European Parliament’s announcement of the political agreement can be accessed [here](#), the final compromise text of the Taxonomy Regulation can be accessed [here](#) and the Q&As can be accessed [here](#).

**Dillon Eustace**

**31 December 2019**

## Our Offices

### Dublin

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

### Cayman Islands

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

### New York

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

### Tokyo

12th Floor,  
Yurakucho Itocia Building  
2-7-1 Yurakucho,  
Chiyoda-ku  
Tokyo 100-0006,  
Japan  
Tel: +813 6860 4885  
Fax: +813 6860 4501

E-mail: [enquiries@dilloneustace.ie](mailto:enquiries@dilloneustace.ie)

Website: [www.dilloneustace.ie](http://www.dilloneustace.ie)

## Contact Points

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

### Andrew Bates

**E-mail:** [andrew.bates@dilloneustace.ie](mailto:andrew.bates@dilloneustace.ie)  
**Tel :** + 353 1 673 1704  
**Fax:** + 353 1 667 0042

### Keith Waine

**E-mail:** [Keith.Waine@dilloneustace.ie](mailto:Keith.Waine@dilloneustace.ie)  
**Tel :** + 353 1 673 1822  
**Fax:** + 353 1 667 0042

### Enda McGeever

**E-mail:** [enda.mcgeeve@dilloneustace.ie](mailto:enda.mcgeeve@dilloneustace.ie)  
**Tel:** + 353 1 673 2051  
**Fax:** + 353 1 667 0042

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