



## FUNDS

# Quarterly Legal and Regulatory Update

Period covered: 1 January 2020 – 31 March 2020

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## 1. Approaching deadlines

| Approaching deadlines |              |  |
|-----------------------|--------------|--|
| Q 2 2020              | 1 April      | Depositories to comply with new EU rules concerning safekeeping. See Section <a href="#">16.4</a> .  |
|                       | 30 April     | Industry letter of “in scope” entities to be brought to the attention of boards/ senior management in response to letter to industry. See Section <a href="#">13.1</a> . |
|                       | Mid-June     | Annual EMIR clearing calculations to be considered for AIFs/ UCITS. See Section <a href="#">6.3</a> .  |
| Q 3 2020              | 30 September | New Liquidity Stress Testing Framework will apply to all AIFMS and UCITS ManCos in respect of their UCITS and AIFs. See Section <a href="#">16.5</a> .                   |
|                       | 30 September | MMF quarterly reports for Q1 and Q2 to be sent to the Central Bank for both Q1 and Q2. See Section <a href="#">11.1</a> .  |
|                       | 1 per annum  | Viability and suitability assessment for all UCITS to be undertaken. See Section <a href="#">2.2</a> .   |
|                       | TBC          | New Central Beneficial Ownership Register to “go live”. See Section <a href="#">14.2</a> .   |

## 2. UCITS

### 2.1 Clarification on authorisation process for Irish UCITS funds

The Central Bank published the twenty-eighth edition of its “UCITS – Questions and Answers” (“**UCITS Q&A**”) on 29 January 2020.

In this Q&A, the Central Bank has reminded stakeholders that the UCITS is a product which is intended to be suitable for retail investors. During the authorisation process for a UCITS, the Central Bank may require additional information to be provided in the course of reviewing a specific application. In particular, the Central Bank may subject an application for authorisation of a new UCITS to enhanced scrutiny by reason of the UCITS’ proposal to invest in contracts for difference (“**CFDs**”), collateralized loan obligations (“**CLOs**”), contingent convertible securities (“**CoCos**”). However, the Q&A does not prohibit investment in any financial instruments nor does it impose any new quantitative limits on investment by a UCITS in any financial instruments.

Please see the Dillon Eustace briefing entitled “Central Bank of Ireland: Clarification on authorisation process for UCITS funds” which can be accessed [here](#).

The twenty-eighth edition UCITS Q&A can be accessed [here](#).

### 2.2 UCITS Funds – Viability and Suitability Assessments

On 18 July 2019, the Central Bank issued a letter entitled “Thematic Review of Closet Indexing” to all Irish domiciled UCITS management companies and self-managed UCITS funds (“**UCITS Man Cos**”). In this letter, the Central Bank stated that it expects all UCITS ManCos to conduct a viability and suitability assessment of each Irish-domiciled UCITS fund under management.

The viability and suitability assessment should be undertaken when the UCITS ManCo is assessing the investment manager's annual presentation as required under the Central Bank's Fund Management Company Guidance<sup>1</sup>. This review should include a documented assessment of the performance, fee structure and investor base of each UCITS and consider, where relevant, whether the fees charged to the UCITS are appropriate for any "targeted level of outperformance of the UCITS against its benchmark".

This new obligation is similar to the "Assessment of Value" requirements announced by the FCA in the UK in 2018.

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| <b>Action</b> | UCITS ManCo to undertake viability and suitability assessment for each UCITS when it is assessing the investment manager's annual presentation during 2020. |
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## 2.3 UCITS' use of securities lending

In a speech outlining regulatory priorities for 2020 delivered on 15 January 2020, the Central Bank has indicated that it will commence a review of UCITS' use of securities lending in the course of 2020.

While it did not indicate the specific focus of any such review in that speech, the Central Bank has previously indicated that it intends to: (i) scrutinise and challenge the treatment of fees and income received from securities lending activities and (ii) more generally, look at the adequacy of disclosure to investors in fund documentation on the use of, revenues and costs generated by, and risks associated with, securities financing transactions such as securities lending arrangements, repurchase and reverse repurchase agreements.

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

## 3. AIFMD

### 3.1 ESRB letter on issues with AIFMD framework

On 5 February 2020, the European Systemic Risk Board ("ESRB") published a letter to the European Commission, on shortcomings on the application and scope of the Alternative Investment Funds. Managers Directive (Directive 2011/61/EU) ("AIFMD").

The ESRB has identified areas for improvement in several areas including: (i) the suitability of the AIFMD reporting framework and access to data for monitoring systemic risk, (ii) the need to operationalise existing macroprudential policy instruments (e.g. the use of leverage limits for AIFs or suspending redemptions in the public interest); and (iii) the ongoing development of the macroprudential policy framework for funds, such as any ex-ante liquidity requirements and the better alignment of redemption terms with the liquidity of assets. It also raises points on information about funds' interconnectedness, leverage and liquidity risk.

The letter indicates that the Commission will report on its review of the AIFMD in early 2020.

The ESRB letter can be accessed [here](#).

### 3.2 ESMA consults on guidance to address leverage risk in the AIF sector

On 27 March 2020, European Securities and Markets Association ("ESMA") launched a consultation on its draft guidance to address leverage risks in the AIF sector. The aim of this consultation is to promote supervisory convergence in how NCAs assess the contribution of leverage within the AIF sector to systemic risk in the financial system. It also aims to assess how the leverage limits are designed and implemented.

<sup>1</sup> However, where a UCITS Man Co was subject to a thematic review on closet-indexing, the date by which this assessment needs to be conducted by is specified in the relevant risk mitigation programme issued to the UCITS Man Co.

This consultation comprises part of ESMA's response to the recommendations of the ESRB published in April 2018 regarding liquidity and leverage risks in investment funds.

ESMA is seeking feedback from stakeholders prior to 1 September 2020.

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

## 4. SRD II

### 4.1 SRD II transposed into Irish law

On 5 February 2020, the second Shareholders Rights Directive (Directive (EU) 2017/828) ("**SRD II**") was transposed into Irish law via the European Union (Shareholders' Rights) Regulations 2020 (the "**Irish Regulations**") which amend the Companies Act 2014. It entered into operation on 30 March, 2020.

On that date, AIFMs, UCITS mancos, internally managed AIFs and self-managed UCITS investment companies ("**ManCos**") will, to the extent that funds under their management invest in EEA listed equities, be required to prepare a shareholder engagement policy and publish same on their website or alternatively disclose on their website why they have chosen not to do so. In addition, additional information must be provided to in-scope institutional investors which invest in funds under their management on who their investment strategy and implementation of same contribute to the medium to long-term performance of the assets of the relevant fund.

SRD II intends to encourage asset managers to engage in long-term stewardship and to move away from a focus on short-term performance. Similar requirements are imposed upon MiFID firms providing portfolio management services and institutional investors (EU life insurers and EU pension funds).

SRD II can be accessed [here](#).

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| <b>Action</b> | Where relevant, ensure shareholder engagement policy (or statement as to why a shareholder engagement policy has not been prepared) is published in the website of the ManCo. |
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## 5. PRIIPS

### 5.1 EFAMA response to the ESAs' Joint Consultation Paper concerning amendments to the PRIIPS KID

On 13 January 2020, the European Fund and Asset Management Association ("**EFAMA**") issued a response to the ESAs' joint consultation paper concerning possible amendments to the Regulatory Technical Standards ("**RTS**") supporting Commission Delegated Regulation (EU) 2017/653 (the "**PRIIPs Delegated Regulation**").

Welcoming the Level 2 review, EFAMA highlighted the need to address the fundamental issues in the PRIIPs Delegated Regulation relating to performance scenarios, transaction costs methodologies and cost disclosures in the Key Information Document ("**KID**") for Packaged Retail Investment and Insurance-Based Products ("**PRIIPs**"). One point to note is that EFAMA has indicated that it prefers for a revised PRIIP KID to become applicable at the beginning of 2022, as this would coincide with the inclusion of UCITS and retail AIFs that currently produce the UCITS KIID (the UCITS exemption is due to expire at the beginning of January 2022).

The deadline for submission of feedback to the ESAs' consultation was 13 January 2020. In turn, the ESAs expect to finalise their review during 2020, in order to submit their conclusions and recommendations to the European Commission.

The EFAMA response can be located [here](#).

## 6. EMIR

### 6.1 The Central Bank publishes the first edition of the EMIR Q&A

On 21 January 2020, the Central Bank published the first edition of its Questions & Answers (the “**EMIR Q&As**”) concerning Regulation 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (“**EMIR**” or the “**European Markets Infrastructure Regulation**”).

The EMIR Q&A includes ten Q&As. The Q&As clarify that supervision of EMIR compliance by financial counterparties is incorporated into the Central Bank’s risk-based approach for supervision (“**PRISM**”) where relevant. Other topics covered include guidance concerning the issuance of LEIs, requests/ notifications for intragroup exemptions, monthly unconfirmed trades reports and notifications concerning the clearing obligation.

The EMIR Q&A’s can be accessed [here](#).

### 6.2 ESMA publishes its Final Report on the alignment of MiFIR with the changes introduced by EMIR Refit

On 7 February 2020, ESMA published its Final Report on the alignment of Regulation (EU) No 600/2014 (the “**Markets in Financial Instruments Regulation**” or “**MiFIR**”) with the changes introduced by Regulation (EU) 2019/834 (the “**EMIR Refit Regulation**”).

Under EMIR Refit, the European Commission is required to prepare a report assessing the necessity and appropriateness of aligning the trading obligation for derivatives under MiFIR (the “**DTO**”) with changes made under EMIR Refit to the clearing obligation for derivatives (the “**CO**”). In the Final Report, ESMA recommends to the European Commission that the changes introduced by EMIR Refit to the scope of the CO for both financial and non-financial counterparties should be replicated in MiFIR so that the scope of counterparties subject to the DTO and CO are aligned.

The Final Report will be submitted to the European Commission by 18 May 2020.

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

### 6.3 Annual EMIR clearing calculations to be determined

UCITS ManCos, self-managed UCITS, EU AIFMs and EU AIFs will need to consider whether or not annual EMIR clearing calculations will be performed for the period ended 31 May 2020 for each sub-fund. Such calculations should capture the average monthly derivatives activity of a sub-fund in the last 12 months ending on 31 May 2020.

Newly established sub-funds and/or sub-funds with insufficient trading history may be outside of scope.

Where an Irish Fund opts not to calculate its aggregate month-end average position for the previous 12 months for a sub-fund, or if the result of that calculation exceeds any of the clearing thresholds, the Fund in respect of the sub-fund is required to notify ESMA and the Central Bank.

#### Action

Fund ManCos and Funds to consider whether or not annual EMIR clearing calculations for each sub-fund will be performed for the period ended 31 May 2020. Where relevant, ensure appropriate notifications are made to ESMA and the Central Bank.

## 7. SFTR

### 7.1 ESMA clarifies SFTR reporting requirements

On 6 January 2020, European Securities and Markets Association (“**ESMA**”) published its Final Report and Guidelines on reporting under articles 4 and 12 of Regulation (EU) 2015/2365 on reporting and transparency of securities financing transactions (“**SFTR**” or “**Securities Financing Transactions Regulation**”).

The Final Report and the Guidelines provide clarification regarding the compliance with the technical standards under the SFTR and ensure the consistent implementation of the new SFTR rules. The Guidelines apply from 7 January 2020. ESMA has also published amended validation rules for SFTR reporting to reflect the above.

These recent publications can be found [here](#).

Following the issue of the Final Report and Guidelines, the Alternative Investment Management Association (“**AIMA**”) submitted a letter to the European Commission and the ESMA regarding the SFTR scope of non-EU AIFs. In the responses provided, the European Commission and ESMA clarified that non-EU AIFs are not subject to the reporting obligations in Article 4(1), even if the AIFM is authorised or registered in accordance with AIFMD. This is the position except in respect of securities financing transactions (“**SFTs**”) concluded in the course of the operations of an EU branch of the non-EU AIF.

A copy of the European Commission’s letter of 7 February 2020 can be accessed [here](#).

A copy of ESMA’s letter of 6 February 2020 can be accessed [here](#).

### 7.2 ICMA publishes a guide to on reporting repo transactions under the SFTR

On 24 February 2020, the International Capital Market Association (“**ICMA**”) published a [guide](#) by its European Repo and Collateral Council (“**ERCC**”) on reporting repo transactions under the SFTR.

A copy of the ICMA’s Guide can be accessed [here](#).

### 7.3 ESMA clarifies position on SFTR in light of COVID-19

On 19 March 2020, ESMA issued a statement clarifying that the phase-in deadline for reporting by MiFID firms, credit institutions and relevant third country entities was deferred from 13 April, 2020 **until 13 July 2020**. ESMA clarified that competent authorities are not expected to prioritise in their supervisory actions. Further ESMA also expects competent authorities “to generally apply their risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

On 26 March 2020, ESMA issued a press release revising its earlier statement of 19 March on coordinated supervisory actions on the application of SFTR. This clarifies that SFTs concluded between 13 April 2020 and 13 July 2020, as well as those subject to backloading under SFTR fall within the issues that competent authorities are not expected to prioritise in their supervisory actions. It advises that the application of a risk-based approach in the exercise of supervisory powers in this area be done in a proportionate manner.

The ESMA statement is available [here](#).

The press release is available [here](#).

## 8. BENCHMARKS

### 8.1 Central Bank issues letter regard to interest rate benchmark reforms

On 28 February 2020, the Central Bank issued a letter to all Irish domiciled UCITS management companies, AIFMs and self-managed UCITS funds/ AIFs (each a “**ManCo**”) with regard to preparation for interest rate benchmark reforms, to remind those responsible for the management of investment funds of their obligations to adequately prepare for the implementation of a number of on-going global benchmark reforms and any associated risks. LIBOR is being discontinued at the end of 2021. EONIA is being replaced with a new Euro short-term rate (“**STR**”) and will be discontinued at the end of December 2021.

This may have wide-ranging implications for a ManCo and the funds which it manages. For example, a ManCo may use an interest rate benchmark to measure the performance of a fund, a fund may invest in benchmark-based products (such as financial contracts the underlying of which references one of the existing benchmarks) and/or a fund may use performance fee methodologies which reference these benchmarks. A ManCo will also need to establish whether any changes need to be made to any existing valuation, pricing and/or risk models which currently rely on such interest rate benchmarks.

#### Action

Each ManCo should undertake an analysis to ascertain the changes which it will need to make to fund and other documentation and to internal processes. This should include an analysis of the extent to which these changes will have an impact upon investors. Thereafter, an appropriate implementation plan can be formulated.

### 8.2 ESMA launches a public consultation on new draft RTS concerning the Benchmarks Regulation

On 9 March 2020, ESM launched a public consultation on new draft RTS under Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (“**Benchmarks Regulation**” or “**BMR**”).

The consultation addresses requirements relating to governance, methodology, infringements reporting and critical benchmarks.

Initially the deadline for feedback by stakeholders was set for 9 May 2020. This deadline has been extended to 8 June 2020 by ESMA in light of COVID-19.

Details for the instructions for feedback can be accessed [here](#).

## 9. FITNESS AND PROBITY

### 9.1 Additional Pre-Approval Control Functions and the impact on the Asset Management Industry

On 25 February 2020, the Central Bank issued a notice of intention (the “**Notice**”) proposing to: (i) introduce three new Pre-Approval Controlled Functions (“**PCFs**”), namely, Chief Information Officer PCF-49, Head of Material Business Line PCF-50 and Head of Market Risk PCF-51; and (ii) split PCF-39 Designated Person into six PCF roles aligned to the specific managerial functions.

The Central Bank indicates in the Notice that amended regulations will be put in place reflecting the introduction of these new roles pursuant to Section 22 of the Central Bank Reform Act 2010. Once the amended regulations have been implemented, regulated financial service providers (“**RFSPs**”) will need to assess persons in situ (i.e. persons in the new PCF roles) to ensure that such person complies with the Fitness and Probity Standards 2014 (the “**Standards**”) (and that such person has agreed to abide by such Standards). RFSPs will be required to submit confirmation of such an assessment to the Central Bank. The exact timings and specifics of the confirmation remain unclear. It would however appear that a period of six weeks will be provided after the implementation of the amended regulations to submit the in situ confirmation.



The Central Bank had invited comments from stakeholders on this proposal prior to 14 April, 2020.

A copy of the Dillon Eustace briefing entitled “Additional Pre-Approval Control Functions and the impact on the Asset Management Industry” can be accessed [here](#).

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| Action | Once the amended Regulations have been implemented, RFSPs will need to: (i) assess “in scope” persons in situ to ensure that such person complies with the Standards (and that such person has agreed to abide by such Standards); (ii) submit confirmation of such an assessment to the CBI; and (iii) review their fitness and probity policies to ascertain if any updates need to be made to reflect the new PCF roles. |
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## 10. PRISM

### 10.1 Central Bank publishes its PRISM Impact Review

In February 2020, the Central Bank published its “PRISM Impact Review - Revised Prudential Impact Models” document (the “**PRISM Impact Review**”). The PRISM Impact Review has revised the prudential impact models in the asset management, credit union, fund service provider, insurance, payments, e-money and market infrastructure sectors.

A copy of the Dillon Eustace briefing entitled “PRISM - CBI Revises Prudential Impact Models” can be accessed [here](#).

A copy of the PRISM Impact Review can be accessed [here](#).

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| Action | The CBI will inform firms of their impact categorisation on a phased basis over the next few months. |
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## 11. MMFR

### 11.1 Additional ESMA defers the deadline for the first reporting under the EU Money Market Fund Regulation (“MMFR”)

ESMA announced on 31 March 2020, that the first reports by MMF managers under the EU Money Market Fund Regulation (Regulation (EU) 2017/1131) (“**MMFR**”) should be deferred until September 2020. The original date for submission to the Central Bank (or other relevant competent authority) was April 2020.

It should be noted that the XML schemas that will be used for the reporting are being updated which is the reason for the extension to the reporting deadline.

A new version 1.1 of the XML schema will now need to be completed. This, together with reporting instructions, will be published on ESMA’s website “shortly”.

ESMA has advised that the reference period for the first reporting is still intended to be Quarter 1 2020. This means that the MMF managers will have to submit quarterly reports in September 2020 for both Q1 and Q2 reporting periods.

ESMA’s announcement can be found [here](#).

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| Action | Boards to ensure that an appropriate MMFR reporting framework is established and reporting filings are completed by 31 July, 2020. |
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## 12. COVID - 19

### 12.1 Additional COVID-19: Implications for Asset Managers

On 18 March 2020, Dillon Eustace issued a client briefing concerning the COVID-19 pandemic concerning potential legal and regulatory implications for asset managers.

A copy of the Dillon Eustace briefing can be accessed [here](#).

### 12.2 Short Selling reporting threshold lowered due to Covid-19

On 16 March 2020, ESMA announced that it has lowered the reporting threshold for net short positions in shares admitted to trading on an EU regulated market under Regulation (EU) No. 236/2012 (the “**EU Short Selling Regulation**” or “**SSR**”). The reporting threshold has been lowered temporarily to 0.1%. These temporary measures announced by the will force investors to reveal more information about their short-selling positions by halving the threshold for disclosures.

The ESMA decision can be found [here](#).

### 12.3 Bans on short selling announced in several European countries

On 16 March 2020, the Italian regulator notified ESMA of its intention to prohibit short selling on shares traded on the Italian MTA regulated market. The ban has been imposed for a period of 3 months and is subject to a number of exceptions. ESMA has issued an opinion confirming that it considers the emergency measure proposed as necessary.

Similarly the French regulator, the Belgian regulator, the Greek regulator and the Austrian regulator have followed this approach in banning short selling in shares admitted to the regulated markets for which it is the relevant competent authority. The exemptions to the ban vary slightly from regulator to regulator.

A copy of the ESMA opinion in respect of the Italian ban can be accessed [here](#).

A copy of the ESMA opinion in respect of French ban can be found [here](#).

A copy of the ESMA opinion in respect of the Belgian ban can be found [here](#).

A copy of the ESMA opinion in respect of the Greek ban can be found [here](#).

A copy of the ESMA opinion in respect of the Austrian ban can be found [here](#).

### 12.4 COVID -19: Use of Liquidity management tools

On 19 March 2020, the Central Bank issued an industry communication reminding fund management companies to engage with the Central Bank once in relation to the use of available liquidity management tools such as gating or suspension.

In addition on 6 January 2020, the Asset Management and Investors Council (“**AMIC**”) and EFAMA updated their report, “Managing Fund Liquidity Risk in Europe”. This report may be helpful to funds and their management companies when considering available liquidity management tools.

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

Please see the Dillon Eustace briefing entitled “COVID 19: Liquidity Management Tools” which sets out an overview of some of the liquidity management tools which fund management companies may want to consider in these unprecedented market conditions. The briefing can be accessed [here](#).

**Action**

Prior notification is required to be provided to the Central Bank prior to implementing certain liquidity management tools. Boards to seek legal advice accordingly.

## 12.5 Disclosure obligations of Issuers in light of COVID-19

Issuers (including funds) with securities listed or traded on regulated markets in the EU are obliged under the Regulation (EU) 596/2014 (the “**Market Abuse Regulation**” or “**MAR**”) to disclose inside information without delay.

MAR also extends its requirements to issuers of financial instruments listed or traded on multilateral trading facilities (“**MTFs**”) and/or organised trading facilities (“**OTFs**”) within the EU.

Listed funds and companies should consider whether any “relevant significant information” about the impact of COVID-19 on the price of their listed securities, or financial instruments linked to such listed securities, which has not yet been made public, could constitute inside information under MAR.

Euronext Dublin listing rules also require the immediate disclosure of any decision to suspend the calculation of net asset value, or a suspension of the redemption of the shares of listed funds.

**Action**

Funds listed or traded on regulated markets, MTFs or OTFs in the EU should consider if any disclosure is required under MAR.

## 12.6 ESMA issues public statement concerning the publication of financial reports by listed issuers under the Transparency Directive – COVID 19

On 27 March 2020, ESMA issued a public statement on the implications of the COVID-19 pandemic on the deadlines for publishing financial reports which apply to listed issuers under Directive 2004/109/EC (the “**Transparency Directive**”).

Under the Transparency Directive, companies with securities listed or traded on regulated markets in the EU are required, inter alia, to publish periodic financial reports within certain timeframes. The ESMA statement recommends NCAs to apply forbearance powers towards issuers who need to delay publication of financial reports beyond the statutory deadline. At the same time, the statement underlines that issuers should keep their investors informed of the expected publication delay and that requirements under the Market Abuse Regulation still apply.

The Transparency Directive does not apply to funds, other than fully closed-ended funds.

ESMA’s public statement can be found [here](#).

## 12.7 Central Bank issues statement on provision of essential services by financial services firms – COVID -19

On 31 March 2020, the Central Bank issued a statement on provision of essential services by financial services firms. The Central Bank notes that it expects “financial service firms’ boards and senior management to actively monitor developments in order to be in the best position to preempt and respond to rapidly changing circumstances” and sets out its specific expectations in this regard.

This includes keeping business continuity plans under constant review to ensure that they remain fit for purpose and notifying the Central Bank, as soon as possible, where they believe circumstances present a risk to the maintenance of essential services to consumers, industry or markets.

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

## 13. CYBERSECURITY

### 13.1 Central Bank of Ireland issues Industry Letter on the Thematic Inspection of Cybersecurity Risk Management in Asset Management Firms

On the 10 March 2020, the Central Bank published a letter to industry on the key findings of their recent thematic inspection (the “**Thematic Inspection**”) of cybersecurity risk management in Asset Management Firms (the “**Industry Letter**”).

Please see the Dillon Eustace briefing on this topic which can be accessed [here](#).

#### Action

The Central Bank has indicated that the Industry Letter must be brought to the attention of all Board Members and Senior Management by 30 April, 2020 where the findings are to be considered and, if necessary, improvements should be made to cybersecurity risk management practices.

## 14. ANTI-MONEY LAUNDERING (“AML”) / COUNTER-TERRORIST FINANCING (“CTF”)

### 14.1 Anti-Money Laundering Risk Factor Guidelines to be revised

On 5 February 2020, the European Banking Authority (“**EBA**”) issued a consultation paper in relation to a revision of the guidelines issued by the European Supervisory Authorities in January 2018 on simplified and enhanced customer due diligence (“**CDD**”) and the factors credit and financial institutions should consider when assessing money laundering and terrorist financing risk (the “**Risk Factor Guidelines**”).

Please see the Dillon Eustace briefing entitled “Anti-Money Laundering - Risk Factor Guidelines to be revised - consultation open” which can be accessed [here](#).

The Consultation Paper can be accessed [here](#).

### 14.2 Central Beneficial Ownership Register for ICAVs & Unit Trusts

On 6 March 2020, the Central Bank announced that it will establish a central Beneficial Ownership Register in respect of Credit Unions and certain funds (namely, Irish collective asset-management vehicles (“**ICAVs**”) and unit trusts). Common contractual funds and investment limited partnerships will also be included on the Register in due course.

A new Statutory Instrument assigning responsibility to the Central Bank to maintain the Register is expected to be introduced shortly. The Central Bank expects that there will be a five month lead-in period for entities to submit information to the Central Bank for inclusion in the Register. The Central Bank has indicated that the central Beneficial Ownership Register in respect of Trusts will be implemented by a separate authority and further details will be available in due course.

#### Action

Corporate and legal entities should already be maintaining details of their beneficial owners independent of the Register. Boards to implement operational measures to ensure that beneficial ownership information will be submitted to the Central Bank once the Register “goes live” in Q3 or Q4.

## 15. SUSTAINABLE GROWTH

### 15.1 ESMA Strategy on Sustainable Finance

On 6 February 2020, ESMA published its strategy on sustainable finance. The report outlines ESMA’s practical objectives when it comes to sustainable finance. These include:

- (i) working with EBA and the European Insurance and Occupational Pensions Authority (“**EIOPA**”) to produce joint technical standards supplementing Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the “**Disclosures Regulation**”).
- (ii) including a dedicated chapter in its trends, risks and vulnerabilities (“**TRV**”) report on the TRV associated with sustainable finance.
- (iii) Using data available to it to analyse financial risks associated with climate change with a view to possibly introducing climate related stress testing in certain market areas.
- (iv) Participating in the EU Platform on Sustainable Finance.
- (v) Pursuing convergence of national supervisory practices on environmental, social, and governance (“**ESG**”) factors.
- (vi) Ensuring compliance with ESG factors within the entities that ESMA supervises directly.

The ESMA report on sustainable finance strategy can be found [here](#).

## 15.2 Rising Tide of ESG Regulation on Investment Funds

In Finance Dublin’s “Investment Funds 2020” publication, Dillon Eustace outlines EU proposals aimed at increasing the use of ESG factors in investment decisions.

The briefing is available [here](#).

## 15.3 Political agreement on the Taxonomy Regulation confirmed

On 5 February 2020, the European Council’s Committee of Permanent Representatives (“**COREPER**”) confirmed political agreement with the European Parliament on the proposed text of the EU Regulation the establishment of a framework to facilitate sustainable investment (the “**Taxonomy Regulation**”). The final Regulation is expected to be published in the Official Journal in May 2020.

The Taxonomy Regulation seeks to establish an EU-wide classification system (or taxonomy) intended to provide firms and investors with a common framework for identifying to what degree economic activities can be considered to be “environmentally sustainable”.

The Taxonomy Regulation applies to a number of issuers and undertakings, including “financial market participants” making available “financial products” (as defined in the related Disclosures Regulation) which covers a broad range of investment funds, product manufacturers and managers, including insurance undertakings, pension funds, AIFMs and UCITS management companies.

The Taxonomy Regulation can be accessed [here](#).

## 16. MISCELLANEOUS

### 16.1 Switzerland – Change to English as Official Language for Fund documentation

In January 2020, new Swiss financial markets legislation was introduced which provides that funds marketed in Switzerland may now elect to use English as an official language.

Please see the Dillon Eustace briefing entitled “Switzerland – Changing to English as Official Language” which can be accessed [here](#).

## 16.2 ESMA publishes updated Prospectus Regulation Q&A (February 2020)

On 18 February 2020, ESMA published an updated version of its questions and answers on Regulation EU 2017/ 1129 (the “**Prospectus Regulation**”).

The revised Prospectus Regulation includes two Q&A's relating to the length of the prospectus summary.

The link to this Q&A can be found [here](#).

## 16.3 ESMA issues Technical Advice to the Commission on the effects of product intervention measures

On 3 February 2020, ESMA issued ITS Final Report containing technical advice to the Commission on the effects of product intervention measures under MiFIR. Currently, ESMA and NCAs are empowered under MiFIR to temporarily prohibit or restrict in the European Union the marketing, distribution or sale of certain financial instruments. These intervention powers are explicitly addressed to investment firms and credit institutions (together referred to as “**MiFID firms**”).

ESMA recommends that such intervention powers should apply restrictions/prohibition directly to AIFMs and UCITS management companies as well as to MiFID firms in order to address the risk of arbitrage.

The Final Report can be found [here](#).

## 16.4 Deadline for compliance by Depositaries with new EU rules concerning safekeeping approaches

Depositaries of UCITS and AIFs have until 1 April 2020 to comply with new rules on safekeeping duties following the publication of: (1) Commission Delegated Regulation (EU) 2018/1618 amending Delegated Regulation (EU) 231/2013 (the “**AIFMD Delegated Regulation**”); and (ii) Commission Delegated Regulation (EU) 2018/1619 amending Delegated Regulation (EU) 2016/438 (the “**UCITS Delegated Regulation**”) (together the “**Delegated Regulations**”).

The Delegated Regulations enhance the rules on safekeeping and segregation of assets held by depositaries and the practical application of the required segregation at the level of third party delegates.

The AIFMD Delegated Regulation can be accessed [here](#).

The UCITS Delegated Regulation can be accessed [here](#).

### Action

Deadline of 1 April for Depositaries to update their documentation with delegates.

## 16.5 Compliance with ESMA Liquidity Stress Testing required by 30 September 2020

On 2 September 2019, ESMA published its Final Report, “Guidelines on Liquidity Stress Testing in UCITS and AIFs” (the “**Report**”). These Guidelines will apply to all UCITS management companies and AIFMs from 30 September 2020 in respect of their UCITS and AIFs.

The Central Bank has not yet confirmed as to how it will implement the ESMA Guidelines on Liquidity Stress Testing into its supervisory regime (whether in the form of revised legislation or through the issue of web-based guidance) but we can expect this framework to be in place in advance of 30 September 2020.

The ESMA Final Report of September 2019 can be accessed [here](#).

**Action**

Boards to conduct a review of ESMA guidelines and assess action to be taken, including any update to existing infrastructure and reporting framework prior to 30 September, 2020.

## 16.6 ESMA consults on draft ITS under Regulation on cross-border distribution of collective investment undertakings

On 31 March 2020, ESMA published a consultation paper on draft implementing technical standards (“ITS”) under Regulation (EU) 2019/1156 on the cross-border distribution of collective investment undertakings.

This is the first stage in the development of the draft ITS and sets out ESMA’s proposals. Responses are required to the consultation by 30 June 2020 with a view to submitting the ITS to the European Commission by 2 February 2021.

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

If you have any questions in relation to the content of this update, to request copies of our most recent newsletters, briefings or articles, or if you wish to be included on our mailing list going forward, please contact any of the team members below.

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