Investment Firms Quarterly Legal and Regulatory Update

Period covered:
1 April 2014 – 30 June 2014

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) ESMA informs European Commission of its intention to ease certain frontloading requirements under EMIR

On 8 May 2014 ESMA sent a letter to the European Commission proposing to limit the scope of the frontloading requirement under EMIR.

The frontloading requirement imposes an obligation on counterparties to clear OTC derivative contracts which have been executed after a central counterparty ("**CCP**") has been authorised under EMIR (the first of which was authorised on 18 March 2014) and before the date of application of the clearing obligation (i.e. the date specified for the clearing obligation to apply by ESMA in the relevant regulatory technical standards).

In this way under the frontloading rules an OTC derivative contract concluded after the authorisation of a CCP might at a later date become subject to the clearing obligation before its expiration date. According to Recital 20 of EMIR, the objective of the frontloading requirement is to ensure a uniform and coherent application of EMIR and a level playing field for stakeholders when a class of OTC derivative contracts is declared subject to the clearing obligation.

The period during which frontloading is relevant can be divided into two separate periods:

- Period A: the period between the notification of the classes to ESMA and the entry into force of the relevant regulatory technical standards ("**RTS**") on the clearing obligation; and
- Period B: the period between the entry into force of the RTS and the date of application of the clearing obligation.

In the letter, ESMA observes that the frontloading procedure creates uncertainties for OTC derivatives end-users because counterparties will not know whether the notified class of derivatives will be subject to the clearing obligation; i.e. an OTC derivative contract entered into after the authorisation of a CCP might become subject to the clearing obligation during Period A. ESMA informed the European Commission that it intends to establish the frontloading requirement in a manner that will minimise uncertainty. At the start of Period B these uncertainties will no longer be present.

ESMA has suggested that the frontloading requirement should not apply to transactions that are entered into during Period A and should only apply to transactions entered into during Period B. ESMA has stated that further details on this rule will be outlined later this summer.

ESMA's letter to the European Commission is available at this link:

http://www.esma.europa.eu/content/Letter-European-Commission-Frontloading-requirement-under-EMIR

(ii) Updated EMIR implementation Q&As

On 21 May and 23 June 2014, ESMA published an updated version of its questions and answers ("**Q&A**") document on the implementation of EMIR. The updated version of the Q&A includes a table detailing which questions and answers have been added or updated and also includes a table which indicates the relevant Article in EMIR to which the questions relate.

Areas covered by the updated Q&A (whether as a new question or as a revision to an existing question) include:

- Whether an umbrella fund or its sub-funds should be treated as a counterparty under EMIR;
- Status of counterparties under EMIR as defined by reference to AIFMD;
- Intra-group exemptions;
- Calculation of the clearing threshold;
- Public register;
- Treatment of non-EU non-exempt central banks;
- Segregation and portability and CCP organisational requirements;
- Risk committee requirements for a CCP;
- Prudential requirements of a CCP;
- Reporting of collateral; and
- Reporting of valuations.

The latest set of EMIR implementation Q&As can be found here:

http://www.esma.europa.eu/content/QA-IX-EMIR-Implementation

(iii) Treatment of FX Forwards under EMIR

As reported in our previous Legal and Regulatory Update, the treatment by regulators of FX Forwards under EMIR varies across the European Union. The reason for these diverging

approaches is the fact that a derivative under EMIR is defined by reference to Directive 2004/39/EC (the "**MiFID Directive**") and Member States transposed the MiFID Directive differently; i.e. different transpositions of the MiFID Directive across Member States mean that there is no single, commonly adopted definition of a derivative or a derivative contract in the European Union.

Concerns have been expressed about the lack of consistency between EU Member States with regards to the definition of an FX Forward. Indeed, ESMA published a letter (dated 14 February 2014) which it wrote to the European Commission whereby it asked the European Commission to clarify the exact definition of what constitutes a forward for EMIR purposes, in particular for FX Forwards with a settlement date up to 7 days and FX Forwards concluded for commercial purposes.

In light of this letter, the European Commission launched a short consultation paper on FX Forwards regarding the delineation between FX Forward contracts and FX spot contracts under MiFID (the "**Consultation Paper**"). Ten questions were raised in the Consultation Paper as follows:

1. *Do you agree that a clarification of the definition of an FX spot contract is necessary?;*
2. *What are the main uses for and users of the FX spot market? How does use affect considerations of whether a contract should be considered a financial instrument?;*
3. *What settlement period should be used to delineate between spot contracts? Is it better to use one single cut-off period or apply different periods for different currencies? If so, what should those settlement periods be and for which currencies?;*
4. *Do you agree that non-deliverable forwards be considered financial instruments regardless of their settlement period?;*
5. *What have been the main developments in the FX market since the implementation of MiFID?;*
6. *What other risks do FX instruments pose and how should this help determine the boundary of a spot contract?;*
7. *Do you think a transition period is necessary for the implementation of harmonised standards?;*
8. *What is the approach to this issue in other jurisdictions outside the EU? Where there are divergent approaches, what problems do these create?;*
9. *Are there additional implications to those set out above of the delineation of a spot FX contract for these and other applicable legislation?; and*
10. *Are there any additional issues in relation to the definition of FX as financial instruments that should be considered?*

The European Commission received 79 responses to the Consultation Paper including responses from the Investment Management Association ("**IMA**"), ESMA's Securities and Markets Stakeholder Group ("**SMSG**") and the Financial Markets Law Committee ("**FMLC**"). The complete list of the responses received can be found at this link:

http://ec.europa.eu/internal_market/consultations/2014/foreign-exchange/contributions_en.htm

It is interesting to note that the Alternative Investment Management Association ("**AIMA**") in its response suggests a definition of FX spot contracts which include any instruments with a settlement period of T+7 or less. This is because the Central Bank have indicated on their website that all FX transactions with settlement beyond the Spot date are to be considered Forward contracts and therefore are subject to the requirements of EMIR. In this regard the Central Bank has stated that for the vast majority of currency pairs the market convention for settling spot transactions is T+2, accordingly the Central Bank have stated that any trade with settlement T+3 should be treated as a Forward transaction ((except in those rare cases where the market convention for the specific currency pair is unequivocally different from T+2).

It is hoped that the responses received by the European Commission will help formulate the European Commission's formal proposal on this area.

(iv) European Commission extends CRR transitional period to 15 December 2014

Under the Capital Requirements Regulation (Regulation 575/2013) ("**CRR**"), exposures to qualifying central counterparties ("**QCCPs**") attract a lower charge than exposures to CCPs that do not have QCCP status. While many third country CCPs obtained QCCP status under a transitional provision in the CRR, that transitional period is due to expire on 15 June 2014. In order to achieve such QCCP status, third country CCPs must register with ESMA in accordance with EMIR. In order to register with ESMA, the European Commission must have adopted a positive equivalence determination in respect of the clearing rules of the CCP's home jurisdiction. As yet, no third country CCPs has registered with ESMA because the European Commission has not adopted a positive determination in respect of any jurisdiction.

On 4 June 2014, the European Commission updated its webpage to announce that on 3 June 2014, it adopted the implementing Regulation (Regulation 591/2014), (the "**Regulation")** on the extension of transitional periods related to own funds requirements for exposures to CCPs. In this way the European Commission extended the deadline relating to QCCP status until 15 December 2014. This extension now permits institutions to consider a CCP as a QCCP for an additional period up to 15 December 2014.

The text of the Regulation was published in the Official Journal of the European Union on 4 June 2014.

Markets in Financial Instruments Directive ("MiFID II")

(i) An update on MiFID II

MiFID II comprises of:

- MiFID II Directive which is largely an amendment and restatement of the original MiFID I Directive; and
- MiFID II Regulation setting out the requirements relating to trade transparency and the mandatory trading of derivatives on organised venues (together "**MiFID II**").

On 12 June 2014, the text of MiFID II was published in the Official Journal of the European Union. This means that MiFID II entered into force on the 2 July 2014. MiFID II was previously approved by European Parliament and the Council of the EU on the 23 April and 13 May 2014 respectively.

The MiFID II Directive will require national implementation within a 30 month timeframe after its entry into force; (i.e. January 2017). The MiFID Regulation will not require national implementation and will apply from 2 January 2017. The MiFID II Regulation will be directly applicable in all Member States and it is hoped that this will minimise the scope for divergences in the interpretation of its requirements.

The new rules contained in MiFID II can be summarised as follows:

- Introduction of new trading venue concept called the Organised Trading Facility ("**OTF**") so as to ensure that trading takes places on a regulated platform wherever possible;
- Restriction on the exemptions that a number of firms currently rely on in order to ensure that they are outside the scope of MiFID. For example MiFID II will restrict the "dealing on own account exemption";
- The introduction of wide ranging reforms to the regulation of derivatives in Member States; e.g. MiFID II will require certain classes of derivatives to be traded on a Regulated Market ("**RM**"), Multilateral Trading Facility ("**MTF**"), OTF or on a third country trading venue which the European Commission has confirmed meets an equivalency test;
- Extension of the current pre and post trade transparency requirements;
- Extension of the current transaction reporting regime;
- Introduction of controls for firms that engage in algorithmic trading;

- Introduction of high-level organisational and conduct of business standards to all investment firms (e.g. client order handling rules, best execution requirements, requirements when providing investment advice, rules regarding inducements, client classification rules, appropriateness and suitability tests, etc);
- New regime for third country firms who want to provide investment services to clients in the European Union; and
- Introduction of a harmonised administrative sanctions regime.

From a funds perspective, all UCITS had been classified as non-complex financial instruments and therefore had not been subject to appropriateness tests under MiFID. MiFID II introduces the concept of a "structured UCITS" which will be treated as a complex financial instrument. This means that investment firms selling these products (i.e. structured UCITS) will be required to obtain information from retail investors to ensure that the product is appropriate to him/her.

MiFID authorised investment firms should be aware of the provisions in MiFID II so that they can take steps to ensure compliance where impacted by MiFID II. In addition, firms which currently avail of certain of the exemptions within MiFID will need to consider whether they will need to become authorised under MiFID II to continue providing such services.

(ii) Level 2 Implementing Measures

The European Securities Markets Authority ("**ESMA**"), as part of the Lamfalussy process has been asked by the European Commission to draft more detailed "level 2" rules over the next eighteen months. In this regard it is expected 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.

In order to achieve these objectives ESMA launched a consultation paper (the "**Consultation Paper**") and a discussion paper (the "**Discussion Paper**") on MiFID II. This is the first step with regards to the preparation of the Level 2 Measures and represents an important part of the process of translating the MiFID II requirements into practically applicable rules and regulations.

The Consultation Paper covers all of the topics on which the European Commission has formally requested ESMA to provide technical advice for the adoption of delegated acts by the European Commission. Therefore the Consultation Paper focuses on; (i) investor protection; (ii) transparency; (iii) data publication; (iv) micro-structural issues; (v) requirements applying on and to trading venues; (vi) commodity derivatives; and (vii) portfolio compression. As ESMA is required to deliver its technical advice to the European Commission by December 2014, it is therefore subjected to a condensed consultation process. On the other hand, the Discussion Paper focuses on more innovative or technically complex topics in order to receive feedback from stakeholders

for the preparation of regulatory technical standards and implementing technical standards. The feedback received on the Discussion Paper will provide the basis of a further consultation on the issues raised in the Discussion Paper.

In advance of this deadline, ESMA will host three public hearings in relation to secondary markets, investor protection and commodity derivatives which are scheduled for 7 and 8 July 2014. The deadline for responses to the Consultation Paper and the Discussion Paper is 1 August 2014.

(iii) Request for technical advice from the European Banking Authority ("**EBA**")

The European Commission has published a letter which it sent to the EBA requesting technical advice on possible delegated acts concerning product intervention by competent authorities. Under MiFID II, the European Commission is empowered to adopt delegated acts specifying criteria and factors to be taken into account by ESMA, EBA and competent authorities in determining when there is a significant investor protection concern and threat to the orderly functioning and integrity of the financial system of the European Union.

The European Commission has already asked ESMA to provide advice on measures specifying the criteria and factors to be taken into account by competent authorities in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of the financial system of the European Union. As the MiFID II Regulation establishes an identical framework for EBA intervention powers in respect of structured deposits, the factors and criteria to be taken into account for the exercise of such powers for structured deposits should be similar (if not identical) to those set for ESMA with respect to financial instruments.

The EBA has been requested to provide its technical advice within six months of MiFID II coming into force; i.e. the EBA has until January 2015 to provide its technical advice.

A copy of this letter can be found at the link below;

http://ec.europa.eu/internal_market/securities/docs/isd/mifid/140516-request-for-eba-technical-advice-concerning-mifid-2_en.pdf

Credit Rating Agencies Regulation

(i) FSB Published Thematic Review of its Principles for Reducing Reliance on CRA Ratings

On 12 May 2014, the Financial Stability Board ("**FSB**") published its results from the thematic review of the FSB Principles for Reducing Reliance on CRA Ratings.

This final report focuses on the action plans developed by national authorities to implement the Roadmap which was agreed in October 2012. The first stage of the review, published in August 2013, comprised a structured stock-taking of references to CRA ratings in national laws and regulations. The final report found that, although good progress has been made toward removing references to CRA ratings from laws and regulations, mechanistic reliance can also come from market practices and contracts.

The FSB want authorities to encourage market participants to review provisions within their private contracts which represent mechanistic reliance on CRA ratings (e.g. ratings triggers).

The Review published by the FSB is available at the link set out below:

http://www.financialstabilityboard.org/publications/r_140512.pdf

(ii) ESMA Published Updated Q&A on CRA Regulation

On 2 June 2014, ESMA published its second updated questions and answers ("**Q&A**") on the Credit Rating Agencies Regulation ("**CRA Regulation**"). The update affects the following Q&As:

- Question 2, relating timing of publication of sovereign ratings;
- Question 3, referred to deviations from the sovereign ratings calendar; and
- Question 4, regarding investments in credit rating agencies.

The purpose of this document is to provide clarity on the requirements and practice in the application of the CRA Regulation.

All the Q&As may be viewed at the following link:

http://www.esma.europa.eu/system/files/2014-578_qas_on_cra3.pdf

(iii) ESMA Publishes Final Report on Draft Regulatory Technical Standards Under CRA III

On 24 June 2014, ESMA published its Final Report on draft Regulatory Technical Standards ("**RTS**") required under the CRA Regulation, which covers the following areas:

- Disclosure requirements on structured finance instruments;
- The European Rating Platform; and
- The periodic reporting on fees charged by credit rating agencies ("**CRAs**").

The draft RTS focuses on the information that the issuer, originator and sponsor of a structured finance instrument must publish. The draft RTS incorporates, where possible, existing disclosure and reporting requirements adopted by the European Central Bank and Bank of England to avoid duplication and overlap. The disclosure obligations also provide for standardised investor reporting and disclosure of transaction documents.

The draft RTS on the new European Rating Platform defines the content and presentation of rating information, including structure, format, method and timing of reporting that credit rating agencies should submit to ESMA for credit ratings that are not exclusively produced for and disclosed to investors for a fee. The European Rating Platform website will be set up and run by ESMA.

The draft RTS on fees charged by CRAs to their clients defines the content and the format of periodic reporting on such fees for the purpose of on-going supervision by ESMA. The information collected under this RTS will allow ESMA to undertake effective oversight of fees charged by CRAs. This will enable ESMA to verify whether pricing practices are discriminatory and ensure compliance with the principle of fair competition and further mitigate conflicts of interest.

A copy of the Final Report is available here:

http://www.esma.europa.eu/system/files/2014-685_draft_rts_under_cra3_regulation.pdf

Regulation on Securities Settlement and on Central Securities Depositaries in the EU

(i) European Commission Adopts Regulation on Securities Settlement and Central Securities Depositories

On 15 April 2014, the European Parliament adopted in plenary session a Regulation on Securities Settlement and Central Securities Depositories (the "**CSD Regulation**").

The CSD Regulation aims to harmonise both the timing and conduct of securities settlement in Europe and the rules governing Central Securities Depositories ("**CSDs**") which operate the infrastructures enabling settlement. With regard to settlement, the CSD Regulation harmonises timing and discipline of securities settlement in the EU. It creates, for the first time at European level, a common authorisation, supervision and regulatory framework for CSDs. Among other matters it provides for:

- Shorter settlement periods;
- Deterrent settlement discipline measures (mandatory cash penalties and 'buy-ins' for settlement fails);
- Strict prudential and conduct of business rules for CSDs;
- Strict access rights to CSD services; and
- Increased prudential and supervisory requirements for CSDs and other institutions providing banking services ancillary to securities settlement.

The CSD Regulation must now be formally approved by the Council of the EU. The publication of the new rules in the Official Journal of the European Union is expected to take place in the third quarter of 2014.

(ii) European Commission Publishes FAQs on Regulation on Securities Settlement and on Central Securities Depositories

On 16 April 2014, the European Commission published a press release including the Frequently Asked Questions ("**FAQs**") related to the Regulation on Securities Settlement and on Central Securities Depositories.

A copy of the European Commission's press release with the FAQs is available at the following link:

http://europa.eu/rapid/press-release_MEMO-14-312_en.htm

Directive on the Disclosure of Non-financial and Diversity Information by Large Companies and Groups

On April 15 2014, the European Parliament adopted a Directive on disclosure of non-financial and diversity information by large companies and groups which will require such companies to disclose information in their management report on policies, risks and results on matters such as respect for human rights, environmental matters, diversity, social and employee related issues, anti-corruption and bribery issues and diversity on boards of directors. The Directive amends Directive 2013/34/EU, which addresses the disclosure of non-financial information but which in that respect has proved to be unclear and ineffective and applied in different ways in different Member States.

The objective of the new proposed Directive is to increase companies' transparency on environmental and social matters and therefore, to contribute to long term economic growth and employment. The European Commission believes that transparent companies perform better over

time, have lower financing costs, have better employee retention levels and are more successful in the long run.

The Directive will apply to large public-interest entities with more than 500 employees. Public interest entities include listed companies and some unlisted companies, such as banks, insurance companies and other companies that are designated as such by Member States because of their activities, size or number of employees.

The Directive gives companies significant flexibility to disclose relevant information in the way that they consider most useful, or in a separate report. Companies may use international, European or national guidelines which they consider appropriate.

The Directive provides for further work by the European Commission to develop guidelines in order to facilitate the disclosure of non-financial information by companies, taking into account current best practice, international developments and related EU initiatives.

As regards diversity on company boards, large listed companies will be required to provide information on their diversity policy, such as, age, gender, educational and professional background. Disclosures will have to set out the objectives of the policy, how it has been implemented, and the results. Companies which do not have a diversity policy will have to explain why not. This approach is in line with the general EU corporate governance framework and is described by the European Commission as complementing its recent initiative on improving gender balance among non-executive directors of listed companies, referred to in our April 2014 edition of Legal and Regulatory Update.

In order to become law, the Commission's proposal needs to be adopted jointly by the European Parliament and by the EU Member States in the Council. The Council of EU is expected to formally adopt the proposal in the coming weeks.

Shareholder's Rights Directive

On 9 April 2014, the European Commission published a proposal to amend the Shareholders' Rights Directive (Directive 2007/36/EC), (the "**Directive**"). The proposals aim to tackle corporate governance shortcomings related to listed companies and their boards, shareholders (institutional and asset managers), intermediaries and proxy advisors (i.e. firms providing services to shareholders, notably voting advice). The overall aim of the Directive is to enhance the long term sustainability of EU companies. The measures proposed in the Directive can be summarised as follows:

- Proposals to increase transparency on executive pay;
- Proposals to increase transparency on transactions between a company and its management, directors, controlling shareholders or companies of the same group;
- Proposals which would enable listed companies to identify their investors; e.g. intermediaries holding shares on behalf of investors would be required to disclose the contact details of investors to companies if requested; and
- Proposals to impose rules on proxy advisors such that they must adopt and implement adequate measures to guarantee that their voting recommendations are accurate and reliable and are not affected by any existing or potential conflict of interest or business relationship.

The Department of Jobs, Enterprise and Innovation sought the views of interested parties on the measures proposed in the Directive and in this regard the closing date for submissions was 13 June 2014.

The Directive is due to be submitted to the European Council and the European Parliament for their consideration and adoption. Once adopted, Member States would be obliged to transpose the Directive into national law.

Statutory Audit Directive and Regulation

On 27 May 2014, the Directive of the European Parliament and of the Council (dated 16 April 2014) amending the Directive on statutory audits of annual accounts and consolidated accounts and the Regulation of the European Parliament and the Council (dated 16 April 2014) on specific requirements concerning statutory audit of public-interest entities were published in the Official Journal.

The revised Directive includes measures to strengthen the independence of statutory auditors, to make the audit report more informative and to strengthen audit supervision throughout the European Union. The Regulation introduces stricter requirements on the statutory audits of public-interest entities, such as listed companies, credit institutions, and insurance undertakings, to reduce risks of excessive familiarity between statutory auditors and their clients and to limit conflicts of interest.

The Directive and the Regulation will apply to ‘public-interest entities’, which will include listed entities (including listed AIFs, listed AIFMs and listed UCITS), undertakings the business of which is to take deposits or other repayable funds from the public and to grant credit for its own account and entities designated by individual Member States as public-interest entities.

The key provisions of the package include:

- A prohibition on audit firms providing certain non-audit services (such as tax services, valuation services, services relating to the internal audit function and services promoting, dealing in, or underwriting shares) to their audit clients;
- Where an audit firm has provided permitted non-audit services to an audit client for three years or more, a limit on the total fees to no more than 70 per cent of the average of the fees paid by the audit client in the previous three years;
- A prohibition on restrictive 'Big Four only' auditor clauses in certain circumstances; and
- Increased responsibilities for the Audit Committee.

Both the Directive and the Regulation shall be applicable as of 17 June 2016. While the Regulation shall be directly effective, the Directive will need to be transposed into national law in each Member State. Given the new regime will not be applicable until mid-2016 it is expected that Member States have sufficient time to put in place the necessary provisions to comply with the Directive.

The texts of the same are available below, respectively:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0056

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0537

The press release published by the European Commission on the 16 June 2014, announcing the entering into force of these new rules is available below:

http://europa.eu/rapid/midday-express-16-06-2014.htm?locale=en

Transparency Directive

On 30 May 2014, the European Fund and Asset Management Association ("**EFAMA**") issued its comments in response to questions raised in ESMA's Consultation for Draft Regulatory Technical Standards on major shareholdings and indicative list of financial instruments subject to notification requirements under the revised Transparency Directive.

Aside from providing specific comments on the questions of the ESMA's Consultation, EFAMA also highlights two aspects that should be taken into account in the implementation of the revised Directive as follows:

- Firstly, the application of the Directive must be harmonised throughout all Member States. EFAMA supports the use of Regulatory Technical Standards as an appropriate mechanism to ensure that all Member States implement similar obligations.
- Secondly, proportionate standards are necessary in order to deliver the desired level of transparency and avoid the imposition of undue burden on market participants.

The specific remarks provided by EFAMA, in relation to the questions raised by ESMA, may be accessed through the following link:

http://www.efama.org/Publications/Public/Corporate_Governance/EFAMA_ESMA_Consultation_TD.pdf

CRD IV

(i) Central Bank issues updated Implementation Notice on Competent Authority Discretions and Options in CRD IV and CRR

On 21 May 2014, the Central Bank updated its "Implementation Notice on Competent Authority Discretions and Options in CRD IV and CRR", (the "Notice"). The Notice specifies the Central Bank's requirements and guidance in relation to the implementation of competent authority discretions and options arising under the European Union (EU) Capital Requirements Directive IV ("**CRD IV Directive**") and the Capital Requirements Regulation ("**CRR**"), (hereinafter collectively referred to as "**CRD IV**").

CRD IV was transposed into Irish law by the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158/2014) and European Union (Capital Requirements) No. 2 Regulations 2014 (S.I. No. 159/2014), (hereinafter referred to as "**CRD IV Regulations**") on 31 March 2014.

The Central Bank had previously issued a preliminary Implementation Notice on 24 December 2013. The updated Notice references the CRD IV Regulations and also references the fact that all entities subject to the CRD IV Regulations are required to ensure that their operations are consistent with all issuances developed by the European Supervisory Authorities ("**ESAs**").

A copy of the Notice can be found at this link;

http://www.centralbank.ie/regulation/industry-sectors/credit-institutions/Documents/Implementation%20of%20Competent%20Authority%20Discretions%20and%20Options%20in%20CRD%20IV%20and%20CRR.pdf

(ii) Central Bank published CRD IV XBRL File Upload User Procedure Document

On 2 May 2014, the Central Bank published a guidance note for investment firms on the procedure for uploading CRD IV XBRL files to the Central Bank's Online Reporting System ("**ONR**").

This note can be found at the link below;

http://www.centralbank.ie/regulation/industry-sectors/investment-firms/mifid-firms/Documents/CRD%20IV%20ONR%20XBRL%20File%20Upload%20User%20Procedure.pdf

(iii) European Banking Authority ("EBA") launches interactive Single Rulebook

On 6 June 2014, the EBA launched an interactive Single Rulebook which is designed to facilitate navigation through the single set of harmonised prudential rules in the EU banking sector. The Single Rulebook aims at ensuring consistent application of the regulatory banking framework across the EU. The interactive tool provides a comprehensive compendium of the level one text for both the CRR and the CRD IV Directive, the corresponding technical standards developed by the EBA and adopted by the European Commission, as well as the EBA guidelines and related Q&As. This tool will also include the Bank Recovery and Resolution Directive once it enters into force.

Institutions, supervisors and all stakeholders can click on the relevant legislative text to navigate across technical standards, guidelines and Q&As relating to each provision of the CRR and the CRD IV Directive.

The interactive Single Rulebook can be found at this link; https://www.eba.europa.eu/regulation-and-policy/single-rulebook/interactive-single-rulebook/-/interactive-single-rulebook/toc/504

(iv) EBA streamlines Single Rulebook Q&A tool

The EBA has introduced some important changes to how the Single Rulebook Q&A tool is operated. The changes relate to rules relating to the circumstances when/how questions may be submitted to the EBA for guidance on the CRR and the CRD IV Directive.

The major changes focus on the stricter prioritisation of incoming questions, more stringent criteria for submitting questions, grouping of questions which raise related issues, and a new publication policy for questions and answers. In this regard, stricter prioritisation will take into account the particular issues raised, their impact on the Single Market and whether they raise wider concerns for the banking industry.

Users must ensure that full and concise questions, background information and proposed answers are submitted to the EBA. In addition, submitted questions will no longer be published while under review, but only after the answers have been finalised.

Rejected questions will be published for two months to illustrate the types of questions that are unsuitable. After this period, they will be deleted from the Q&A tool. The rejections will also reflect the stricter criteria for submitting questions set out in points 9-13 of the additional background and guidance for asking questions.

Further information regarding the guidance for asking questions can be found at this link; http://www.eba.europa.eu/single-rule-book-qa#search

(v) CRR – EBA Liquidity Reporting Templates

On 16 April 2014, the European Commission adopted supervisory reporting templates (including those on liquidity) drafted by the EBA under the CRR. However, following the adoption of these supervisory reporting templates some technical issues emerged relating to the mapping of the liquidity templates (Annex XII) onto the underlying data point model (Annex XIV).

In order to provide a pragmatic solution to these issues, the EBA announced as an exceptional measure, that either the templates published on the European Commission's website on 16 April or the relevant liquidity files published on the EBA's website on 2 December 2013 may be used for the purposes of liquidity reporting. The EBA has stated that the technical issues will be resolved at the earliest opportunity.

A copy of the press release is available at this link; https://www.eba.europa.eu/-/eba-informs-on-liquidity-reporting-templates

(vi) Commission Delegated Regulation on criteria to identify material risk takers for CRD IV remuneration purposes published in the Official Journal

The European Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing the CRR with regard to Regulatory Technical Standards on qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile was published in the Official Journal of the European Union on 6 June 2014. The Regulation comes into force on 26 June 2014.

(vii) Publication of overview document setting out the state of play as regards regulatory technical standards ("RTS") and implementing technical standards ("ITS") supplementing the CRR and the CRD IV Directive

On 6 June 2014, the European Commission published two updated overview documents setting out the state of play as regards the RTS and the ITS which supplement the CRR and CRD IV. The documents can be found at the links below:

http://ec.europa.eu/internal_market/bank/docs/regcapital/acts/overview-crr-crdiv-rts_en.pdf

http://ec.europa.eu/internal_market/bank/docs/regcapital/acts/overview-crr-crdiv-its_en.pdf

Market Abuse

(i) Council of EU Adopts the Market Abuse Regulation and the Directive on Criminal Sanctions for Insider Dealing and Market Manipulation

On 14 April 2014, the Council of the European Union announced that it has adopted the Market Abuse Regulation ("**MAR**") and Directive on Criminal Sanctions for Insider Dealing and Market Manipulation ("**CSMAD**") (together "**MAD II**").

The European Commission has issued a press release welcoming the Council of the European Union's adoption of the MAD II legislative package and setting out the consequences of the adoption of MAD II.

The adoption of the MAR means that:

- Existing market abuse rules will be broadened to include abuse on the electronic trading platforms that have proliferated in recent years;
- Abusive strategies enacted through high frequency trading will be clearly prohibited;
- Those who manipulate benchmarks such as LIBOR will be guilty of market abuse and face tough fines;
- Market abuse occurring across both commodity and related derivative markets will be prohibited, and cooperation between financial and commodity regulators will be reinforced;
- The deterrent effect of the legislation will be far greater than today, with the possibility of fines of at least up to three times the profit made from market abuse, or at least 15% of turnover for companies. Member-States could decide to go beyond this minimum.

The effects of the adoption of the CSMAD are as follows:

- There will be common EU definitions for market abuse offences such as insider dealing, unlawful disclosure of information and market manipulation;
- There will be a common set of criminal sanctions including fines and imprisonment of at least four years for insider dealing/market manipulation and two years for unlawful disclosure of inside information;
- Legal persons (companies) will be held liable for market abuses;
- Member States need to establish jurisdiction for these offences if they occur in their country or the offender is a national;
- Member States need to ensure that judicial and law enforcement authorities dealing with these highly complex cases are well trained.

On 12 June 2014, both MAR and CSMAD were published in the Official Journal of the EU.

Member States are required to have transposed the provisions of the Directive by 3 July 2016, while the Regulation will apply for the most part from 3 July 2016 with the remaining provisions relating to MiFID II provisions to apply from 3 January 2017.

The press release issued by the Council of EU may be accessed via the following link:

http://europa.eu/rapid/press-release_IP-14-424_en.htm

The press release published by European Commission is available here:

http://europa.eu/rapid/press-release_IP-14-424_en.htm?locale=en

(ii) ESMA Published a Request for Technical Advice from the European Commission on Implementing Acts relating to MAR

On 2 June 2014, ESMA published a request for technical advice from the European Commission on implementing acts relating to the Market Abuse Regulation ("**MAR**").

Article 32 of MAR addresses the reporting of infringements of MAR. Under Article 32(5) of MAR, the Commission is empowered to adopt implementing acts relating to this.

The Commission invited ESMA to provide technical advice on the specification of procedures to enable reporting of actual or potential infringements of MAR to competent authorities. This includes:

- The arrangements for reporting and for following up reports;
- Measures for the protection of persons working under a contract of employment; and
- Measures for the protection of personal data.

The request also provides guidance on what information the technical advice should take into account.

ESMA is requested to deliver the advice within eight months of MAR entering into force.

A copy of the request for technical advice is available at the link below:

http://ec.europa.eu/internal_market/securities/docs/abuse/140528-esma-mandate_en.pdf

Reform of the Client Asset Regime

In April 2014, the Central Bank addressed the Association of Compliance Officers in Ireland ("**ACOI**") on the proposed changes to the Client Asset Regime. The speech covered:

- The background to the consultation on Client Assets – CP71;
- The extension of the scope of the Client Asset Regime to include Fund Service Providers;
- The seven key principles underpinning the Client Asset Regime;
- Industry's response to the proposed Client Asset Regime; and
- Next steps.

In particular, it was clarified that:

- References to Collection Accounts mean the bank accounts that are used to receive subscription monies and remit redemption proceeds;
- Once money is invested in a fund it no longer constitutes client money subject to the Client Asset Regime. In this instance the assets belong exclusively to the fund and are entrusted to the trustee for safe-keeping.

The Central Bank has held a number of workshops with representatives from the Funds industry to work through the practical challenges posed by the new Client Asset Regime and to assist in understanding the refinements that need to be made to the Client Asset Regulations and Central Bank's Guidance

It is expected that the Client Asset Regulations and the Central Bank's Guidance relating to same will be finalised later this year.

The Central Bank's speech may be viewed via the following link:

http://www.centralbank.ie/regulation/marketsupdate/Documents/ACOI%20Address%2020140401.pdf.

Central Bank

(i) Central Bank Publishes Annual Report 2013 and Annual Performance Statement Financial Regulation 2013-2014

On 30 April 2014, the Central Bank published its Annual Report 2013 and Annual Performance Statement Financial Regulation 2013-2014.

The Annual Report documents the activities and presents the annual accounts of the Central Bank for the year ended 31 December 2013. It provides that in 2013 the Central Bank's profit was €1.5 billion, of which €1.2 billion would be paid over to the Exchequer. According to the Governor Patrick Honohan, the main focus of the Central Bank for 2013 remained restoring financial stability and supporting domestic economic recovery.

The 2013 key activities and developments are set out as follows:

- Stability of the financial system;
- Proper and effective regulation of financial institutions and markets;
- Resolution of financial difficulties in credit institutions;
- Protection of consumers of financial services;
- Independent economic advice and high quality financial statistics;
- Efficient and effective payment system and currency services;
- Operational efficiency and cost effectiveness;
- Ireland's financial sector commitments under the External EU-IMF Programme of Financial Support;
- Energy, safety and environmental developments;
- Statements and published papers by the Bank in 2013; and
- Governance.

The Annual Performance Statement Financial Regulation documents financial regulatory activities undertaken during 2013 and planned for 2014.

Both the reports are available via the links below:

http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Annual%20Report%202013.pdf

http://www.centralbank.ie/publications/Documents/Central%20Bank%20of%20Ireland%20Annual%20Performance%20Statemement%202013-2014.pdf

(ii) Central Bank Publishes Information Notice relating to an Interim Solution for Unavailable PCF Returns

In April 2014, the Central Bank removed three PCF returns from its On-Line Reporting System ("**ONR**") due to technical issues arising with those returns. The Central Bank has confirmed that they are working to rectify the problem with the PCF returns as soon as possible.

The Information Notice sets out the following:

- Effective Start Date and Resignation Notifications – an interim solution is being put in place pending restoration of the relevant PCF returns on ONR;
- Change of Address – for situations where a PCF holder changes his/her address:
  - Where the PCF holder remains in the State, there is no need to report until such time as the ONR system is back live;
  - If the PCF holder has moved outside of the State, an update must be provided in writing to the Central Bank (as set out in the Information Notice).
- Annual PCF Confirmation Return – the Central Bank extended the submission date for the Annual PCF Return due from Credit Institutions and Insurance Undertakings from 30 April 2014 to 30 June 2014.

The Information Notice is available via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Information%20Note%20April%202014%20(2).pdf

Data Protection

(i) EU and US Remain Dedicated to the Continued Operation of the Safe Harbour Framework

On 26 March 2014, the EU and the US issued a joint statement committing to comprehensively strengthening the Safe Harbour Framework "to ensure data protection and enable trade through

increased transparency, effective enforcement and legal certainty when data is transferred for commercial purposes" The European Parliament had previously threatened to veto any future trade agreement between the EU and US, unless safeguards for EU citizens' privacy rights are improved by the US.

The Safe Harbour Framework provides for a set of principles which means that any transfer of personal data to companies in non-EEA countries that have signed up to the Safe Harbour principles may take place without any additional condition over and above those for the transfer to a third party or to a data processor located within the EU/EEA.

(ii) The Data Protection Commissioner 2013 Annual Report

On 12 May 2014, the Data Protection Commissioner ("**DPC**") launched his annual report for 2013 (the "**Annual Report**"). The Annual Report summarises activities of the Office of the DPC during 2013 by reference to specific investigations and audits undertaken as well a summary of policy matters and EU/international activities.

During 2013, the Office of the DPC opened 910 complaints for investigation. Complaints from individuals in relation to difficulties gaining access to their personal data held by organisations accounted for almost 57% of the overall complaints investigated during 2013. With 517 complaints in this category, this represents a record high number of complaints concerning access requests.

The Annual Report highlights that individual complaints relating to data access requests are primarily being driven by poor customer service standards by commercial entities. The findings of the Office of the DPC indicate that individuals who consider that they are not receiving adequate customer service from commercial entities resort to exercising their data protection right to request a copy of all personal data held by that entity, which may not have become necessary had the customer's initial queries been dealt with by the entity in a timely and comprehensive fashion.

The Annual Report also provides that the vast majority of complaints in 2013 were resolved without the need for a formal decision under Section 10 of the Data Protection Acts or without enforcement action being required.

The Annual Report provides useful reading for data controllers and data processers. It may be accessed via the following link:

http://www.dataprotection.ie/docimages/documents/Annual%20Report%202013.pdf

Anti-Money Laundering/Counter-Terrorism Financing

(i) Council of EU Publishes Compromise Proposal on the Fourth AML Directive and Revised Wire Transfer Regulation

On 15 June 2014, the latest compromise text for both the Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the "**4th Anti-Money Laundering Directive**") and the Regulation on Information on the payer accompanying transfers of funds ("**Wire Transfer Regulation**") was published by the European Presidency.

The Permanent Representative Committee has now called on the Italian European Presidency to commence trialogue negotiations with the European Parliament once it has resumed work following the recent elections, with a view to adopting the latest proposed text

For a copy of the compromise text of the 4th Anti-Money Laundering Directive please see the link below:

http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010970%202014%20INIT

(ii) Financial Action Task Force Published Documents on its Activities

On 27 June 2014, the Financial Action Task Firce ("**FATF**") published:

- A summary of its plenary meeting held in Paris from 25 to 27 June 2014; and
- A report on virtual currencies, which focuses on key definitions and potential anti-money laundering ("**AML**") and combating the financing terrorism ("**CFT**") risk.

The summary and the report can be accessed via the following links, respectively:

http://www.fatf-gafi.org/documents/news/plenary-outcomes-jun-2014.html

http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf

Companies Bill 2012 Update

On 17 June 2014, the Seanad Committee Stage of the Companies Bill was completed and all of the 170 amendments tabled by the Department of Jobs, Enterprise and Innovation were agreed. The Bill will now be considered by the Seanad at the Report Stage, however a date has not yet been fixed for this stage.

It is anticipated that the Companies Bill will be enacted towards the end of 2014 and private companies limited by shares will be given an 18 month transitional period to take certain action as a result of the introduction of the Act. The Minister for Jobs, Enterprise and Innovation may choose to extend this by a further 12 months. The transitional period will give directors and shareholders the time to decide between registering as a new-form company ("**CLS**") and registering as a designated activity company ("**DAC**"). Where a company takes no action, it will be deemed to have become a CLS on the expiry of the transition period. It is to be noted that many of the changes will, however, come into effect immediately.

Further information relating the technical amendments of the Companies Bill are available accessing the following link:

http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2014061000040?opendocument

Irish Taxation Update

(i) Revenue Commissioners Finalises Relevant Regulations on FATCA

On 27 June 2014, the Irish Revenue Commissioners (in conjunction with the Department of Finance) finalised the relevant Regulations (S.I. No. 292 of 2014) with respect to FATCA (the "**FATCA Regulations**"), which came into operation on 1 July 2014.

The Irish and US Governments signed an intergovernmental agreement ("**Irish IGA**") on 21 December 2012 with respect to FATCA and legislation was subsequently included in Finance Act 2013 for the implementation of the Irish IGA. The legislation (Section 891E of the Taxes Consolidation Act, 1997 ("**TCA 1997**")) specifically permitted Regulations to be made by the Irish Revenue Commissioners with regard to the various requirements arising under the Irish IGA (such as, the potential registration, due diligence and reporting obligations that may arise).

A consultation period followed to ensure that relevant stakeholders would have an opportunity to review / comment on the draft Regulations and Guidance Notes as issued by the Irish Revenue

Commissioners. In this regard, draft Regulations and Guidance Notes were initially issued on 3 May 2013 with revised drafts of same being issued on 16 January 2014.

The consultation period has now ended with the publication of the FATCA Regulations.

The FATCA Regulations along with the Irish IGA, Section 891E TCA 1997 and draft Guidance Notes set out the framework for Irish Financial Institutions to implement and comply with the provisions of FATCA.

While the Guidance Notes are still currently in draft, it is envisaged that these will also to be finalised in the near future.

(ii) The IFIA's FATCA Working Group Drafts Self-certification Forms

On 30 June 2014, the Irish Funds Industry Association ("**IFIA**") published on their website an information update mentioning that the FATCA Working Group of the IFIA has been working with the Revenue Commissioner in relation to the obligations that FATCA imposes, with a view to obtaining clarity on fund specific issues. It is expected that these issues will be dealt with in the revised Guidance Notes.

One of the new requirements from 1 July 2014 is the need to confirm the status of investors from a US tax perspective. In this regard the Working Group has drafted appropriate self-certification forms for both individuals and entities which formed part of our discussions with Revenue.

Copies of the forms (for entities and for individuals) are available below, respectively:

http://www.irishfunds.ie/fs/doc/publications/ifia-fatca-self-certification-for-entities-27-6-14-final.PDF

http://www.irishfunds.ie/fs/doc/publications/ifia-fatca-self-certification-for-individuals-27-6-14-final.PDF

Dillon Eustace

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

Authors: Breeda Cunningham / Michele Barker

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.

Mary Canning
E-mail: mary.canning@dilloneustace.ie
Tel : + 353 1 673 1759
Fax: + 353 1 667 0042

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

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO