Investment Firms Quarterly Legal and Regulatory Update

Period covered:

1 January 2015 – 31 March 2015

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO

DILLON EUSTACE

Table of Contents

INVESTMENT FIRMS QUARTERLY LEGAL AND REGULATORY UPDATE

European Market Infrastructure Regulation ("EMIR")

(i) Update on implementation schedule for margin requirements for non-centrally cleared derivatives

The Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**") released revisions to the framework for margin requirements for non-centrally cleared derivatives on 18 March 2015. The revised framework is available on the websites of the Bank for International Settlements and IOSCO.

Recognising the complexity of implementing the framework, the BCBS and IOSCO have agreed to (i) delay the implementation of requirements to exchange both initial margin and variation margin by nine months; and (ii) adopt a phase-in arrangement for the requirement to exchange variation margin.

Relative to the 2013 framework, the revisions delay the beginning of the phase-in period for collecting and posting initial margin on non-centrally cleared trades from 1 December 2015 to 1 September 2016. The full phase-in schedule has been adjusted to reflect this nine-month delay. The revisions also institute a six-month phase-in of the requirement to exchange variation margin, beginning 1 September 2016.

The BCBS and IOSCO will also liaise with industry as market participants continue their work to develop initial margin models that will be required to comply with the margin requirements. This engagement will help ensure that emerging quantitative initial margin models are consistent with the framework but will not provide an explicit review or approval of any initial margin model.

(ii) Pension funds to benefit from a further two year exemption from central clearing requirements

The European Commission published a report on 3 February 2015 that recommends granting pension funds a two-year exemption from central clearing requirements for their over-the-counter ("**OTC**") derivative transactions. The report, which is based on an extensive study requested by the European Commission, concludes that central counterparties ("**CCPs**") need this time to find solutions for pension funds. At the same time, the report encourages CCPs to continue working on finding technical solutions in this important matter. Ultimately, the objective is that pension scheme arrangements ("**PSAs**") should use central clearing for their derivatives transactions, as is the case for other financial institutions.

Under current arrangements, PSAs – which encompass all categories of pension funds – would have to source cash for central clearing. Given that PSAs hold neither significant amounts of cash nor highly liquid assets, imposing such a requirement on them would require very far-reaching and costly changes to their business model which could ultimately affect pensioners' income. Current EU law provides for a temporary exemption from the clearing obligation until August 2015.

A press release issued by the European Commission is available at:

http://europa.eu/rapid/press-release_IP-15-3643_en.htm

(iii) ESMA publishes opinion on Draft Regulatory Technical Standards ("RTS") on the clearing obligation on interest rate swaps

As previously reported in our last update, ESMA submitted final draft regulatory technical standards ("**IRS RTS**") for the central clearing of Interest Rate Swaps ("**IRS**") for approval to the European Commission on 1 October 2014. The IRS RTS define those types of IRS contracts which will have to be centrally cleared, the types of counterparties covered by the obligation and the dates by which central clearing of IRS will become mandatory for them.

On 18 December 2014, the European Commission sent a letter to ESMA informing ESMA of its intention to endorse, with amendments, the draft IRS RTS, (the "**Commission Modified RTS**"). In the letter the European Commission outlined certain changes which it considers were necessary to the IRS RTS which included postponing the start date of the frontloading requirement, clarifying the calculation threshold for investment funds and excluding from the scope of the clearing obligation non-EU intragroup transactions.

On 30 January 2015, ESMA published an opinion (the "**Opinion**") on the IRS RTS in response to the European Commission's letter of 18 December 2014. ESMA supports the European Commission's intention to postpone the start date of the frontloading obligation, as this should give counterparties sufficient time to determine whether contracts are subject to frontloading. However, ESMA believes that the European Commission's proposals relating to third country intra-group reporting are not appropriate from a legal perspective. The Opinion contains a second version of

ESMA's draft RTS on the clearing obligation (the "**ESMA Modified RTS**"). On 9 March 2015, ESMA published a revised opinion on its Modified RTS however, the revised opinion does not change the ESMA Modified RTS.

The European Commission may now proceed to adopt the ESMA Modified RTS with the amendments it considers relevant (which may involve, as regards one or more of the issues identified above, reinstating the approach taken in the Commission Modified RTS) or reject it. Any adoption by the European Commission of the RTS must simultaneously be notified by it to the European Parliament and the Council, who then have a three-month period in which to object to the RTS, extendible by a further three months (which periods are reduced to one month, where the adopted RTS is the same as the ESMA Modified RTS). In the absence of such an objection, the RTS adopted by the European Commission will be published in the EU's Official Journal and will enter into force on the date set out in the RTS (currently 20 days following such publication). However, if either the European Parliament or the Council objects, the RTS will not enter into force, thereby further delaying the start of mandatory clearing within the EEA. As there is no legislatively prescribed timeline for dealing with such an eventuality, the potential extent of any such delay is unclear. In light of these delays the earliest that the clearing obligation could come into effect for IRS is the end of 2015.

(iv) ESMA issues feedback statement on the central clearing of non-deliverable forwards

ESMA published a feedback statement on its consultation on the clearing obligation for non-deliverable forwards ("**NDF**") which it had to conduct under EMIR by 4 February 2015.

EMIR requires ESMA to draft technical standards regarding the clearing obligation of different derivative classes. This feedback statement summarises the responses received to the consultation.

Based on the feedback received, ESMA is not proposing a clearing obligation on the NDF classes at this stage. ESMA believes that more time is needed to appropriately address the main concerns raised during the consultation.

This decision is without prejudice to the possibility for ESMA to propose a clearing obligation on the NDF classes (by the submission of a final report to the European Commission including a draft RTS) at a later point in time in order to take into account further market developments.

(v) ESMA reviews CCP colleges under EMIR

On 8 January 2015, ESMA published a peer review report on its participation on the supervisory colleges established under EMIR to authorise and supervise EU-based CCPs.

The report is focused on the supervisory activities of competent authorities relating to the authorisation of CCPs under EMIR and is based on ESMA's experience in the initial phase of the college process, that is their establishment, their review of CPP authorisation applications, their review of the competent authorities' risk assessments, and their adoption of the joint opinions on CCPs authorisations. ESMA is a member of every college to ensure the consistent and correct application of EMIR.

(vi) List of CCPs authorised under EMIR

On 22 January 2015, ESMA added Athens Exchange Clearing House to its list of authorised CCPs under EMIR. The updated list of CCPs can be found at this link;

http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf

(vii) ISDA proposes recovery and continuity framework for central counterparties

On 26 January 2015, the International Swaps and Derivatives Association ("**ISDA**") published a position paper setting out a proposed recovery and continuity framework for CCPs. Owing to their systematic importance, CCPs are required to develop recovery plans to enable them to recover from a threat to their viability and financial strength and ensure that they can maintain the continuity of critical services without requiring the use of resolution powers by authorities or resorting to public money.

The proposed framework comprises the following elements:

- Recovery measures;
- Transparency and timing;
- Appropriateness of utilising recovery measures beyond pre-funded resources;
- Segregated clearing services;
- Failure to re-establish a matched book;
- Compensation for loss allocation; and
- Condition for entry into resolution.

ISDA considers that the recovery of a CCP is preferable to its closure and believes that the proposed framework is comprehensive and will be effective.

(viii) Global Legal Entity Identity Foundation launches website

On 26 January 2015, the Global Legal Entity Identity Foundation ("**GLEIF**") published a press release announcing the launch of its website. The GLEIF was established by the Financial Stability Board ("**FSB**") and is overseen by the Regulatory Oversight Committee of the Global Legal Entity Identifier System ("**LEI ROC**").

During 2015, the website will enable market participants to access the authoritative database of all LEIs issued globally and associated reference data.

(ix) Implementation monitoring of the PFMI: Level 2 assessments for central counterparties and trade repositories in the European Union, Japan and the United States

The Committee on Payments and Market Infrastructures ("**CPMI**") and the IOSCO published three reports on selected jurisdictions' progress towards the implementation of the *Principles for Financial Market Infrastructures* ("**PFMI**") on 26 February 2015.

The reports focus on the implementation of the Principles (as contained in the PFMI) for CCPs and TRs in the European Union, Japan and the United States. The three Level 2 assessment reports are based on peer reviews of whether, and to what degree, the content of the jurisdiction's legal and regulatory or oversight framework is complete and consistent with the PFMI. CPMI and IOSCO consider the implementation monitoring exercise to be very important, not least given the increasingly significant role played by CCPs and TRs in the OTC derivatives market arising from the regulatory reforms agreed by the G20.

In each case, the assessment reflects the status of the jurisdiction's legal, regulatory and oversight frameworks as at 18 April 2014.

Overall, the reports demonstrate that the three jurisdictions have made good progress in implementing the Principles in their legal and regulatory or oversight frameworks. This is especially evident for CCPs, where the jurisdictions have generally developed frameworks that completely and consistently implement either all, or the majority, of the Principles applicable to systemically important CCPs. Jurisdictions' progress towards completely and consistently implementing the

Principles for TRs has been more varied. Where appropriate, the reports highlight gaps and make recommendations for addressing them.

(x) Questions and Answers on the implementation of EMIR

ESMA published the 12th update to its Q&A for EMIR on 31 March 2015.

The revised Q&A includes further guidance on the authorisation of CCP services, the clearing obligation and the RTS on direct, substantial and foreseeable effect of contracts within the Union.

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

http://www.esma.europa.eu/system/files/2015_655_qa_xii_on_emir_implementation_october_2014.pdf

Markets in Financial Instruments Directive ("MiFID")

(i) Responses to ESMA consultation paper on draft guidelines clarifying the definition of derivatives under MiIFD

On 6 January 2015, ESMA published a list of responses that it received to its September 2014 consultation paper (ESMA/2014/1189) on draft guidelines on the application of the definition of commodity derivative contracts under points C6 and C7 in section C of Annex 1 of MiFID. The adoption of the guidelines are intended to ensure the consistent classification of certain financial instruments as derivatives.

The list of responses can be found at this link:

http://www.esma.europa.eu/consultation/Consultation-draft-guidelines-application-C6-and-C7-Annex-I-MiFID

(ii) Themed Inspection of MiFID authorised Investment Firms regarding the provision of information to clients in relation to costs and charges

On 18 December 2014, the Central Bank published the results of a thematic review in a letter (the **"Letter**") to industry participants that it completed on investment firms subject to the requirements of the European Communities (Markets in Financial Instruments) Regulations 2007 (as amended) (the "**MiFID Regulations**") and where relevant, the Consumer Protection Code (the "**Code**"). In particular, the aim of the thematic review was to assess and evaluate how investment firms provide information to clients on direct costs and charges applied by the investment firm and to assess the level of compliance by investment firms with the requirements relating to costs and charges which are set out in the MiFID Regulations and the Code.

The purpose of the Letter is to provide feedback in relation to areas of concern identified by the Central Bank following its thematic review. The findings in the Letter will therefore be relevant to all investment firms.

All investment firms should review their systems and controls in light of the Letter and take any appropriate steps to ensure compliance with the recommendations set out in the Letter. The Central Bank will have regard to the Letter in assessing investment firms' future compliance with the MiFID Regulations and/or the Code.

A copy of the Letter is available at this link:

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Provision%20of%20Information%20on%20Costs%20and%20Charges%20Industry%20Letter.pdf

(iii) ESMA publishes peer review on best execution under MiFID

ESMA has conducted a peer review on how national regulators ("**NCAs**") supervise and enforce the MiFID provisions relating to investment firms' obligation to provide best execution, or obtain the best possible result, for their clients when executing their orders.

ESMA found that the level of implementation of best execution provisions, as well as the level of convergence of supervisory practices by NCAs, is relatively low. In order to address this situation a number of improvements were identified, including:

- Prioritisation of best execution as a key conduct of business supervisory issue;
- The allocation of sufficient resources to best execution supervision; and
- A more proactive supervisory approach to monitoring compliance with best execution requirements, both desk-based and onsite inspections.

The review was conducted on the basis of information provided by 29 NCAs and complemented by on-site visits to the NCAs of France, Liechtenstein, Luxembourg, Malta, Poland and Spain.

The peer review report can be found at this link:

http://www.esma.europa.eu/system/files/2015-494_peer_review_report_on_best_execution_under_mifid.pdf

Markets in Financial Instruments Directive ("MiFID II")

(i) Level 2 Measures

ESMA, as part of the Lamfalussy process, has been asked by the European Commission to draft more detailed "level 2" rules. In this regard it is anticipated that ESMA will produce and prepare a number of regulatory technical standards, implementing technical standards, various recommendations, guidelines and other technical advice (hereinafter the "**Level 2 Measures**") over the next while.

As previously reported in our last update, in order to achieve its objective of producing such Level 2 Measures, ESMA published final technical advice (ESMA/2014/1570), (the "**Technical Advice**") to the European Commission and a consultation paper (ESMA/2014/1570) (the "**Consultation Paper**") on MiFID II on 19 December 2014.

The final Technical Advice was prepared following ESMA's consideration of the feedback it received on its consultation paper on draft technical advice which was published in May 2014. The Technical Advice follows the same structure as the May 2014 consultation paper which is (1) Introduction, (2) Investor protection, (3) Transparency, (4) Data publication, (5) Micro-structural issues, (6) Requirements applying on and to trading venues, (7) Commodity derivatives and (8) Portfolio compression.

The European Commission will consider the contents of the Technical Advice before producing Delegated Acts. Notwithstanding that the European Commission is not required to follow ESMA's advice, investment firms should be aware of the key recommendations contained in ESMA's Technical Advice so that they can understand ESMA's thinking on certain key topics and in particular to understand how ESMA's thinking has changed in the last six months (when it published its May 2014 consultation paper). Delegated Acts should be adopted by the European Commission by July 2015 so that they can enter into application by 30 months following the entry into force of MiFID II (taking into account the right of the European Parliament and Council to object to a Delegated Act within 3 months (which can be extended by a further 3 months). It is expected that firms can expect to see the finalised Delegated Acts by early January 2016.

The Consultation Paper includes draft regulatory technical standards and implementing technical standards on all areas for which MiFID II require ESMA to adopt technical standards. The draft technical standards are based on feedback and responses received to ESMA's discussion paper which was published in May 2014. The Consultation Paper is over 645 pages long and raises 245 questions. The Consultation Paper is divided into key topics and is structured in the same way as the discussion paper which was published in May 2014. It is expected that ESMA will use the input received from the Consultation Paper to finalise its draft regulatory technical standards which will be sent to the European Commission for endorsement by mid-2015. It will send its draft implementing technical standards to the European Commission by January 2016.

The deadline for comments to the Consultation Paper was 2 March and a list of responses received can be found at this link:

http://www.esma.europa.eu/consultation/Consultation-MiFID-IIMiFIR

(ii) ESMA published an addendum consultation paper

On 18 February 2014, ESMA published an addendum consultation paper (the "**Addendum**") which complements the transparency section of the Consultation Paper. The Addendum should be read in conjunction with the Consultation Paper (referenced in (i) above).

The Addendum covers the following non-equity asset classes:

- Foreign exchange derivatives;
- Credit derivatives;
- Other derivatives; and
- Contracts for difference.

For each asset class, ESMA sets out an analysis of the definition of a liquid market and the specification of the large in scale ("**LIS**") and size specific to the instrument ("**SSTI**") thresholds for pre trade and post-trade transparency purposes.The consultation closed on 20 March 2015 and ESMA will use the input received to finalise its draft RTS which will be sent for endorsement to the European Commission in mid-2015.

A list of responses received to the Addendum can be found at this link:

http://www.esma.europa.eu/consultation/Addendum-Consultation-Paper-MiFID-IIMiFIR#responses

(iii) MiFID II – Switching on the light without turning of the tap

Verena Ross, Executive Director of ESMA, delivered the keynote speech at the ABA/Law Society Capital Markets Conference 2015 in London on MiFID II which focused on transparency and liquidity issues on 26 February 2015.

A copy of the speech is available at this link;

http://www.esma.europa.eu/system/files/2015-496_mifid_ii_-_switching_on_the_light_without_turning-off_the_tap_-_verena_ross_executive_director_esma.pdf

(iv) ACER recommendation relating to the MiFID II regime for derivative contracts that are wholesale energy products that must be physically settled

On 20 March 2015, the Agency for the Cooperation of Energy Regulators ("**ACER**") published a recommendation to the European Commission (dated 17 March 2015) on the regime under the MiFID II Directive applying to derivative contracts that have the characteristics of wholesale energy products that must be physically settled.

Wholesale energy derivatives traded on an OTF that must be physically settled are excluded from the list of financial instruments in section C.6 of Annex I to the MiFID II Directive. Under Article 4(1)(2) of the MiFID II Directive, the European Commission must adopt delegated acts in accordance with Article 89 specifying the derivative contracts referred to in Section C6 of Annex I that have the characteristics of wholesale energy products that must be physically settled and C6 energy derivative contracts.

CRD IV

(i) EBA updates single rulebook Q&A's

The Q&A contains answers to various questions posed by stakeholders on the practical implementation of the Single Rulebook (the "**Rulebook**"). The Q&A allows users to search the database for guidance relating to particular aspects of the Rulebook. Users of the Q&A can search the database by Q&A ID, legal reference, date submitted or keyword.

The EBA updated the Q&A nine times during the quarter ending 31 March 2015 as follows:

On 9 January 2015, the EBA updated the question below;

Question ID:2013_521 : Capital requirements for a subgroup integrated by a parent holding company in a member state and its institutions and subsidiary financial institutions.

On 16 January 2015, the EBA updated the questions below;

Question ID: 2014_1039: Treatment of Cash collateral.
Question ID: 2014_744: Application of the Basel I floor (Article 500) and the SME factor (Article 501).
Question ID: 2014_1025: Issues with Template row headers.
Question ID: 2014_1018: Start of Probation Period.
Question ID: 2014_1016: Tracking of Past-due amounts.
Question ID: 2014_1007: International organisations regarding z-axis "Country of residence of the counterparty".
Question ID: 2014_1004: Templates 17.1, 17.2 and 17.3 - Reconciliation between Accounting and CRR scope of consolidation.
Question ID: 2014_992: FINREP Table 31 - Related parties - derecognition of non-financial assets.
Question ID: 2014_988: FINREP Templates 8.1 and 8.2.
Question ID: 2014_984: Treatment of Exposures to "Civil-law associations".
Question ID: 2014_966: Transitional adjustments in regards to Goodwill in CA5.1.
Question ID: 2014_939: Additional Reporting templates for FINREP (large exposures).
Question ID: 2014_920: Reporting of two groups of connected clients when one client is considered as the most significant entity within both groups.
Question ID: 2013_573: Specific credit risk adjustments on exposures in default.
Question ID: 2014_847: Classification of in default exposures that are at the same time is an Item Associated with Particular High Risk.

On 16 January 2015, the EBA updated the questions below;

Question ID: 2015_1775: Non transferred assets, rights and liabilities of shareholders or creditors.

Question ID: 2015_1774: Use of an existing legal person as a bridge institution.
Question ID: 2015_1773: Timing of valuation.
Question ID: 2015_1772: Bridge institution tool.
Question ID: 2015_1771: Appointment of temporary administrator.
Question ID: 2015_1770: Bail-in tool.
Question ID: 2015_1769: Actions of a Special Manager .

On 13 February 2015, the EBA updated the question below;

Question ID: 2015_1791: Market making prior to 5 years from issuance of AT1-/T2-Instruments.

On 20 February 2015, the EBA updated the questions below;

Question ID: 2014_1579: Aggregate liabilities.
Question ID: 2014_872: Where and how much to report forward starting repo or reverse repo?
Question ID: 2014_1576: LCR inflows: current accounts with other credit institutions.
Quesiton ID: 2014_1382: Short positions in financial institution capital requirements.
Question ID: 2013_384: Inclusion of interim profits/deduction of losses in own funds.
Question ID: 2014_1474: Exemption of purchased receivables from Article 405 retention requirement.
Question ID: 2013_265: Risk retention.

On 27 February 2015, the EBA updated the questions below;

Question ID: 2014_1000: Statement of profit or loss.
Question ID: 2013_683: Reporting "type of connection".

On 13 March 2015, the EBA updated the questions below;
Question ID: 2014_1020: Country of incorporation of SMEs and application of the supporting factor.
Question ID: 2014_1626: Scope of deposit monopoly.
Question ID: 2014_944: Table 11.1 - notional amount of derivatives used in two hedge relationships (fair value and cash flow hedges).
Question ID: 2014_1366: Reporting of ten largest exposures to institutions.
Question ID: 2014_1448: The approach that advanced measurement approaches (AMA) institutions should use when determining the relevant indicator to fill in C 16.00 - operational risk template.
Question ID: 2014_1445: Large exposures - maturity buckets.
Question ID: 2014_1529: Validation rule v1384_m.

On 20 March 2015, the EBA updated the question below;

ID: 2014_1221: Inclusion of consolidated current and year-end profits in Common Equity Tier 1 Capital.

On 27 March 2015, the EBA updated the question below;

Question ID: 2014_1379: Disclosure requirement on individual basis.
Question ID: 2014_1179: Scaling factor for IRBA securitisations with 1250% risk weight under the ratings based method.
Question ID: 2013_19: Consideration from residual values in the LCR calculation.
Question ID: 2014_1374: Error in validation v0623_m.
Question ID: 2014_878: Scope for probation period.

This is the link to the Q&A; https://www.eba.europa.eu/regulation-and-policy/single-rulebook/interactive-single-rulebook

(ii) ESRB letter to European Commission on use of Article 459 Capital Requirements Regulation (Regulation 575/2013) ("CRR") powers

On 7 January 2015, the European Systemic Risk Board ("**ESRB**") published a *letter* from Mario Draghi, ESRB Chair, to Jonathan Faull, Director General for Financial Stability, Financial Services and Capital Markets Union at the European Commission, on the possible use of the Commission's powers under Article 459 of the CRR.

Article 459 gives the European Commission the power to adopt delegated acts imposing stricter prudential requirements for exposures where this is necessary to address changes in the intensity of prudential risks arising from market developments affecting member states. This power should be used in circumstances where the powers contained in the CRR and the CRD IV Directive (*2013/36/EU*) are insufficient to address the prudential risks in question. The European Commission is expected to take such a step following a recommendation or opinion from the ESRB or the EBA.

In the letter, the ESRB states that to date it has not seen any circumstances in which it considers the European Commission would wish to use its powers under Article 459. However, it suggests that there are two instances where, in theory, these powers might help to address specific systemic threats namely:

- Systemic fragilities in financial markets that might call for comprehensive, uniform and swift policy responses; and

- Indirect contagion that might easily spread to other states, necessitating broad preventative measures across the EU.

The ESRB states that Article 459 could be used to enhance systemic stability by requiring firms to improve public disclosures on exposures, indicators or practices of systemic relevance.

(iii) EBA consults on draft guidelines on sound remuneration policies under CRD IV

The EBA launched a three-month public consultation on its Guidelines on sound remuneration policies on 4 March 2015, (the "**Draft Guidelines**"). The Draft Guidelines set out the governance process for implementing sound remuneration policies across the EU, as well as the specific criteria for mapping all remuneration components into either fixed or variable pay. Guidance is also provided on the application of deferral arrangements and the pay-out instruments ensuring that variable remuneration is aligned with an institution's long-term risks and that any ex-post risk adjustments can be applied as appropriate.

The Draft Guidelines complement the EBA Opinion on allowances issued in October 2014 by providing additional details in support of the principles formulated in it, so as to ensure compliance with the bonus cap introduced by the Capital Requirements Directive ("**CRD IV**"). In particular, the Draft Guidelines clarify the process for identifying those categories of staff whose professional activities have a material impact on the institutions' risk profile, and do so on the basis of the criteria that were defined in the EBA Regulatory Technical Standards on identified staff.

Specific guidance is provided on how the ratio between the variable and the fixed components of remuneration should be calculated, taking into account specific remuneration elements, such as allowances, sign-on bonus, retention bonus and severance pay. The document also covers pay-out processes and types of instruments used to pay variable remuneration, in line with the provisions defined in the EBA standards on classes of instruments and the combination of different categories of instruments.

The Draft Guidelines will apply to competent authorities across the EU, as well as to institutions on a solo and consolidated basis, including all subsidiaries which are not subject to the CRD IV framework. Once the Draft Guidelines are finalised, the previous Guidelines on remuneration policies and practices from 2010 will be repealed.

Comments to this consultation can be sent to the EBA by clicking on the "send your comments" button on the consultation page:

https://www.eba.europa.eu/news-press/calendar?p_p_auth=c0lIQJcn&p_p_id=8&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1002371

The deadline for the submission of comments is 4 June 2015.

(iv) EBA publishes new DPM and XBRL taxonomy for remittance of supervisory reporting as of 30 June 2015

The EBA published a new XBRL taxonomy to be used by competent authorities for remittance of data under the EBA Implementing Technical Standards on supervisory reporting on 2 March 2015. The new taxonomy will have as a reference date 30 June 2015 onwards and will be used for the first reports on additional liquidity monitoring metrics and supervisory benchmarking. The new taxonomy presents the data items, business concepts, relations, visualisations and validation rules described by the EBA Data Point Model which are contained in the Implementing Technical Standards on supervisory reporting and in the EBA Guidelines on definitions and templates on funding plans.

The updated taxonomy incorporates corrections to the COREP, FINREP, asset encumbrance and funding plans reporting structures, as well as the new reporting structures for additional liquidity monitoring metrics and supervisory benchmarking.

(v) Commission Delegated Regulation (EU) 2015/488 amending Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads

Commission Delegated Regulation (EU) 2015/488 which amends Delegated Regulation (EU) No 241/2014 as regards own funds requirements for firms based on fixed overheads was published in the official Journal of the EU on 24 March 2015. This amending Regulation establishes the methodology for calculating fixed overheads for firms and inserts a new chapter in Delegated Regulation (EU) No 241/2014. The Regulation enters into force on 13 April 2015.

The Bank Recovery and Resolution Directive 2014/59/EU ("BRRD")

(i) EBA consults on ITS on provision of information for resolution plans under BRRD

On 14 January 2015, the EBA published a consultation paper (EBA/CP/2015/01) on draft implementing technical standards ("**ITS**") on procedures, forms and templates for the provision of information under Article 11(3) of the Bank Recovery and Resolution Directive (2014/59/EU) ("**BRRD**").

The consultation paper has stated that resolution authorities are required to draw up resolution plans for firms that are subject to the BRRD. Firms are expected to provide the necessary information to resolution authorities in order to enable them to prepare these plans. Article 11(3) of the BRRD requires the EBA to draft ITS specifying procedures and a minimum set of standard forms and templates for the provision of this information by firms.

In the proposed draft ITS, the EBA sets out the procedure that resolution authorities should follow when seeking information about a firm to prepare a resolution plan. It also sets out, in Annexes I to XII, the forms and templates that firms should use when providing information to resolution authorities, following instructions set out in Annex XIII.

The deadline for responses is 14 April 2015. The EBA is required to submit the final version of the ITS to the European Commission by 3 July 2015.

The consultation paper can be accessed via the following link:

https://www.eba.europa.eu/documents/10180/948691/EBA-CP-2015-01+(Draft+CP+ITS+Reporting+Resolution+planning).pdf

(ii) Responses to EBA consultations on RTS, ITS and guidelines on group financial support under BRRD

On 13 January 2015, the EBA published a list of the responses it received to its October 2014 consultation on draft Regulatory Technical Standards ("**RTS**") and draft guidelines specifying the conditions for group financial support under Article 23 of the BRRD and draft Implementing Technical Standards ("**ITS**") on the form and content of disclosure of financial support agreements under Article 26 of the BRRD. The consultation closed to responses on 4 January 2015, in which there were three responses to the consultation, including a response from the European Banking Federation ("**EBF**").

On the same day, the EBA published a list of responses it received to its September 2014 consultation on draft guidelines on triggers for the use of early intervention measures under the BRRD. The consultation closed on 22 December 2014.

The list includes responses from the Association for Financial Markets in Europe ("**AFME**"), European Banking Federation ("**EBF**") and Investment Management Association ("**IMA**"). The EBA is required to issue its final version on triggers for the use of early intervention measures by 3 July 2015.

(iii) EBA adds BRRD to its online Interactive Single Rulebook and Questions and Answer ("Q&A") tools

On 30 January 2015, the EBA updated its online Interactive Single Rulebook and Q&A tools with the inclusion of the BRRD.

Users will now be able to review all the EBA's Technical Standards and Guidelines associated with the BRRD on the EBA website. This can be done by navigating through the website on an article by article basis. The inclusion of the BRRD into the Q&A tool will also allow users to submit any questions they may have on the application of the BRRD and the EBA's work related to it.

(iv) European Commission Q&As on BRRD

The European Commission has published a document containing questions and answers ("**Q&As**") on the BRRD.

The European Commission has stated that the purpose of the document was in order to provide some "elements of reflection" in the context of the transposition of the BRRD. The European Commission has commented that statements and opinions given in the Q&As are tentative and do not necessarily represent the correct interpretation of current and forthcoming EU legislation.

(v) EBA technical advice relating to the BRRD

On 6 March 2015, the EBA published three pieces of technical advice relating to delegated acts under the BRRD.

- Technical advice on the delegated acts on critical functions and core business lines

(EBA/Op/2015/05). This relates to Article 2(2) of the BRRD. The aim of this advice is to develop a common understanding of which of the functions performed by a bank are critical to the real economy and financial markets, and which are core to its own performance. The EBA proposes shared definitions and harmonized evaluation criteria to be used, as guidance, by banks, competent authorities and resolution authorities to identify "critical functions" and "core business lines".

- Technical advice on delegated acts on the deferral of extraordinary ex-post contributions to financial arrangements (EBA/Op/2015/06). This relates to Article 104 of the BRRD. This advices aims to further specify the meaning of the likelihood that a payment of extraordinary ex-post contributions "would jeopradise" the financial condition of a bank, and the circumstances in which this would lead to a deferral. The EBA recommends that national authorities analyse the impact of solvency and liquidity of banks before allowing for ex-post contributions, which should only be applied in exceptional cases.

- Technical advice on the delegated acts on the circumstances when exclusions from the bail-in tools are necessary (EBA/Op/2015/07). This relates to Article 44(11) of the BRRD. In this advice, the EBA considers that the characteristics of the bank (for example size, interconnectedness or complexity) should not automatically justify exclusions. The EBA has stated that these be considered on a case-by-case basis in order to avoid competitive imbalances and setting the wrong incentives for bank structures. The EBA has also recommended that exclusions should be used restrictively, as they are exceptions to the principle of equitable treatment of creditors of the same class

(vi) EBA consults on draft RTS and guidelines on business reorganization plans under BRRD

On 9 March 2015, the EBA published a consultation paper (EBA/CP/2015/05) on draft regulatory standards ("**RTS**") and guidelines on business reorganisation plans under the BRRD.

According to Article 43(2) of the BRRD, it states that when resolution authorities use the bail-in-tool to recapitalise an institution under resolution, the BRRD requires the resolved institution to draw up a plan setting out the measures aiming at restoring its long term viability. The BRRD mandates the EBA to develop draft RTS on the minimum elements to be included in the plan and accompanying guidelines on the criteria for the assessment of the plans by the resolution authority.

The draft RTS states that there is a requirement that the plan identifies the causes of the failure, addresses them and shows that the institution can operate viably in the long-term. It also states that projections on the financial performance of the institution during the reorganisation period be included and that relevant milestones and indicators for a base-case, as well as best and worse-case scenarios be included. The institution should regularly report the implementation of the plan to the resolution authority through progress reports.

The guidelines require that the authorities assess the credibility of the plan and its assumptions, as well as the appropriateness of the strategy and measures. The authorities should also ensure that the plan is consistent with other public policy objectives. The guidelines include provisions for the coordination between the resolution and competent authorities when assessing the plan and progress report.

The consultation closes on 9 June 2015. A public hearing on the business reorganisation plans will take place on 11 May 2015.

The consultation paper is available via the following link:

https://www.eba.europa.eu/documents/10180/1008804/EBA-CP-2015-05+%28CP+on+RTS+and+GL+on+Business+reorganisation+plan%29.pdf

Single Market Private Limited Liability Company

(i) Opinion 2014/C 458/04

The 501st plenary session of the European Economic and Social Committee (the "**EESC**") was held on 10 and 11 September 2014. The EESC adopted the proposal for a Directive of the European Parliament and of the Council of single-member private limited liability companies by 127 votes to 50 with 15 abstentions. The proposal is designed to make it easier for SMEs to operate on a cross-border basis. The EESC believes that, as it stands, the proposal is in need of further development, since many of its provisions entail serious potential risks to the proper conduct of trade on the internal market and to the interest of creditors, consumers and employees. The aim is to essentially introduce the European private company by a different route.

ESMA

(i) ESMA Chair comments on key building blocks of EU Capital Markets

On 19 January 2015, ESMA published a speech given by Steven Maijoor, ESMA Chair. Among other things, in his speech, Mr Maijoor commented on what he personally thinks should be the four main building blocks of the EU Capital Markets Union:

- Greater diversity in funding;
- Increasing the efficiency of capital markets;
- Strengthening and harmonisation of supervision; and
- Increasing the attractiveness of capital markets for both EU and non-EU investors.

The European Commission stated in its work programme for 2015 that it is planning a legislative or non-legislative initiative relating to the EU Capital Markets Union

(ii) Joint statement on US-EU financial markets regulatory dialogue

On 15 January 2015, the European Commission has published a statement reporting on the latest meeting of the US-EU financial markets regulatory dialogue which took place on 12 January 2015.

The statement outlines the discussions that took place in a number of key areas, including:

- **OTC derivatives.** Participants reiterated the need for all G20 jurisdictions to continue to address and implement OTC derivatives reforms in a timely manner.

- **Banking.** EU and US participants recognised the major strides made globally through the Basel Committee on Banking Supervision and in their markets to strengthen bank capital, leverage, and liquidity, while noting critical work has to be carried out to implement outstanding elements of the robust banking regulatory framework globally.

- **Resolution.** Participants noted the considerable progress made in the past year on cross-border resolution and reaffirmed the deep co-operation between the Commission and the US agencies on technical aspects of resolution.

(iii) ESMA Guidelines Compliance Table

ESMA has published a table which sets out those Member State competent authorities that have informed ESMA that they comply or intend to comply with ESMA's guidelines on cooperation arrangements and information exchange (the "**Guidelines**").

The Guidelines provide for competent authorities to enter into and comply with the provisions of a multilateral memorandum of understanding ("**MMoU**") which provides a general framework for cooperation arrangements and information exchange between competent authorities and between competent authorities and ESMA.

(iv) Risk of ESMA failing to meet legal obligations in 2015 due to budget cuts

On 23 February 2015, ESMA published a revised version of its work programme for 2015 (dated 18 February 2015).

In a letter (dated 18 February 2015) from the Chair and Executive Director of ESMA to the European Parliament, the Council of the EU and the European Commission, ESMA explains that the version of the work programme sent to the EU institutions on 30 September 2014 was based on the 2015 budget request of EUR38,639,000 and 147 establishment plan posts that had been approved by ESMA's Board of Supervisors. The EU budget had not been voted on at that time. Following adoption of the EU budget, ESMA's 2015 budget is EUR33,601,402 (plus an additional EUR3,100,000 from assigned revenues for tasks delegated from national competent authorities) with 137 establishment plan posts.

ESMA's Board of Supervisors has approved the revised work programme to account for the difference of EUR5 million and 10 establishment plan posts, representing a 15% reduction compared to ESMA's planned budget. As a result, ESMA will not have sufficient resources to carry out all of the tasks it initially planned for 2015. The revised work programme explains where reprioritisation has had to take place. There is a risk that ESMA will not fully meet its legal obligations.

Credit Rating Agencies Regulation

(i) Delegated Regulations on CRA III RTS published in official journal

On 6 January 2015, the following three Delegated Regulations containing RTS required under Regulation 1060/2009 (the "**CRA Regulation**"), as amended by

Regulation 462/2013 (the "**CRA III Regulation**"), were published in the OJ and entered into force twenty days after publication in the OJ on 26 January 2015:

- Commission Delegated Regulation (EU) 2015/1 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the periodic reporting on fees charged by credit rating agencies for the purpose of ongoing supervision by the European Securities and Markets Authority. This Regulation applies from the date of its entry into force.

- Commission Delegated Regulation (EU) 2015/2 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards for the presentation of the information that credit rating agencies make available to the European Securities and Markets Authority. This Regulation will apply from 21 June 2015.

- Commission Delegated Regulation (EU) 2015/3 of 30 September 2014 supplementing Regulation (EC) No 1060/2009 of the European Parliament and of the Council with regard to regulatory technical standards on disclosure requirements for structured finance instruments. This Regulation will apply from 1 January 2017, with the exception of Article 6(2), which applies from the date of its entry into force.

(ii) Responses to ESA's consultation and addendum on draft ITS on mapping of ECAIs' credit assessments

The Joint Committee of the European Supervisory Authorities ("**ESAs**") published the consultation paper on draft implementing technical standards ("**ITS**") on the mapping of the credit assessments to risk weights of external credit assessment institutions ("**ECAIs**") under Article 136(1) and (3) of the Capital Requirements Regulation (*Regulation 575/2013*) (the "**CRR**") in February 2014 and the subsequent addendum in October 2014. The addendum provides further details on the application of the rules proposed in the draft Implementing Technical Standards (in relation to particular ECAIs and is to be considered as an extension of the consultation process.

On 14 January 2015, the European Banking Authority (the "**EBA**") published lists of the responses to the consultation. The list of respondents to the consultation includes the Association for Financial Markets in Europe ("**AFME**"), and the list of respondents to the addendum includes the European Association of Credit Rating Agencies ("**EACRA**").

The list of responses can be accessed via the following link:

http://www.eba.europa.eu/regulation-and-policy/external-credit-assessment-institutions-ecai/draft-implementing-technical-standards-on-the-mapping-of-ecais-credit-assessments

(iii) ESMA annual report on supervision of CRAs and trade repositories

On 16 February 2015, ESMA published its annual report on its supervision of credit rating agencies ("**CRAs**") and trade repositories ("**TRs**"), which outlines ESMA's key areas of action during 2014 and its main priorities for 2015.

Key priorities for the supervision of CRAs include:

- Maintaining a complete and accurate view of how the internal decision making and business development processes of CRAs work in practice and the degree of influence that these have on the issue of credit ratings;
- Seeking to understand better the influence on the process of issuing credit ratings of CRA's governance, risk management and internal decision-making processes and of CRAs' business development processes;
- Meeting with CRAs as a part of its on-going supervision, in accordance with the cycle of engagement established for each CRA following the application of ESMA's risk assessment framework; and
- Conducting thematic investigations into the review and validation of ratings methodology, IT internal controls and security and the individual investigation into the ratings process, focusing on elements which could have a significant impact on the quality of ratings.

Key priorities for the supervision of TRs include:

- On-going supervision relating to the monitoring of action plans and improvement plans the TRs are already implementing in response to ESMA requests;
- Conducting thematic reviews into the inter-TR reconciliation process, business continuity planning and the cost-relatedness of TRs' fees;
- Conducting individual reviews and investigations into the lifecycle of TR systems software development, data availability and regulators' access to TRs; and
- Conducting individual reviews and investigations.

ESMA's annual report can be accessed via the following link:

http://www.esma.europa.eu/system/files/esma-2015-280_cra_and_tr_annual_report_2014_and_supervisory_work_programme_2015.pdf

(iv) ESMA call for evidence on competition, choice and conflicts of interest in the CRA industry

On 3 February 2015, ESMA published a call for evidence on competition, choice and conflicts of interest in the CRA industry.

The call for evidence forms part of the development of technical advice for the European Commission on the functioning of the credit rating industry and the evolution of the markets for structured finance instruments under the CRA Regulation, as amended by the CRA III Regulation. ESMA is seeking evidence about competition, choice and conflicts of interests in the credit rating agency industry in general as well as about the impact of a number of specific provisions of the CRA Regulation.

ESMA is asking for evidence about the following general issues:

- The appropriateness of existing and alternative remuneration models for CRAs;
- Choice of and competition between CRAs;
- Whether it is necessary and appropriate to propose further measures to stimulate competition between CRAs; and
- The impact of market concentration levels on the overall stability of the financial sector.

In addition, a number of specific provisions of the CRA Regulation will be assessed in order to determine whether they are effective or whether they should be amended or extended:

- The policies and procedures, shareholder caps and rotation obligations to mitigate conflicts of interest;
- The disclosure obligations for structured finance instruments; and
- The length of the agreements between CRAs and issuers for issuing credit ratings on re-securitisations, the mandatory rotation of CRAs rating re-securitisations and the exemption from this mandatory rotation.

The consultation closed on 31 March 2015. ESMA intends to publish its technical advice by September 2015.

ESMA's call for evidence can be accessed via the following link:

http://www.esma.europa.eu/consultation/Call-Evidence-Competition-Choice-and-Conflicts-Interests-CRA-Industry

(v) ESMA final guidelines on periodic information submitted to it by CRAs

On 23 March 2015, ESMA published a final report dated 19 March 2015 containing guidelines on periodic information submitted to it by CRAs (the "**Final Report**").

Annex 1 of the Final Report sets out the guidelines which apply to CRAs registered in the EU. However, it should be noted that they do not apply to certified CRAs. Annex 2 of the Final Report contains a summary of periodic information to be submitted to ESMA by CRAs.

The aim of the guidelines is to:

- Set out the information that should be submitted by CRAs to enable ESMA's ongoing supervision of CRAs on a consistent basis; and
- Clarify ESMA's expectations of the information that should be submitted to ESMA for the calculation of supervisory fees and CRA's market share.

ESMA had previously consulted on a draft version of the guidelines and recommendations in July 2014 and the Final Report also contains a feedback statement summarising responses to that consultation and policy decisions taken by ESMA.

The guidelines and recommendations will be translated into all the official languages of the EU and will become effective two months after their publication on ESMA's website in all the official languages of the EU.

The Final Report can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-609_cra_guidelines_on_periodic_reporting.pdf

Market Abuse

(i) Benchmark Regulation

On 22 January 2015, the Presidency of the Council of the EU published a compromise proposal dated 21 January 2015 in respect of the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts (the "**Benchmark Regulation**") (the "**Compromise Proposal**"). It is outlined in the cover note of the Compromise Proposal that additions to the previous compromise text are set out in bold underlined font and deletions are struck through. It is understood that this refers to the Council's compromise proposal on the Benchmark Regulation dated 8 December 2014.

On 13 February 2015, the Council of the EU published a press release outlining that COREPER has agreed, on the Council's behalf, the Council's negotiating position on the proposed Benchmark Regulation. The Council's General Secretariat had previously recommended on 6 February 2015, in an "I" item note (5921/15) from its General Secretariat to COREPER (Part 2) that COREPER agree on the negotiating mandate for the proposed Regulation, as set out in the Annex. The Council's press release confirms that COREPER has adopted the text in 5921/15 as the Council's negotiating position. The European Commission has approved the Council's action and has published a press release in this regard.

On 31 March 2015, ECON voted on the European Parliament’s text for the Benchmark Regulation. ECON have addressed apprehensions regarding access to non-EU benchmarks by supplementing the European Commission’s original equivalence framework with alternative options through which non-EU entities can provide their benchmarks in the EU. What constitutes the use of a benchmark for the purposes of the rules was also clarified. ECON has published a press release announcing that it has voted to adopt its draft report on the proposed Benchmark Regulation. This press release outlines that the text will be put to a vote by the European Parliament as a whole in order to consolidate its position prior to trialogue negotiations with the Council of the EU and the European Commission.

The European Parliament has indicated that it will consider the proposed Benchmark Regulation during its plenary session to be held from 7 to 10 September 2015.

On 6 January 2015, the Latvian Presidency of the EU published its work programme for the period 1 January to 30 June 2015. Amongst other initiatives, the Presidency intends to reach agreement with the European Parliament on the proposed Benchmark Regulation.

The Compromise Proposal can be accessed via the following link:

http://data.consilium.europa.eu/doc/document/ST-5453-2015-INIT/en/pdf

The Council’s press release can be accessed via the following link:

http://www.consilium.europa.eu/en/press/press-releases/2015/02/150213-benchmarks-for-financial-instruments-council-agrees-stance-tighter-controls/

ECON’s press release can be accessed via the following link:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20150330IPR39136/20150330IPR39136_en.pdf

(ii) ESMA technical advice on new market abuse regime under the market abuse regulation

On 3 February 2015, ESMA published a final report outlining its technical advice to the European Commission on potential delegated acts under the Market Abuse Regulation ("**MAR**") (the "**Final Report**").

On 12 June 2014, MAR was published in the Official Journal of the European Union and entered into force on 2 July 2014.

MAR aims to enhance market integrity and investor protection. To this end MAR updates and strengthens the existing framework by extending its scope to new markets and trading strategies and by introducing new requirements.

ESMA received two formal mandates from the European Commission to provide technical advice to assist the European Commission on the possible content of the delegated acts required by some of the provisions in MAR.

ESMA was required to provide technical advice by no later than 8 months after the entry into force of MAR.

The first mandate was published on 21 October 2013 and it covers the following topics:

- The specification of the indicators of market manipulation;
- The establishment of a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of exemption with respect to the public disclosure of inside information;
- The specification of the competent authority for the notification of delays in the public disclosure of inside information; and
- The specification of the characteristics of a manager's transaction which trigger the notification duty, and specification of the circumstances under which trading during a closed period may be permitted by the issuer.

The second mandate was published on 2 June 2014, and refers only to the specification of procedures to enable reporting of actual or potential infringements of MAR.

The Final Report follows the Consultation Paper ("**CP**") published by ESMA on 15 July 2014, and is divided into five main sections, reflecting the mandates received:

- Specification of the indicators of market manipulation;
- Minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information;

- Determination of the competent authority for notification of delays in public disclosure of inside information;
- Managers' transactions; and
- Reporting of infringements.

The Final Report also contains, for each question originally included in the CP, the summary of the market participants' responses, as well as ESMA's own comments to the responses received.

The delegated acts should be adopted by the European Commission so that they enter into force 24 months after the entry into force of the MAR, taking into account the right of the European Parliament and Council to object to a delegated act within 3 months (which can be extended by a further 3-month period).

The Final Report can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-224.pdf

PRIIPS KID REGULATION

(i) Insurance Europe publishes its final response to the ESAs

On 17 February 2015, Insurance Europe published its final response to the Joint Committee of the European Supervisory Authorities (the "**ESA's**") November 2014 discussion paper on key information documents ("**KIDs"**) for packaged retail and insurance-based investment products ("**PRIIPs"**).

Insurance Europe has stated that it believes that it is important to apply a clear and comparable cost indicator and clearly distinguish between costs and premiums, and to avoid confusing duplication of pre-contractual information.

Insurance Europe's response to the ESA's discussion paper can be accessed via the following link:

http://www.insuranceeurope.eu/uploads/Modules/Publications/response-to-esas-on-kid-for-priips.pdf

Securities Financing Regulation

(i) Transparency, reporting obligation and re-use: ECON draft report on regulation on securities financing transactions

On 8 January 2015, ECON published its draft report dated 22 December 2014 on the proposed Regulation on securities financing transactions (the "**STF Regulation**") (the "**Draft Report**").

The Draft Report contains a European Parliament legislative resolution on the Regulation, the text of which sets out suggested amendments to the European Commission's original proposal. Rapporteur Renato Soru also provides an explanatory statement in the Draft Report, in which he makes a number of comments in respect of the following areas:

- Reporting obligation: This should cover all financial and non-financial counterparties, except central banks and their counterparties. Mr Soru believes that reporting obligations should cover all types of securities financing transactions ("**SFTs**") currently in the market and the European Commission should have power to extend the list of SFTs and of SFT counterparties to be included in the scope of the Regulation;
- Transparency: Investment funds must disclose all relevant details of SFT activities in their applicable report and investor documents. Also, credit institutions should disclose details on their SFTs in a similar manner to that required of other financial institutions, and any listed companies that engage in SFTs should have a clear responsibility to inform their shareholders of the risks that these activities entail; and
- Re-use: The Regulation should aim at making the EU compliant with Financial Stability Board ("**FSB**") recommendations on SFTs by the end of 2017, which is the targeted implementation date set by the FSB. Mr Soru therefore believes that it is very important to set in this Regulation all the principles agreed by the FSB, while leaving out the technical details to be specified by ESMA. To this end, Mr Soru sets out certain amendments to Article 15 of the proposed Regulation.

On 24 March 2015, ECON published a press release stating that it has voted to adopt the Draft Report. The vote consolidates ECON's position and negotiations with Member States are expected to commence in April 2015. The European Parliament is scheduled to consider the Regulation in its plenary session to be held from 7 to 10 September 2015.

The Draft Report can be accessed via the following link:

http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-544.170&format=PDF&language=EN&secondRef=01

ECON's press release can be accessed via the following link:

http://www.europarl.europa.eu/news/en/news-room/content/20150323IPR36440/html/MEPs-back-transparency-rules-on-lending-and-re-use-of-securities

Securitisations

(i) European Commission issue a public consultation on an EU framework for simple, transparent and standardised securitisations

On 18 February 2015, the European Commission issued a public consultation on an EU framework for simple, transparent and standardised securitisations (the "**Consultation**").

The Consultation represents a first step towards potentially creating an EU framework for simple, transparent and standardised securitisation. The purpose of the Consultation is to gather information and views from stakeholders on the current functioning of European securitisation markets and how the EU legal framework can be improved to create a sustainable market for high-quality securitisation.

Securitisation refers to transactions that enable a lender (typically a bank) to refinance a
set of loans or assets (e.g. mortgages, auto leases, consumer loans, credit cards) by converting them into securities. The lender pools and repackages a portfolio of its loans, and
sometimes organising them into different risk categories, tailored to the risk/reward appetite
of investors. Returns to investors are generated from the cash flows of the underlying loans.
These markets are not for retail investors.

The deadline to respond to the Consultation is 13 May 2015.

The Consultation can be accessed via the following link:

http://hb.betterregulation.com/external/An%20EU%20framework%20for%20simple,%20transparent%20and%20standardised%20securitisation.pdf

Financial Stability Board (FSB)

(i) FSB discusses work plan for 2015

On 27 March 2015, the Financial Stability Board (“**FSB**”) published a press release following its plenary meeting in Frankfurt on 26 March 2015.

At the meeting, the FSB discussed its work in several areas including:

- **Market Liquidity and Asset Management.** The FSB agreed a work plan to identify financial stability risks associated with market liquidity in fixed income markets and asset management activities, as well as longer-term structural financial stability issues. The FSB will consider the role that existing or additional policy measures could play in mitigating potential risks and make policy recommendations as necessary. The FSB will discuss the initial findings at its meeting in September 2015.

- **Market-Based Finance.** The FSB considered the responses to its October 2014 consultation on standards relating to the application of numerical haircut floors to non-bank transactions and it has planned to finalise these standards in September 2015. The FSB intends to conduct a comprehensive peer-reviewed information-sharing exercise in 2015 relating to the FSB's high-level policy framework for shadow banking entities.

- **Ending too-big-to fail.** The FSB considered its ongoing work on the total loss-absorbing capacity (“**TLAC**”) of global systematically important banks (“**G-SIBs**”) and the adoption of contractual recognition clauses to make temporary stays of early termination rights effective in a cross-border context. The FSB agreed a work plan to promote the resilience, recovery planning and resolvability of central counterparties (“**CCPs**”). This work will be co-ordinated with the International Organisation of Securities Commissions (“**IOSCO**”), the Committee on Payments and Market Infrastructures (“**CPMI**”) and the Basel Committee on Banking Supervision (“**BCBS**”).

- **Market Conduct Issues.** The FSB reviewed a work plan that will consider whether reforms to risk governance, compensation and benchmarks have helped to reduce misconduct and whether any additional measures are needed. It will also consider whether further measures are needed to improve standards of conduct in the fixed income, commodities and currencies markets.

- **Systemically Important Banks.** The FSB will publish a thematic peer review report in April 2015 on supervisory frameworks and approaches for systemically important banks that will examine how authorities are implementing the FSB's recommendations for a more intensive and effective approach to supervision.

- **Data Gaps.** The FSB considered a proposal for the third and final phase in implementing its initiative to collect data on G-SIB exposures and funding through a common data template.

International Organisations of Securities Commission (IOSCO)

(i) IOSCO publishes responses to its consultation on post-trade transparency in credit default swaps market

On November 17, 2014, the International Organization of Securities Commissions ("**IOSCO**") issued a consultation report on post-trade transparency in the credit default swaps ("**CDS**") market, analyzing the possible effects resulting from mandatory post-trade transparency in the CDS market. The report states that the introduction of mandatory post-trade transparency does not have a substantial effect on market risk exposure or market activity, and that greater post-trade transparency, including making the price and volume of individual transactions publicly available, is highly valuable to market participants. IOSCO identifies the benefits and costs of mandatory post-trade transparency, recommends that its members take measures to increase post-trade transparency in their jurisdiction and provides a list of factors that may help minimize related potential costs. The consultation closed on February 15, 2015.

On 20 February 2015 IOSO updated its webpage on its publications to include links to the public responses it has received to its consultation on post trade transparency in the CDS market.

(ii) IOSCO Report Compares, Analyses Prudential Standards in the Securities Sector

IOSCO published the final report *A Comparison and Analysis of Prudential Standards in the Securities Sector*, which makes a high level comparative analysis of the key prudential/capital frameworks for securities firms on 24 February 2015.

The final report seeks to highlight similarities, differences and gaps among the different frameworks. IOSCO´s objective is to update its 1989 Report on *Capital Adequacy Standards for Securities Firms*, based on the issues identified in its final report.

The report´s comparative analysis focuses on the Net Capital rule approach, in particular the US approach, and the Capital Requirements Directive which is founded on the Basel Committee approach.

(iii) FSB/IOSCO Issue Second Proposal on G-SIFI Designation Methodology for Investment Funds and Asset Managers

On March 4, 2015, the FSB and IOSCO issued a second consultation addressing the potential designation of investment funds and asset managers as global systemically important financial institutions ("**G-SIFIs**").

The Consultation establishes a protocol and step-by-step plan to potentially designate investment funds and asset managers. FSB and IOSCO seek comments on eligibility thresholds for traditional investment funds that will be evaluated for potential G-SIFI status.

Comments must be submitted by 29 May 2015.

A copy of the second consultation is available at the following link; https://www.iosco.org/library/pubdocs/pdf/IOSCOPD479.pdf

Capital Markets Union

(i) The EU's Next Focus for Reforms

On 18 February 2015, the European Commission published a green paper (the "**Green Paper**") on building a Capital Markets Union ("**CMU**"), alongside two complementary consultation papers on a revised EU framework for securitisation and a review of the Prospectus Directive.

The CMU aims to provide a single rulebook for all EU Member States thereby improving access to financing, increasing and diversifying the sources of funding and increasing market effectiveness and efficiency.

The main areas that the Green Paper seeks to address are:

- Improving access to financing for all businesses across Europe and investment projects, in particular start-ups, SMEs and long-term projects;
- Increasing and diversifying the sources of funding from investors in the EU and all over the world; and
- Making the markets work more effectively so that the connections between investors and those who need funding are more efficient and effective, both within Member States and cross-border.

Contributions are invited from all interested parties by 13 May 2015 and the aim of the project is to implement a fully functioning CMU by 2019. The purpose of the Green Paper is to consult all interested parties on the European Commission's overall approach to putting in place the building blocks for CMU by 2019, the underlying economic rationale of CMU, and on possible measures which could be taken to achieve this objective.

Based on the feedback it receives the European Commission will unveil an action plan on the CMU during third quarter of 2015.

A copy of the Green Paper is available via the following link; http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0063

International Swaps and Derivatives Association (ISDA)

(i) ISDA key principles and initiatives to improve regulatory transparency of global derivatives markets

On 26 February 2015, the International Swaps and Derivatives Association ("**ISDA**") published a paper outlining key principles and initiatives for regulators, market participants and industry service providers in order to further improve regulatory transparency of the global derivatives markets.

ISDA has stated that, although significant progress has been made in the reporting of over-the-counter ("**OTC**") derivatives trades and the establishment of trade repositories, major challenges remain.

The aim of the paper is to help with standardising, aggregating and sharing of data across borders, to achieve greater regulatory transparency. The key principles are:

- Regulatory reporting requirements for derivatives transactions should be harmonised within and across borders. Regulators should identify and agree on the trade data required to meet their supervisory responsibilities and issue consistent reporting requirements across jurisdictions.
- Policy-makers should adopt standards (such as legal entity identifiers (“**LEIs**”), unique trade identifiers (“**UTIs**”), unique product identifiers (“**UPIs**”) and financial products markup language (“**FpML**”)) to improve quality and consistency in meeting reporting requirements.
- Where global standards do not yet exist, market participants and regulators can collaborate and secure agreement on common solutions to improve consistency and cross-border harmonisation. Market participants can, in an open and transparent process, establish a central source (described by ISDA as a "data dictionary") that defines and clarifies derivatives trade and reference data and workflow requirements for each reporting field that is required by relevant regulators. In turn, regulators should be clear about their priorities and set timetables for reform. They should also regularly review this work and facilitate its adoption on a cross-border basis.
- Laws or regulations preventing policy-makers from appropriately accessing and sharing data across borders must be amended or repealed. Regulators need to continue to work collaboratively to develop a framework that enables appropriate sharing of derivatives trade data across geographic boundaries. Any issues preventing the appropriate sharing of data should be removed, either by regulatory or legislative action.
- The quality and completeness of data provided to repositories should be tracked, measured and shared with market participants and regulators to benchmark, monitor and incentivise progress in reporting.

ISDA recommends that all stakeholders consider, and align with, the key principles and action points set out in the paper

A copy of the paper is available via the following link; http://www2.isda.org/news/isda-outlines-key-principles-for-further-improving-regulatory-transparency-and-derivatives-trade-reporting

Prospectus Directive

(i) Response to ESMA's consultation paper on draft regulatory technical standards on prospectus related issues under the Omnibus II directive

The Omnibus II Directive introduced some important changes to the Prospectus Directive with the aim of further harmonisation in relation to prospectuses, their approval and publication, and to dissemination of advertisements.

To achieve those goals, ESMA has been mandated to draft RTS as part of assisting the European Commission with its advice. ESMA must deliver the RTS to the European Commission by 1 July 2015. To this end ESMA published a Consultation Paper on 25 September 2014, in respect of the draft regulatory technical standards on prospectus related issues under the Omnibus II Directive (the "**Consultation Paper**"). The deadline to submit responses to the Consultation Paper has now closed.

On 16 January 2015, the Securities Markets Stakeholder Group (the "**SMSG**") published a response to the Consultation Paper. Although the SMSG outlines in the response to the Consultation Paper that it supports almost all of ESMA's proposals in principle, the SMSG has highlighted those areas where different interpretations could result from the current wording of such proposals, with the aim of helping to achieve better clarity of wording. In some cases, the SMSG proposes smaller modifications and/or alternative wordings with the aim of building a strong and unified market across the EU, with the highest possible level of protection of both issuers and investors.

The response to the Consultation Paper can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-smsg-003_smsg_advice_prospectus.pdf

(ii) European Commission publishes consultation paper on the review of the prospectus directive

On 18 February 2015, the European Commission published a consultation paper on the review of the Prospectus Directive (the "**Consultation Paper**").

The issues outlined for discussion in the Consultation Paper are as follows:

- *When a prospectus is needed:* the European Commission is seeking respondents' views on a possible recalibration of the obligation for issuers to draw up a prospectus, based on the existing exemption thresholds, as well as the favourable treatment granted to debt issuers using high denominations per unit. Views are also welcome on whether a prospectus should be required for secondary issuances and for the admission of securities to trading on MTFs;

- *What information a prospectus should contain*: the Consultation Paper seeks feedback on ways to expand the existing tools that were intended to introduce some flexibility in the drawing up of a prospectus and enhance their effectiveness to the benefit of issuers. Issues raised include whether the proportionate disclosure regime should be modified or extended, whether there should be a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market and the possible limitations which could be introduced on prospectuses; and
- *How prospectuses are approved*: for example, the Consultation Paper questions whether the scrutiny and approval process should be made more transparent to the public and more flexible for the issuers seeking to react quickly to market windows. The role of national competent authorities in the approval process of prospectuses and the equivalence of third-country prospectus regimes is also considered.

Respondents are invited to reply to the Consultation Paper by 13 May 2015 at the latest.

The Consultation Paper can be accessed via the following link:

http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf

Client Money Rules

(i) Introduction

The Central Bank published two sets of regulations on 30 March 2015; (i) Client Asset Regulations 2015 for Investment Firms[1], (the "**Client Asset Regulations**") and (ii) Investor Money Regulations 2015 for Fund Service Providers [2], (the "**Investor Money Regulations**") which strengthen the safeguards around client assets and investor money, (hereinafter collectively referred to as the "**Regulations**").

The Client Asset Regulations apply to investment firms when holding client assets[3]. Therefore the Client Asset Regulations may apply to investment firms authorised under MiFID Regulations[4], certain investment business firms authorised under the Investment

1 S.I. No. 104 of 2015
2 S.I. No. 105 of 2015
3 The term client assets is defined in S.I. No. 104 of 2014 as meaning client funds and client financial instruments.
4 S.I. No. 60 of 2007

Intermediaries Act 1995 (as amended) (the "**IIA**")[5], UCITS management companies which are authorised to provide individual portfolio management activities and Alternative Investment Fund Managers which are authorised to provide individual portfolio management activities. The Central Bank has also published guidance ("**Guidance on Client Asset Regulations for Investment Firms**") to assist investment firms in complying with the Client Asset Regulations, which will come into operation on 1 October 2015 and will replace the existing Client Asset Requirements (issued 1 November 2007) from that date.

Given the business model operated by "Fund Service Providers ("**FSPs**") the Central Bank engaged with representatives from the funds industry and, developed a separate set of regulations and guidance with regards to the operation of collection accounts. In this regard, the Investor Money Regulations apply to FSPs when holding investor money. A FSP is defined as meaning a person who is authorised under the IIA to carry out (i) the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes or (ii) custodial operations involving the safekeeping and administration of investment instruments. Accordingly, the Investor Money Regulations will apply to fund administrators and to depositaries/custodians authorised under the IIA when they hold investor money. The Central Bank has published guidance ("**Guidance on Investor Money Regulations for Fund Service Providers**") to assist FSPs to comply with the Investor Money Regulations, which will come into operation on 1 April 2016.

On the publication of the Regulations, the Director of Markets Supervision, Gareth Murphy, said "*The publication of these Regulations marks a significant development with regard to the safeguarding of client assets and investor money in Ireland. The development of these Regulations is the outcome of a lengthy period of industry consultation with investment firms and funds service providers. The Central Bank will closely monitor the implementation of these Regulations so as to ensure that our aim of enhancing investor protection and safeguarding client assets is achieved*."

(ii) Client Asset Regulations

As outlined above the Client Asset Regulations apply to certain investment firms which hold client assets. The Client Asset Requirements will also apply to such a firm in respect of passported activities carried out by that firm but do not apply to an incoming EEA investment firm with respect to its passported activities in Ireland or any branch of an EEA firm operating in Ireland.

5 The definition of "investment firm" which is contained in the Client Assets Regulations specifically excludes a person authorised under the IIA to solely carry out; (i) the administration of collective investment schemes or fund accounting services or acting as a transfer agent or registration agent for such schemes or (ii) custodial operations involving the safekeeping and administration of investment instruments; i.e. the definition specifically excludes fund administrators and depositaries authorised under the IIA.

The Client Asset Regulations are set out under seven headings which the Central Bank regards as the seven core client asset principles of the client asset regime:

1. Segregation

An investment firm should physically hold, or arrange for the holding of client assets separate from the investment firm's own assets and maintain accounting segregation between the investment firm's own assets and client assets.

2. Designation and Registration

An investment firm should ensure that client assets are clearly identified in its internal records and in the records of third parties. The client assets must be identifiable and separate from the investment firm's own assets.

Under the Client Asset Regulations, a firm shall obtain a Fund Facilities and Financial Instrument Facilities Letter where it deposits client funds or client financial instruments with that third party. These agreements are to be regarded as master letters which govern the relationship with the firm and the third party.

3. Reconciliation

An investment firm should keep accurate books and records to enable it at any time and without delay to provide an accurate record of the client assets held by the investment firm for each client and the total held in the client asset account. An investment firm should conduct a reconciliation between its internal records and those external records of any third party with whom client assets are held as provided for in the Client Asset Regulations (daily in the case of client monies and monthly in the case of client financial instruments). The Guidance on Client Asset Regulations for Investment Firms explicitly states that fixed term deposits should be reconciled on a monthly basis.

Under Regulation 5(10) of the Client Asset Regulations, an investment firm shall commence an investigation into the cause of any difference in the reconciliation within one working day, shall identify the cause of the reconciliation difference within 5 working days and shall resolve any reconciliation difference identified as soon as practicable.

4. Daily Calculation

Each working day, an investment firm should ensure that the aggregate balance on its client asset bank account as at the close of business on the previous working day is equal to the amount it should be holding on behalf of its clients. The Client Asset Requirements therefore eliminate the requirement upon firms to retain a buffer; i.e. a firm's Client Money Resource should only contain what it is required to hold for its clients on a given day.

5. Client Disclosure and Client Consent

An investment firm should provide information to its clients in a way that informs the client on how and where their client assets are held and the resulting risks thereof. Under the Client Asset Regulations a firm will be required to provide a Client Assets Key Information Document ("**CKID**") to retail clients. In addition, a firm should be able to demonstrate, when requested to do so, evidence that it provided the CKID to its retail clients.

6. Risk Management

An investment firm should ensure that it applies systems and controls that are appropriate to identify risks in relation to client assets and should put in place mitigants to counteract these risks.

Under the Client Asset Regulations, an investment firm will be required to appoint an individual to the role of Head of Client Asset Oversight Role ("**HCAO**"), who will be responsible for ensuring that the firm complies with its obligations under the Client Asset Regulations. This person will be a pre-approved controlled function ("**PCF**") under Part 3 of the Central Bank Reform Act 2010. The responsibilities of the HCAO should be tailored to the business model of the firm.

Firms that hold/intend to hold client assets will be required to adopt a Client Asset Management Plan ("**CAMP**"). The CAMP will be required to be reviewed and updated at least annually or more frequently if there is a change to a firm's business which effects the way in which client assets are held by the firm. The Client Asset Regulations contain detailed rules as to what should be included in the CAMP.

7. Client Asset Examination ("**CAE**")

An investment firm should engage an external auditor to report at least on an annual basis on the investment firm's safeguarding of client assets. Under the new regime the auditor must provide an assurance report with regards to certain matters which are specified in the Client Asset Regulations.

(iii) Investor Money Regulations

Holding Investor Money

The Investor Money Regulations are issued pursuant to section 48 of the Central Bank (Supervision and Enforcement) Act 2013 and apply to FSPs when holding investor money.

The Investor Money Regulations provide that a FSP will be deemed to hold investor money where:

- It has been lodged into a collection account of a credit institution located and authorised in the EEA, a signatory state to the Basel Capital Convergence Agreement of July 1988 or in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

- It is held in the name of the FSP or any nominee of the FSP; and

- The FSP has the capacity to effect transactions on that collection account.

The term collection account is defined as meaning an "*account opened with a third party by a fund service provider to hold money to deliver from an investor to an investment fund or from an investment fund to an investor*". Accordingly, the term "collection account" is designed to capture an account operated by a FSP where monies are transferred from the client to the FSP for onward transmission to the investment fund (the "**Fund**") and likewise where monies flows back from the Fund to the Collection Account for onward transmission to the underlying client. In other words the Investor Money Regulations will apply to monies in a collection account where that account is held in the name of the FSP or any nominee of the FSP.

The Guidance on Investor Money Regulations for Fund Service Providers specifically provide that if the collection account is an asset of the Fund (i.e. the investment fund has opened the collection account in its name with a credit institution) the Investor Money Regulations will not apply.

Six Core Principles of the Investor Money Regulations

The Guidance on Investor Money Regulations for FSPs explicitly provides that the Investor Money Regulations are applicable to a FSP that is authorised in the State and is holding investor money irrespective of whether the investor money is in respect of Irish or non-Irish Funds.

The Investor Money Regulations are set out under six headings which the Central Bank regards as the six core investor money principles of an investor money regime:

1. Segregation

A FSP should physically hold, or arrange for the holding of investor money separate from the FSP's own assets and maintain accounting segregation between the FSP's own assets and client assets.

2. Designation and Registration

A FSP should ensure that investor money is clearly identified in its internal records and in the records of third parties. The investor money must be identifiable and separate from the FSP's own assets.

3. Reconciliation

A FSP should keep accurate books and records to enable it at any time and without delay to provide an accurate record of the investor money held by the FSP for each client and the total held in the collection account. Regulation 5(1) of the Investor Money Regulations requires a FSP to reconcile collection accounts on a daily basis.

4. Daily Calculation

Each working day, a FSP should ensure that the aggregate balance of all collection accounts as at the close of business on the previous working day is equal to the amount it should be holding on behalf of its clients.

5. Risk Management

A FSP should ensure that it applies systems and controls that are appropriate to identify risks in relation to investor money and should put in place mitigants to counteract these risks.

6. Client Asset Examination

A FSP should engage an external auditor to report at least on an annual basis on the FSP's safeguarding of investor money.

(iv) Conclusion

The Regulations will ensure that both investment firms and FSPs will have stronger systems and controls in place to protect the ownership rights of clients and investors respectively. In addition investment firms and FSPs will have a process in place which, in the event of insolvency, will facilitate the expeditious return of client assets or investor money. It is hoped that the revised regime will prevent a repeat of cases such as MF Global, Lehman Brothers and Custom House Capital in Ireland where individual investors lost significant amounts of money.

Central Bank of Ireland

(i) Central Bank (Amendment) Bill 2014 Seanad Eireann second stage speech

On 22 January 2015, the members of Seanad Eireann met to discuss the Central Bank (Amendment) Bill (the "**Bill**"). The Government is bringing forward the Bill at the request of the Joint Committee of Inquiry into the Banking Crisis.

The Bill amends two main provisions, firstly, it amends Section 33AK of the Central Bank Amendment Act 1942 to allow the Central Bank to disclose confidential information to the Joint Committee of Inquiry under certain circumstances (as it stands, the Central Bank officials are subject to professional secrecy requirements, and could face criminal sanctions for sharing confidential information in this way) and secondly, it provides for the House of the Oireachtas to make Standing Orders setting out the sanctions to apply to members of the Houses for any failure to comply with these professional secrecy requirements. The purpose of amending the Standing Orders is to accommodate the constitutional position of the privilege of members of the Oireachtas which restricts the extent to which criminal sanctions could be applied.

The Bill states that the above case does not apply for any other persons who would disclose confidential information.

Under the EU Treaties, Ireland is required to consult formally with the ECB on any new legislative provisions relating to the Central Bank. The ECB have commented on the fact that the scope of section 33AK (6) of the Central Bank Act 1942 should be broadened to comply with Article 37.2 of the Statue of the European System of Central Banks ("**ESCB**"). This would have the effect of removing any ambiguity over the scope of professional secrecy requirements pertaining to persons who should receive information disclosed by the Central Bank.

The ECB opinion further notes that under the Capital Requirements Directive, specific conditions rather than prohibitions also apply when disclosing confidential information relating to the prudential super supervision of institutions to parliamentary Inquiry committees. The ECB identifies these conditions as follows:

- The parliamentary enquiry committee must have a 'precise mandate' under national law;
- The information must be 'strictly necessary' for fulfilling that mandate;
- Persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in the Capital Requirements Directive;
- Where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement; and
- To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the parliamentary enquiry committee must comply with relevant national transposing law.

The Bill has since been amended, received for final consultation and passed by the Seanad.

The Bill (with amendments) is available via the following link:

http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2014/10814/document1.htm

(ii) Central Bank's enforcement priorities for 2015

The Central Bank has published its statement of enforcement priorities for 2015 (the "**Statement**"). The publication of the Statement provides for an opportunity for regulated entities to assess and raise compliance standards, where necessary, in key risk areas. In addition, the Statement also provides regulated entities with a list of the Central Bank's planned priorities for enforcement activity for 2015.

The Central Bank publishes enforcement priorities annually in order to help promote compliance in areas that are of greatest importance to the Central Bank.

The Enforcement Priorities for 2015 are:

- **All Sectors**:
  i. Prudential Requirements
  ii. Systems and Controls
  iii. Provision of timely, complete and accurate information to the Central Bank

iv. Appropriate governance and oversight of outsourced activities
v. Anti- Money Laundering/ Counter Terrorism Financing Compliance

- **MiFID Firms**
    i. MiFID Conduct of Business Rules
    ii. Client Asset Requirements

- **Credit Unions**
    i. Governance

- **Consumer Protection**
    i. Code of Conduct on Mortgage Arrears
    ii. Suitability of Sales
    iii. Fair Treatment of Customers

- **Low Impact Firms**

    The Central Bank has stated that in the context of low impact firms, it has allocated resources for enforcement actions against firms with a low impact PRISM rating on the Central Bank's risk assessment framework. The Central Bank will utilise its enforcement powers in order to remind all firms irrespective of their nature, scale or complexity that all regulatory requirements must be compiled with and that non-compliance is regarded as a serious issue.

For further detail, please refer to the following Dillon Eustace article:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Enforcement%20Priorities%202015.pdf

(iii) Central Bank publishes service report on regulatory transactions

On 30 January 2015, the Central Bank published its Regulatory Transactions Service Standards Performance Report (the "**Report**") for the period from July 2014 to December 2014. The purpose of the Report is to demonstrate the turnaround time of the Central Bank in:

- Processing IQs in respect of persons proposed for PCFs; and
- Authorisation of regulated financial service providers.

The Report indicates that the Central Bank exceeded its performance targets in six of the seven targets set and that the Central Bank processed over 92.51% of 'standard' IQ applications (i.e. non QIFs and/or individuals not previously approved) within 15 days. The Central Bank failed however to reach its target of processing over 75% of authorisation applications within 3 months of completion, instead only reaching a figure of 60%.

The Report also contains an appendix in which it lists the reasons for returning IQ applications as incomplete.

A link to the report is available below:

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

(iv) Central Bank publishes programme of themed inspections in market supervision

On 26 February 2015, the Central Bank published its programme of themed-inspections in Markets Supervision, which reflects a number of supervisory priorities for this year. The programme builds on supervisory work of previous years and also anticipates areas of emerging risk.

The themed-inspections, which supplement day-to-day supervisory activities under the Central Bank's risk-based supervisory framework (PRISM – Probability Risk and Impact System) are:

- Cyber Security / Operational Risk: Inspection of controls and procedures around system security and access;
- Integrity of Regulatory Returns: Review of firms' regulatory reporting;
- Treatment of pricing errors for the Calculation of Fund NAVs: Examination of the processes for the treatment of pricing errors and the payment of compensation;
- Depository Oversight: Review of depositary oversight of investment funds including the depositary's annual report to investors;
- Proprietary trading: Reviewing the governance and control environment for MiFID firms trading on their own account;
- Conduct of Business: Review of selected MiFID conduct of business requirements;
- Suspicious Transaction Reports ("**STRs**"): Follow-up on previous themed-inspection from 2013 related to market discipline in filing STRs;
- Person Discharging Managerial Responsibilities ("**PDMRs**"): Review of policies and practices in relation to notification of relevant trading activity by persons discharging managerial responsibility in listed firms; and
- Risk management in UCITS: Examination of the on-going application of risk management processes employed by UCITS.

The Central Bank's Director of Markets Supervision, Gareth Murphy stated that "investor protection, market integrity and financial stability are at the core of the Central Bank's mandate. By announcing these themed-inspections, we are highlighting areas where investment firms, funds and market participants may need to raise standards. Following these inspections, we will communicate our assessment of regulatory standards in these areas and, where necessary, we will ensure that specific remedial actions are taken".

(v) Address by director of market supervision, Gareth Murphy, at the fourth annual funds congress

On 26 February 2015, Gareth Murphy, the Director of Markets Supervision spoke at the Fourth Annual Funds Congress in London. He began by speaking about some aspects of the on-going work at the Central Bank in which he stated that the mission in the Central Bank's Markets Supervision Directorate is to ensure that markets are safe and efficient by pursuing the three goals of investor protection, market integrity and financial stability.

Mr Murphy stated that "effective and efficient supervision is what we aim for" and a project that will achieve this is an electronic funds authorisation platform that the Central Bank expects to go live with during the course of 2015. Once this new platform has been proven, a reasonable application fee will be introduced by funds/promoters who wish to avail of it.

Mr Murphy spoke about CP86, the Consultation Paper on Fund Manager Company Effectiveness - Delegate Oversight launched last October and the interviews of fund management companies that were held recently. He stated that almost 50 consultation responses were received, and from these results, there are many issues to consider. He noted that it is too early to disclose the details of feedback that have been received, however these will be published in the coming months.

Mr Murphy also spoke about ESMA's public 'Call for Evidence' in relation to the working of the AIFM passport, the functioning of national private placement regimes and interaction with third country funds regimes. He stated that during this time, ESMA was also gathering quarterly feedback from national competent authorities on the above issues and that the purpose of all this work was to meet the legislative deadline which has been set for ESMA to provide an opinion on the working of the internal AIFM passport and advice on the extension of that passport to third countries. According to Mr Murphy, this will "most likely be the most significant piece of work in the investment management arena that ESMA carries out this year".

Mr Murphy continued to speak about UCITS V and the issuance of guidelines on remuneration as required under the UCITS V Directive. He stated that "as with Article 67 advice, work is already well-advanced in this area". The starting point is the 'AIFMD' remuneration guidelines'.

To view the full speech click on the following link:

http://www.centralbank.ie/press-area/speeches%5CPages%5CAddressbyDirectorofMarketsSupervisionAnnualFunds%20Congress.aspx

(vi) Central Bank publishes Consumer Protection Outlook Report

The Central Bank published its Consumer Protection Outlook Report on 6 February 2015 (the "**Report**"). The Report sets out a number of consumer protection themes that the Central Bank will be focusing on throughout 2015. It also outlines the risks associated with its consumer protection objectives, for example if the right product is sold to the right consumer in the right way.

The Report sends a clear message to all regulated firms of what is expected of them. This includes a consumer-centered culture from the top of the organisation, right through to the staff delivering products and services to their customers. The Report is structured by dealing with each of the 'five C's' – consumer, culture, confidence, challenge and compliance. The Report is aimed at all regulated firms and is accompanied by the Central Bank's expectations that regulated firms must act in the best interest of consumers at all times.

Some of the key priorities contained in the Report include:

- Additional protections for Small Medium Enterprises when accessing credit;
- Supervisory work on firms that are not meeting minimum consumer protection standards;
- Reviews and inspections to be carried out in order to support consumer protection objectives;
- Continuing to work with the Department of Finance to secure the necessary legislation to extend the same protections of Irish financial services legislation (including the Code of Conduct on Mortgage Arrears) to borrowers whose loans are sold on to non-regulated lenders. To this end, the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 (the "**Bill**") was published on 14 January 2015 (see further detail below);
- Building on the Central Bank's engagement with Boards and CEOs, ensuring that they can demonstrate delivery of meaningful consumer outcomes based on a better understanding of the needs, expectations and experiences of their customers; and
- Monitoring and challenging how firms are responding to the Central Bank's 2014 guidance on appropriate variable remuneration arrangements in recognition of the impact of incentive structures on culture and practices.

The Bill aims to ensure that borrowers have the benefit of the regulatory safeguards that they enjoyed prior to the sale of their loans, including pursuant to the Central Bank Code of Conduct on Mortgage Arrears, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code (together the "**Codes**") as well as the right to make complaints to the Financial Services Ombudsman (the "**FSO**"). It is proposed that the legislative changes envisaged by the Bill will be brought about by way of amendment to the Central Bank Acts 1942 – 2014.

The Bill was published following the public consultation conducted by the Department of Finance in July and August 2014 (the "**Consultation Process**") on the initial draft of the proposed legislation, known as the "Consumer Protection on the Sale of Loan Books Bill 2014" (the "**Initial Proposals**"). The impetus to legislate in this area arose from the fact that the protections afforded to borrowers by the Codes, as well as borrowers' access to the FSO, no longer apply when their loans are transferred to unregulated entities.

The Initial Proposals had sought to regulate the ownership of retail credit as a means of ensuring continued regulatory protections for natural persons following the sale of their loans to unregulated purchasers.

On foot of the concerns raised as part of the Consultation Process, the Bill has moved away from the approach outlined in the Initial Proposals and now proposes to regulate the activity of "credit servicing" and the "credit servicing firms" engaged in such activity, being the "customer-facing" activity. Pursuant to the terms of the Bill, a holder of legal title to a credit, who is not already a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland, will only be subject to regulation if the credit servicing is not undertaken by: (i) a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland or; (ii) an authorised credit servicing firm.

While the Bill does seek to address the issue of providing regulatory protection for consumers, it does require some further consideration and amendment. For example, certain types of corporate lending, and the ownership of such corporate loans that, up to now, would not have constituted regulated activities and which are expressly excluded from the scope of the Codes (such as syndicated lending and lending to SPVs) would become regulated pursuant to the terms of the Bill. This is concerning, especially given the need for SME credit presently.

As such, Dillon Eustace expects further engagement on the Bill before its enactment. An article prepared by Dillon Eustace on the Bill is available via the following link:

http://www.dilloneustace.ie/download/1/Publications/Banking%20and%20Capital%20Markets/The%20Consumer%20Protection%20(Regulation%20of%20Credit%20Servicing%20Firms)%20Bill%202015.pdf

The Central Bank Report is available via the following link:

http://www.centralbank.ie/publications/Documents/Consumer%20Protection%20Outlook%20Report%202015.pdf

(vii) Central Bank publishes set of reporting requirements

On 4 March 2015, the Central Bank published a set of reporting requirement documents to include the following:

- Reporting Requirements for AIFMs;
- Reporting Requirements for AIF Management Companies;
- Reporting Requirements for UCITS Management Companies;
- Reporting Requirements for Fund Administrators;
- Reporting Requirements for Depositaries;

The respective reporting requirement documents detail the information these entities are required to report on a periodic basis and can be accessed via the following links:

AIFMs:
http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/Reporting%20Requirements%20for%20AIFMs.pdf

AIF Management Companies:
http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/non-ucits-management-companies/Documents/Reporting%20Requirements%20for%20AIF%20Management%20Companies.pdf

UCITS Management Companies:
http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/ucits-management-companies/Documents/Reporting%20Requirements%20for%20UCITS%20Management%20Companies.pdf

Fund Administrators:
http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/administrators/Documents/Reporting%20Requirements%20for%20Fund%20Administrators.pdf

Depositaries:

http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/trustees/Documents/Reporting%20Requirements%20for%20Depositaries.pdf

(viii) Regulatory reporting requirements for Irish authorised investment funds

On 27 March 2015, the Central Bank published an updated version of its guidance note in respect of the regulatory reporting requirements for Irish authorised investment funds (the "**Guidance Note**").

The Guidance Note is relevant for all Irish authorised Investment Funds ("**IF's**") and their service providers. The purpose of the Guidance Note is to provide information and direction to the IF's Board of Directors / Management Company / AIF Management Company / General Partner, as appropriate, on the reporting requirements relating to the extension of the Central Bank's Online Reporting System to IF's.

The Guidance Note can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/Documents/Guidance%20Note%20Regulatory%20Report%20ing%20Vol%202.7%20March%202015.pdf

Workplace Relations Bill 2014

(i) Update on the Workplace Relations Bill 2014

The Workplace Relations Bill 2014 (the "**Bill**") is a significant development in Irish Employment Law, introducing reforms for how workplace disputes are processed. The Government's objective is to deliver a world-class workplace relations service which is simple to use, independent, effective, impartial, cost effective and provides for workable means of redress and enforcement, within a reasonable period of time. The Bill provides a statutory basis for a new structure which will see the existing five State bodies replaced by two. The Labour Relations Commission (the "**LRC**"), the National Employment Rights Authority ("**NERA**"), the Equality Tribunal, the first instance functions of the Employment Appeals Tribunal (the "**EAT**") and the first instance functions of the Labour Court will be replaced by the new Workplace Relations Commission (the "**WRC**"), and the appellate functions of the EAT will be transferred to a new expanded Labour Court. Appeals will be heard in public and decisions will in general be published. Labour Court Appeals will be appealable to the High Court, but only on a point of law. Current Labour Court members will continue in their role, and a new division will be recruited for the Labour Court by way of competition.

The aim of the Bill is to create a modern, user-friendly, world-class employment workplace relations system that will provide significant benefits for its users and society as a whole. The focus will be on resolving the workplace disputes as quickly and inexpensively as possible. The Bill will also give significant powers to workplace inspectors as well as introducing two new services to assist employers and employees in resolving and settling disputes in the workplace without the need for formal adjudication by a third party.

The Bill itself does not deal with the issue of whether a party to proceedings before a WRC Adjudication Officer or the Labour Court will be liable for the other party's legal costs. It has stated however, that it permits fees to be charged for new services as well as previously stating that there will be no fee for taking claims before the WRC or the Labour Court. There are current talks by the Department about introducing a refundable fee of €300 which will be applied to a party who lodges a fee before the Labour Court after failing to attend an initial hearing before the WRC. In order for the fee to be refunded, the appellant will have to demonstrate good cause for not having attended the WRC hearing.

The Bill states that if an employer fails to comply with the decision of an Adjudication Officer or the Labour Court, the employee (or their representatives) can apply to the District Court for an order directing the employer "to carry out a decision in accordance with its terms". Under the Bill, it also states that inspectors will either be appointed or transferred from previous inspectorate roles to the WRC under the Bill and granted new powers. Their roles will include issuing Fixed Payment Notices, that is, on the spot fines to employers of up to €2,000 in the case of failure to produce wage statements and written statements of hourly rates of pay for a pay reference period to employees or failure to notify the Minister of proposed collective redundancies. They are also able to issue Compliance Notices in order to compel employers to rectify contraventions of certain employment laws.

The Department of Jobs, Enterprise and Innovation has set the end of 2015 as the target date for enacting the Bill. Disputes will continue to be heard by the current workplace relations bodies up to a cut-off date to be specified in the legislation.

Fitness and Probity

(i) Performance Report on fitness and probity service standards performance

The Central Bank published a report on 'Fitness and Probity Service Standards Performance Report – July 2014' on 30 January 2015 and further amended it on 5 February 2015. The report sets out the Central Bank's performance against Service Standards it has committed to in respect of (i) processing of Fitness and Probity Pre-

Approval Controlled Functions (“**PCFs”**) Individual Questionnaire (“**IQ**”) applications; and (ii) Authorisation of Regulated Financial Services Providers.

Section 1 reports on performance against the Fitness and Probity PCF service standards stating that the Central Bank exceeded targets for all four categories between 1 July 2014 and 31 December 2014.

The Central Bank has also stated in an Appendix the main reasons why PCF IQs continue to be returned as incomplete, as follows;

- Incorrectly answering yes to questions 1.4 and 1.5 and not completing Reputation and Character Section 5;
- Omitting ‘Other relevant experience’ from question 3.1 demonstrating the applicants experience in a particular sector and/or to a particular function;
- Incomplete documentation relating to compliance with the Minimum Competency Code, such as evidence of qualifications, grandfathering status, new entrant status, and proof of continuing professional development;
- Lack of supporting documentation in respect of a matter disclosed in Reputation and Character in section 5;
- For Passporting persons: Lack of documentation to demonstrate that the person is entitled under the laws of an EEA / EU member state to perform the equivalent to the PCF function;
- Incomplete list of directorships/senior positions provided by applicant in sections 6 and 9;
- IQ completed by and / or submitted by a person whose name does not match the name of the applicant or the name of the proposer and / or the proposer is not an approved person within the entity with the authority to submit the IQ.

Section 2 reports on performance against the Authorisation service standards, for the same period as section 1. It states that in total, sixteen applications were received between 1 July 2014 and 31 December 2014, and that all targets were exceeded. Applications however, were only received from Insurers and Investment Firms.

Click on the link below to view the performance report which is published on the Central Bank’s website:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Service%20Standards%20Performance%20Report%20Jan%202015%20(REVISED%205%20Feb%202015).pdf

(ii) Fitness and probity frequently asked questions

The Central Bank published an amended set of Frequently Asked Questions ("**FAQ's**") on 18 February 2015 in order to address many of the commonly asked questions which have been raised in relation to operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010 (the "**F & P Regime**"). The FAQs were previously updated in November 2014.

The amendments to the latest FAQs include Question 3.19 (of the previous FAQs) which has been removed. This question related to whether an individual who performs the role of Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF15) could also be designated as Head of Compliance (PCF12).

In addition, all references to Section 4 which consisted of 'Single Supervisory Mechanism Related Issues' have been removed from the FAQs.

Lastly, Question 8.13 (of the previous FAQs) has also been removed which related to whether you are able to obtain a Data Protection Disclosure from an Garda Siochana.

The amended FAQs for February 2015 can be accessed via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Final%20FAQ%20-%20February%202015.pdf

Data Protection

(i) Data protection regulation

On 7 January 2015, German MEP Jan Philipp Albrecht, the European Parliament's lead rapporteur, warned that concerns raised by the UK, Germany and France expressed doubts as to whether or not the Regulation could be finalised and adopted before the end of 2015.

These comments follow previous statements with the intention of having the Regulation adopted by 2015. The concerns raised by Germany and France are primarily related with the "one-stop shop" approach proposed, which essentially enables international organisations to process personal data in EU Member States under the supervision of one single national data protection authority. The UK has also expressed concerns with the structure of the proposed reforms to the EU data protection regime which they believe should be affected by means of a directive and not a regulation. Their reasoning for this is because an EU directive has to be integrated into national laws of each Member State through legislation, where in comparison, an EU regulation automatically applies across the EU. The UK has also suggested watering down the meaning of ‘consent’ suggested by the Working Group. The UK suggests reverting to the definition of consent in Article 2(h) of the Data Protection Directive, effectively removing the requirement that ‘unambiguous’ consent is given.

The EU Council, which is comprised of the justice ministers of each EU Member State, is the only institution that has still not agreed on the Regulation, which must occur before the commencement of trilogues between the European Commission, the Parliament and the Council, to agree on the final working of the Regulation.

Mr Albrecht also referred to various differences of opinion between the EU institutions on the Regulation which need to be resolved before further progress can be made. It is hoped, however, that Mr Albrecht’s comments will help to focus minds at both EU and national level on reaching agreement as to the form and content of the Regulation, and delivering on the commitment made by EU leaders in October 2014 to introduce the proposed reforms before the end of 2015.

(ii) ENISA recommendations for financial services sector on network and information security

The European Network and Information Security Agency (“**ENISA**”) published a research report on 20 January 2015 on Network and Information Security (“**NIS**”) in the finance sector including financial service activities.

The purpose of the report is to understand both the coverage of NIS obligations in the European regulatory landscape (both at EU and Member State level), and compare it with the industry’s prospects. This comparison has led to a high-level overview of the situation and to recommendations on the alignment of policies and needs where possible.

The report provides relevant information at a strategic and governance level. It is primarily intended for Chief Information Officers/Chief Technology Officers in the Finance sector, NIS Experts in National Financial Supervisory Authorities, NIS Experts in the European System of Financial Supervision (“**ESFS**”) (i.e. the EBA, ESMA and EIOPA), and Professional Associations.

It also includes four main recommendations for the finance sector:

- The EBA and ENISA should consolidate NIS obligations in supervisory guidelines;
- ENISA should establish guidelines on how NIS supervision practices apply by extension to their supply chain, including cloud providers that operate financial services;

- ENISA should establish guidelines summarising the key conditions for the adoption of cloud-based applications or services; and
- ENISA should support the ECB and the ESFS to organise regular and voluntary NIS stress tests in the finance sector.

ENISA is the centre of network and information security expertise for the EU and works to develop advice and recommendations on good practice in information security.

(iii) Irish data protection matters

The Irish Government has joined Microsoft in its landmark case against the US government in a bid to help stop the company being forced to hand over confidential data on Irish citizens. Data Protection Minister, Dara Murphy stated that this case involved "important principles of public policy that were at play" despite the fact that both governments have co-operated on criminal matters in the past. He also stated that "The right of individuals to the protection of their personal data is an essential foundation for modern society and the growing digital economy" and that "We must ensure that individuals and organisations can have confidence in the rules and processes that have been put in place to safeguard privacy".

Big tech firms including Apple and eBay have backed Microsoft by also handing in submissions against the US government.

(iv) Data protection challenges and themes for 2015

On 7 January 2015, Helen Dixon, the newly appointed Irish Data Protection Commissioner, highlighted several challenges facing the Office of the Data Protection (the "**DPC**") as well as outlining themes to be expected for 2015.

The Commissioner spoke about several comments that have been made from our EU counterparts claiming that:

- Ireland is facilitating forum shopping by data companies;
- The DPC is not as independent from government as it should be; and
- Ireland does not enforce data protection penalties against multinational companies.

The DPC responded to these comments by simply stating that these were issues of perception as opposed to reality.

However, to improve this perception the Commissioner highlighted that the DPC will not hesitate in sanctioning those who do not comply with data protection legislation. In addition, a number of measures are to be introduced throughout 2015:

- The development of media and PR activity by the DPC;
- The re-orientation of how data protection complaints are dealt with by the DPC, in order to eliminate unmeritorious referrals;
- The establishment of a Dublin office of the DPC (the regional office in Portarlington will still be maintained);
- The start of an active recruitment process to increase the levels of staffing and expertise of the office;
- More active co-operation between the DPC and other EU data protection regulators;
- Deeper Irish engagement with the Article 29 Working Party; and
- Encouraging government bodies to engage with data protection issues at an early stage of major data projects such as Eircode.

The €3.65 million increase in funding for 2015 has been widely welcomed and allocated to the DPC, however, the Commissioner acknowledged that adequately resourcing the office has remained a constant challenge in the past. The Commissioner also noted that Ireland's ability to contribute to the activities of the Article 29 Working Party has suffered from lack of resources, however, that it is hoped that with the increase in funding for the office, Ireland will now be able to "take a seat at the table" with the aim of contributing to EU data protection policy and ensuring that the expertise of the DPC will be recognised at EU level.

Important themes that will affect the DPC as well as EU data protection authorities in 2015 were also discussed by the Commissioner, and include;

- Jurisdiction: How Google Spain's "right to be forgotten" decision of the European Court of Justice ("**ECJ**") is impacting how data protection authorities are dealing with regulation and complaints. The Commissioner referred to the example of the Netherlands deciding to open an investigation into Facebook's new privacy policy and terms and conditions, despite these having been recently agreed with the Irish DPC.

- Surveillance: This was flagged as a matter to be addressed by the Commissioner due to the revelations about the widespread use of cable and phone tapping by national authorities as surveillance is not currently a topic fully within the scope of the current Data Protection Directive. It was further noted however, that this will be a matter for the Courts and/or the legislature.

- Big Data and Internet of Things: This mainly includes how to regulate when technology developments are outpacing existing legislation, dealing with refusals of search engines to de-list references to an individual as a result of the Google Spain decision and the implications of the ECJ judgement in which the court held the private use of CCTV was, in the given circumstances, not covered by the "household exemption".

- Draft Data Protection Regulation: Concerns were expressed by the Commissioner over recent proposals to amend the "one stop shop" element of the draft Data Protection Regulation and how the amended proposal may have the outcome where "Ireland could be cast in the role of chief co-ordinator rather than lead decision maker" if the proposals were followed through. The Commissioner lastly noted however that the proposals are not finalised yet and are still in draft form, so hope is still there.

Financial Services Ombudsman

(i) Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2015

The Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulation 2015 (the "**Regulation**") was published on 10 February 2015. The Central Bank and Financial Services Authority of Ireland Act 2004, Sections16, 57 BE and BF, provides that levies are payable by financial service providers to enable the Financial Services Ombudsman's Bureau carry out its statutory functions. The levy amounts are prescribed by the Financial Services Ombudsman Council with the consent of the Minister for Finance

The Regulation extends to entities that come within categories A – R listed below and amends the levies which were previously prescribed by S.I. No. 137 of 2014, Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees (Amendment) Regulations 2014:

a) Credit Institutions;
b) Insurance Undertakings;
c) Intermediaries;
d) Investment Business Firms (other than Investment Product Intermediaries), Collective Investment Schemes and other service providers, and Exchanges;
f) Credit Unions;
g) Approved Moneylenders;
h) Approved Professional Bodies;
(j) Bureaux de Change and Money Transmission Service Providers;
(k) Electronic Money Institutions;
(l) Home Reversion Firms/Retail Credit Firms;
(m) Other Regulated Service Providers;
(o) Business Transfers;
(p) Default Assessments;
(q) All other Regulated Entities; and
(r) Debt Management Companies.

In order to view each of these categories in full detail, click on the following link:

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0042.pdf

(ii) Annual review 2014

The Financial Services Ombudsman Annual Review (the "**Review**") was published on the 25 February 2015 for the year January to December 2014. This is the first time a full year's statistics have been published since the new reporting powers were granted to the Financial Services Ombudsman (the "**FSO**") in September 2013.

The Review is also the first review to set out the number of complaints against the Financial Service Providers (the "**FSPs**") in an entire calendar year. Throughout the Review, it can be seen that 4,477 complaints were received for 2014 which is a decrease overall of 42% year on year. The Review has stated that 3,166 complaints were closed by way of formal investigation, finding and settlement. 45% of complaints closed during 2014 had some form of customer redress. Investment complaints have decreased by 65% from 770 in 2013 to 271 in 2014. Insurance complaints have also decreased by 49% from 3,835 in 2013 to 1,955 in 2014. These were followed by banking which also decreased by 27% from 2,925 in 2013 to 2,127 in 2014.

On a product basis, mortgage issues consisted of 28% of all complaints received, continuing to be the highest, while Payment Protection policy complaints also continue to be the main factor of Insurance complaints representing a figure of 15% of the 3,835 received last year.

It is hoped that the publication of the above information will continue to drive FSPs to provide a better service, change procedures and policies where possible to minimise the need for customers to complain, and to settle cases at an early stage in the process.

The following link will bring you to the published Review:

https://www.financialombudsman.ie/publications/FSO%20Annual%20Review%202014%20Digital.pdf

Companies Act 2014

(i) Key impacts for investment companies and fund managers

The Company Act 2014 (the "**Act**") is planned to be commenced as of 1 June 2015, with a further 18 month transitional implementation period applicable to certain provisions therein. The Act reforms Irish company law, consolidating the Companies Acts 1963 to 2013 in a single statute. Essentially, it is a product of over a decades' work by the Company Law Review Group (the "**CLRG**") and the largest piece of legislation in the history of the State, comprising a total of 25 Parts (over 1440 sections) and 17 Schedules.

The Act aims to simplify Irish Company law and provides Ireland with a legislative framework which is fit for purpose in the 21st century business environment. Given every company, director and shareholder will be affected by the Act, Irish companies should start to assess and prepare for the choices they may have to make.

Some considerations for the Irish investment firms include:

*Re-registration as a Designated Activity Company ("**DACs**")*

It is likely that Irish investment firms will be obliged to re-register as a DAC post the commencement of the Act, however this has yet to be confirmed by the Central Bank.

The key features of a DAC are as follows:

- The DAC will continue to have a memorandum in its constitution. This will state the objects for which the company is incorporated (the validity of an act done by a DAC shall not however be questioned on the grounds of lack of capacity by reason of anything contained in the DACs objects);
- The DAC will have limited liability and will have a share capital or is a private company limited by guarantee;
- The DAC will have at least two directors;
- The DAC will be able to pass majority written resolutions but cannot dispense with the need to hold an AGM; and
- The name of the company must end in "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe", unless exempted.

The Act provides two straight forward mechanisms for re-registration as a DAC as follows:

- An existing private company may re-register as a DAC by passing an ordinary resolution not later than 3 months prior to the end of the 18 month transition period (i.e. the 18 month transition period is expected to expire on 1 December 2016); or

- An existing private company shall be required to re-register as a DAC before the end of the 18 month transition period, if, not later than three months before the expiry of that period, a notice in writing requiring it to do so is served on it by a shareholder or shareholders holding in aggregate more than 25% of the voting rights.

The Act also makes provision for relief where a company does not re-register as a DAC before the end of the 18 month transition period.

Codification of Director Duties

An aspect of the new Act that applies to all Irish companies is the introduction of a non-exhaustive codification of the principal fiduciary duties of the directors of an Irish company, whether private or public.

Reorganisations, Acquisitions, Mergers and Divisions

Chapter 3 (Mergers) of Part 9 of the Act provides for a statutory procedure allowing two private Irish companies to merge so that the assets and liabilities of one transfer by operation of law to the other after which the former company is dissolved. Chapter 3 has been modelled on the European Communities (Cross-Border Mergers) Regulation 2008 (as amended) which implements Directive 2005/56/EC on cross border mergers in Ireland. It allows mergers by acquisition, where one company acquirers another by way of a merger; merger by absorption where a wholly owned subsidiary is merged into its parent; and mergers by formation of a new company, where one or more companies transfer their assets and liabilities to the newly formed company. Mergers under the Act can be affected by a court order or by using the new summary approval procedure introduced by the Act. This is a new validation procedure involving the passing of a special resolution by the shareholders of a company and the swearing by the directors of that company of a statutory declaration of solvency.

Limitations exist in chapter 3 however as it does not apply to public limited companies. Chapter 16 of Part 17 applies where one of the merging companies is a public limited company, with provisions similar to Chapter 4 of Part 9 of the Act but the summary approval procedure is not available.

Chapter 4 (Divisions) of Part 9 of the Act permits (i) divisions by acquisition where two or more companies (of which one or more but not all may be a new company) acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation in exchange for the issue to the shareholders of the transferring company of shares in the successor companies (with or without cash payment); and (ii) by formation of new companies (an operation consisting of the same elements as a division by acquisition except that the successor companies have been formed for the purposes of the acquisition of the assets and liabilities).

Limitations also exist in chapter 4 as none of the companies in a chapter 4 division may be a public limited company and the summary approval procedure cannot be used to approve a procedure. Chapter 17 or Part 17 applies where one of the companies involved in a division is a public invited company.

Despite the limitation to the mergers and divisions regimes, they are essentially a welcoming improvement on the current methods of reconstruction and reorganisation of companies in Ireland.

Continuing Obligation to have a Company Secretary

In both private and public companies, the position of company secretary has been retained under the new legislation demonstrating the importance of the role of company secretary in the eyes of the legislature, however there are some reforms that need mentioning. Under the Act, although a CLS company may only have one director it must still have a secretary which is a different person to the director.

The responsibilities of the modern day company secretary have evolved to one which encompasses a much broader role of acting as “Board Adviser” and having responsibilities for the organisation’s corporate governance. The fiduciary duties of the company secretary have not been codified under the Act and therefore will be delegated by the Board of Directors. The Act removes the obligation for company secretaries to ensure compliance with the Act, acknowledging the lack of power secretaries have to procure it. The Act imposes duties on the directors of a company to ensure that the person appointed to the role of company secretary has the skills or resources necessary to discharge their statutory, legal and other duties.

Company secretaries are now required to sign a declaration acknowledging their legal duties and obligations when consenting to act. The Act similarly extends an existing provision to an act of a director or a secretary which shall be valid notwithstanding any defect which may afterwards be discovered in his or her appointment or qualification.

The Act consolidates previous requirements relating to annual return dates and documents to be annexed to the return. The Act also provides that an express authorisation may now be registered with the CRO. Finally, the Act introduces greater flexibility in regards to affixing of the seal. There is now nothing in the Act to prevent the constitution of a company authorising one person only to affix the seal (for example, any director or secretary).

The Act has been published on the Oireachtas (the Irish parliament) website, in order to see the Act in full, use the following link:

http://www.oireachtas.ie/documents/bills28/acts/2014/a3814complete.pdf

(ii) Registration of charges and priority

The Companies Act 2014 (the "**Act**") defines a charge as being a mortgage or a change (written or oral) created over any interest in any property of a company. The Act however, states that it specifically excludes the following from the definition of a charge:

- A mortgage or charge created over cash;
- Money credited to an account of a financial institution, or any other deposits;
- Shares, bonds or debt instruments;
- Units in collective investment undertakings or money market instruments; or
- Claims and rights, such as dividends or interest, in respect of any of the foregoing, except for cash.

The exclusions have the ability to narrow and refine as to what will constitute a security interest that requires registration in the Companies Registration Office (CRO).

Registration of Charges

The Act also states that any charge which is not filed in the CRO shall be void as against any liquidator or creditor of a company. It is necessary to note that when a charge becomes void, the money secured by it become immediately payable.

Priority of Charges

The Act sets out that registration of the particulars of a charge will be able to be processed by way of either the one-stage procedure or the two-stage procedure. The procedure chosen may affect the determining of the priority of a charge for the particular company. It is necessary to note that the date of creation of the charge will no longer determine priority; however exceptions to this do apply in certain circumstances. Circumstances where exceptions apply include where priority is governed by some other regime, such as by the Property Registration Authority of Ireland, or where lenders agree between themselves to priorities that differ from those set out in the Act.

One-Stage Procedure

This procedure is very similar to what is used under the current regime where particulars must be delivered in the prescribed form, called a form C1. This must be delivered not later than 21 days after the date of the charge's creation.

Two-Stage Procedure

This is a new procedure which involves the submission of prescribed particulars in two separate forms. The first of the forms to be submitted to the CRO is the form C1A which is a notice of intention by a company to create a charge; however this must be submitted to the CRO in advance of the Company making the charge.

The second involves a form C1B which must be delivered to the CRO within 21 days of the submission of the form C1A. The C1B essentially confirms that the charge in relation to the C1A has been created. The CRO will reject and return the C1A form in the case where there is a failure to file a form C1B. It is also necessary to note that the particulars on the C1A form cannot be altered. This procedure allows a lender to improve the priority of its security which will essentially run from the date the form C1A has been filed. Therefore, even if a form C1, which is filed pursuant to the one-stage procedure, is filed after a form C1A but before a form C1B, the submission made following the two-stage procedure will be given priority (provided the C1B for is filed within 21 days from the C1A form submission).

The CRO has requested that all the particulars of a charge be completed online. After the commencement date, it will no longer be possible to submit a paper form C1, C1A or C1B to the CRO.

Pursuant to the Act, particulars contained in a form C1, C1A or C1B which attempt to fix notice on a subsequent lender of the existence of a negative pledge will be deemed to be "extraneous material", and will not be entered on the register as a result. Finally, The Slavenburg file will be closed permanently from June 1st. No obligation will exist from this date to register a charge created by a foreign or external company unless such a company has established a branch in the state. Only charges submitted against an Irish or external company already registered with the CRO will be accepted.

Anti-Money Laundering/Counter-Terrorism Financing

(i) Endorsement of AML package

On 27 January 2015, the Presidency of the Council of the EU announced that it has endorsed the agreement reached with the European Parliament of the Fourth Money Laundering Directive ("**MLD4**").

Both the Committee on Economic and Monetary Affairs ("**ECON**") and the Committee on Civil Liberties, Justice and Home Affairs ("**LIBE**") also voted in favour of MLD4 and the revised Wire Transfer Regulation (the "**WTR**") according to a statement published on 27 January 2015.

MLD4's aim is to oblige EU Member States to keep central registers of information on the ultimate beneficial owners of corporate entities and trusts. The registers will be accessible to regulatory authorities and their financial intelligence units, obliged entities (such as regulated funds, investment firms and life insurance companies conducting customer due diligence) and the general public. To gain access to the registers, a person will need to demonstrate a legitimate interest in suspected money laundering or terrorist financing. It is also stated that provisions have been inserted into MLD4 in order to protect personal data.

Rules on politically-exposed persons ("**PEPs**") have also been clarified and when there is a high risk relationship with PEPs, additional measures should be put in place (i.e. to establish source of wealth and source of funds involved).

Following the recent terrorist attacks in Paris, the Council alongside the European Commission have stated that in order to enhance the efficiency of both MLD4 and the revised WTR, efforts need to be made towards:

- Speeding up national implementation of the new rules;
- Strengthening of the co-operation between member states terrorist financing 'financial intelligence units' ("**FIUs**"); and
- Addressing terrorist financing risks by way of EU's supranational risk assessment.

On 10 February 2015, the Council of the EU approved the political agreement reached within the European Parliament on MLD4. The Council's approval of the political agreement paves the way for the adoption by the European Parliament of the proposals, which is expected to take place in April 2015.

After that, the MLD4 text will be reviewed and revised by legal linguists, before being published in the Official Journal of the EU (the "**OJ**") around June 2015. Member States will have two years to transpose the Directive into national law.

(ii) Financial sanctions alert

The Central Bank published an article on 'EU Financial Sanctions' and 'Targeted Financial Sanctions' on 29 January 2015. The article outlines the obligations of EU Member States and entities incorporated or constituted under the law of a Member State as well as all persons and entities doing business in the EU, including nationals of non-EU countries and outlines the penalties to those who do not comply with either sanctions.

It states that pursuant to ‘EU Financial Sanctions Regulations’ a person is:

- Required to freeze all funds and economic resources belonging to, or owned or held by a natural or legal person, body or entity listed under the relevant EU Financial Sanctions Regulation (known as listed persons or entities);
- Prohibited from making any funds or economic resources (within the definitions contained in the appropriate EU Financial Sanctions Regulation) available directly or indirectly to or for the benefit of listed persons or entities; and
- Obliged to immediately provide to the Central Bank any information which would facilitate compliance with the EU Financial Sanctions Regulations, such information to include, but is not limited to, notification of any action taken to freeze or unfreeze assets or economic resources pursuant to EU Financial Sanctions Regulations.

A breach of the provisions of the EU Financial Sanctions Regulations is considered a criminal offence. Any person guilty of an offence under the relevant statutory instrument, including a failure to comply with instruction issued by the Central Bank, is liable on conviction to imprisonment and/or a fine.

Pursuant to ‘Targeted Financial Sanctions’, to ensure that a designated person is not facilitating the financing of terrorism it should monitor both the EU and UN Sanctions list relating to terrorism as these lists are regularly updated and must be checked to ensure the latest one is available. The links to the following lists are below:

EU - Link to the consolidated list of persons, groups and entities subject to EU financial sanctions: http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm

UN - Link to the consolidated United Nations Security Council Sanctions List-: http://www.un.org/sc/committees/consolidated_list.shtml.

The Consolidated list maintained on this website was last updated on 2 January 2015, and supersedes all previous versions.

(iii) Central Bank publishes report on anti-money laundering/countering the financing of terrorism and financial sanctions compliance in the Irish banking sector

The Central Bank published its Report on ‘Anti-Money Laundering/Countering the Financing of Terrorism (‘**AML/CFT**’) and Financial Sanctions Compliance in the Irish Banking Sector’ (the **“Report”**) on 26 February 2015. The Report sets out the deficiencies identified by the Central Bank in five different areas as well as expressing the Central Bank’s expectations for further compliance in this area. The

Report only deals with the Irish banking sector, however lessons can be learned for all other sectors including funds, investment firms and life assurance.

The Report is broken down into five key areas:

- *Governance and Compliance*: The Report states that pursuant to Section 54(1) of the Criminal Justice Act 2010 (as amended_ (the "**CJA**"), banks must adopt policies to prevent and detect the commission of Money Laundering/Financing Terrorism ("**ML/TF**"). Some inadequacies detected by the Central Bank under the remit of Governance and Compliance, along with expectations for improvement include incomplete and insufficient detailed risk assessments as well as policies and procedures that are not subject to regular review and some not sufficiently documented to demonstrate where current policies are appropriate and effective to manage such risks. Training records were also not sufficient to show who had completed training, with some board members having not participated fully;
- *Customer Due Diligence*: The Report states that banks are required to identify and verify customers before the establishment of a business relationship or carrying out any transaction or service. Several deficiencies identified in current due diligence processes involved a failure to update customer due diligence information and reassess the risks and in the context of new customers, risk assessment questions were very subjective which in turn gave rise to inconsistencies;
- *EU Financial Sanctions*: The Report states that Financial Sanctions are generally implemented into Irish law autonomously at EU level. Banks must ensure that they comply with all applicable financial sanctions. The Central Bank observed that the policies and procedures do not provide enough detail to gauge the banks' compliance programme requirements;
- *Identification and Escalation of Suspicious Transactions*: Deficiencies identified involved a failure to report as soon as practicable, failure to document the process of blocking an account or freezing a transaction on receipt of a court order despite the fact that section 41(1) of the CJA requires any suspicion to be reported as soon as practicable; and
- *Testing of AML/CFT and Financial Sanctions Systems:* It is very important that all systems used to facilitate the management and monitoring of ML/TF are operating correctly and efficiently, thus a key deficiency identified was that banks only performed very limited IT assurance testing on systems and controls.

In conclusion, Domhnall Cullinan, Head of Anti-Money Laundering at the Central Bank states that 'satisfactory processes and controls were found in place in areas. However, the number and nature of issues identified suggests that more work is required in Ireland to effectively manage Money Laundering and Terrorist Financing'.

The Central Bank hopes that its observations and expectations will be taken on board by all financial and credit institutions in Ireland.

(iv) FATF plenary meeting opens with terrorist financing high on the agenda

On 25 February 2015, Mr Michel Sapin, the French Prime Minister of Finance and Public Accounts opened the Financial Action Task Force (the "**FATF**") Plenary meeting which continued until the 27 February 2015.

The main issues dealt with during the meeting included:

- The issuing of a statement on FATF action on terrorist finance;
- The adoption and publishing of a report on the financing of the terrorist organisation Islamic State in Iraq and the Levant;
- The production of two public documents identifying jurisdictions that may pose a potential risk to the international financial system. These included jurisdictions with strategic AML/CFT deficiencies for which a call of action applies and jurisdictions with strategic AML/CFT deficiencies for which an action plan has been developed between them and the FATF;
- Receiving an update on AML/CFT improvements in Albania, Cambodia, Kuwait, Namibia, Nicaragua, Pakistan and Zimbabwe;
- The discussion of the fourth round mutual evaluation reports on compliance with the FATF Recommendations of Australia and Belgium;
- Increasing collaboration between FATF and the Egmont Group of Financial Intelligence Units, including a briefing by the Chair of the Egmont Group on recent developments in financial intelligence units;
- The reviewing of the voluntary tax compliance programmes in several jurisdictions;
- The continuation of its work on the issue of 'de-risking', in line with the effective implementation of a risk-based approach; and
- Building on the 2014 report on virtual currencies, the FATF wants to progress this issue for a decision at the scheduled June 2015 Plenary meeting.

(v) FATF to work on ensuring UN consolidated list

On 12 March 2015, the FATF published a speech given (on 10 March 2015) by Je-Yoon Shin, FATF Vice President, on the FATF's current agenda and priorities.

Among other things, Mr Shin comments on the FATF's action on terrorist financing. He explains that this area of work is fundamental to FATF as terrorism is an increasingly global problem that requires global action by a united international community. He explains that whilst this has been a priority for many years, FATF will enhance its focus on the freezing of terrorist assets without delay and implementation of on-going prohibitions. He refers to the United Nations who has recently created a consolidated sanctions list with the designated persons and entities from all the sanctions committees. The list is now published on the UN website.

Mr Shin explains that feedback from the private sector would be helpful to ensure that the list is “more useable” by the private sector. The FATF will facilitate this feedback process, as the consolidated sanctions list is important for effective implementation of the freezing of terrorist asset requirements.

Mr Shin closed his speech by saying that “it is important that we build a strong anti-money laundering/counter terrorism financing compliance culture to safeguard the integrity of our financial system. There is still much work to be done, and there will always be new threats to mitigate”.

Also discussed throughout the speech were key areas of the Global Regulatory Arena, the Risk-Based Approach, De-risking and the FATFs Mutual Evaluation Process.

The full speech is available via the following link:

http://www.fatf-gafi.org/topics/fatfrecommendations/documents/je-yoon-shin-speech-japanese-regulatory-summit.html

Irish Taxation Update

(i) FATCA Update

FATCA is now fully operational with relevant Irish financial institutions being required to have registered with the IRS before 31 December 2014. The first FATCA reports are due to be filed with the Irish Revenue Commissioners by 30 June 2015 and will be in respect of the 2014 reporting year.

CONTACT US

Our Offices

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

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

Hong Kong
604, 6/F, Printing House
6 Duddell Street
Central
Hong Kong
Tel: +852 35210352

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

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

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

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

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

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

DISCLAIMER:
This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:
© 2015 Dillon Eustace. All rights reserved.

Dillon Eustace
This Investment Firms Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 March 2015, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO