DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Funds

Quarterly Legal and Regulatory Update

Period covered: 1 July 2020 – 30 September 2020

TABLE OF CONTENTS

APPROACHING DEADLINES	UCITS & AIFMD	PRIIPS	EMIR
COVID-19	AML/CTF	DATA PROTECTION	SUSTAINABLE GROWTH
MMFR	BREXIT	MiFID/ MiFIR	BENCHMARKS REGULATION
INVESTMENT LIMITED PARTNERSHIPS BILL	CENTRAL BANK OF IRELAND		

1. APPROACHING DEADLINES

Approaching deadlines		
Q 4 2020	**11 October**	UCITS management companies and AIFMs will be required to report all relevant SFT transactions concluded by funds under management with effect from 11 October 2020.
	27 November	UCITS management companies must ensure by 27 November 2020 that performance fees charged to UCITS funds only crystallise annually and are only paid once a year.
	9 December	Fund Managers must email the Financial Conduct Authority (**FCA**) by **9 December 2020** to notify it of the intention to *update existing* applications (i.e. to add further sub-funds) previously submitted by UCITS and AIFs for the temporary permissions regime (**TPR**) in the UK. The window for such updated applications will open on 14 December 2020. See Section 10.4.
	25 December	All ICAVs and Unit Trusts in existence before 25 June 2020 must file relevant information on beneficial owners with the Central Register maintained by the Central Bank by 25 December 2020
	30 December	Deadline for receipt of *new* applications for UCITS and AIFs for the TPR in the UK closes. See Section 10.4.

2. UCITS & AIFMD

2.1 Central Bank publishes updated UCITS Q&A and updated AIFMD Q&A to address liquidity stress testing

On 13 July 2020, the Central Bank of Ireland (**CBI**) published the thirty-fourth edition of its "AIFMD – Questions and Answers" (**AIFMD Q&A**) and the twenty-ninth edition of its "UCITS – Questions and Answers" (**UCITS Q&A**). Both the AIFMD Q&A and the UCITS Q&A contain additional questions and answers which seek to address the CBI's expectations in relation to liquidity stress testing (**LST**) in AIFs and in UCITS as follows:

- The LST should be conducted at least quarterly. Any determination to conduct LST at a higher or lower frequency should be documented in the LST policy;
- The LST should be employed at all stages in a UCITS/AIF lifecycle, including at the design phase; and
- The CBI also confirmed in its UCITS Q&A that the LST policy may be documented within the UCITS risk management policy.

On the same date, the CBI published a Notice of Intention (**CBI Notice**) indicating to management companies that it will apply the European Securities and Markets Authority (**ESMA**) Guidelines on Liquidity Stress Testing in UCITS and AIFS (**Guidelines**) from 30 September, 2020. The Guidelines were issued by ESMA on July 2020 to managers of UCITS and AIFs, as well as to depositaries and national competent authorities (**NCAs**).

The Guidelines can be accessed here.

The CBI Notice can be accessed here. Please also see Dillon Eustace's briefing on the CBI Notice here.

The thirty-fourth edition AIFMD Q&A can be accessed here.

The twenty-eighth ninth edition UCITS Q&A can be accessed here.

Key Action Point	With effect from 30 September 2020, management companies should implement liquidity stress testing arrangements to allow them to comply with the Guidelines in full.

2.2 ESMA highlights priority areas for AIFMD review

On 18 August 2020, ESMA issued a letter to the European Commission highlighting nineteen areas where, in ESMA's opinion, improvements could be made to the regulatory framework currently in place for alternative investment funds (**AIFs**) and which ESMA believes the Commission should consider as part of the Commission's scheduled review of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (**AIFMD**).

Please see our client briefing entitled "ESMA's letter to the European Commission on its review of AIFMD". In the briefing we consider a number of the key proposals including those relating to: (i) delegation and substance of AIFMS and UCITS management companies; (ii) external valuer liability; (iii) amendments to leverage calculations; (iv) clarification of the proportionality principle for remuneration requirements; (v) harmonisation of certain aspects of the UCITS and AIFMD regimes such as risk management and liquidity management as well as reporting requirements; (vi) scope of additional "MiFID" services and application of rules; and (vii) availability of additional liquidity management tools.

The Dillon Eustace briefing can be accessed here.

The ESMA letter to the Commission can be accessed here.

2.3 EFAMA publishes response to ESMA consultation paper on guidelines to address leverage risk under AIFMD

On 31 August 2020, the European Fund and Asset Management Association (**EFAMA**) issued its response to ESMA's consultation paper on guidelines to address leverage risk under AIFMD. ESMA's consultation paper seeks to promote supervisory convergence on how NCAs: (a) assess the systemic risk of the use of leverage; and (b) set limits on the amount of leverage an AIF can employ.

In this response:

- EFAMA welcomes a holistic approach to the development of the guidelines, and emphasises the importance of focusing on the procyclicality of increasing margin calls during stressed situations, more than on the leverage in a fund. EFAMA underlines that high leverage is rare in AIFs and this factor should be taken into account in the development of the guidelines.

- EFAMA welcomes the alignment of the proposed risk assessment with IOSCO Recommendations. However, EFAMA cautions against the inclusion of more granular information requirements as part of this risk assessment, which may harm the competitiveness of EU-based funds.

- EFAMA warns that the introduction of increased reporting frequency or new reporting requirements for the purposes of the risk assessment would be burdensome and costly to implement, and recommends the use of data provided through existing AIFM fund reporting.

The deadline for submission of feedback to the ESMA consultation was 1 September 2020. ESMA is now expected to finalise the guidelines for publication.

The EFAMA response can be accessed here.

2.4 Requirement upon UCITS companies to establish an audit committee

Section 167 of the Companies Act 2014, as read in conjunction with Section 1097 of the Companies Act 2014, imposes an obligation upon each Irish UCITS public limited companies (**PLC**) to establish an audit committee, or alternatively explain why an audit committee has not been established in the directors' reports contained in the financial statements. This is known as the "comply or explain"

requirement. This requirement does not apply to non-UCITS PLCs (such as RAIFs and QAIFs) nor to unit trusts, common contractual funds or Irish collective investment schemes (**ICAVs**).

Pursuant to Section 1551(11) of the Companies Act 2014, (as amended by the Companies (Statutory Audits) Act 2018) the "comply or explain" requirement has been specifically exempted for any Irish UCITS PLC which constitutes a "public-interest" entity. In the context of an Irish UCITS PLC, a "public-interest" entity is a UCITS whose transferable securities are admitted to trading on a regulated market of any Member State in the EU (i.e. EU listed UCITS). However, it would appear that Irish UCITS PLCs which are not "public-interest" entities, i.e. unlisted Irish UCITS PLCs, were not exempted and therefore remain subject to the "comply or explain" requirement.

Key Action Point	It would appear that an Irish UCITS PLC whose transferable securities are not admitted to trading on a regulated market of any Member State in the EU (i.e. an unlisted UCITS PLC) should be addressing the "comply or explain" requirement in directors' reports contained in the annual financial statements

3. PRIIPS

On 4 August 2020, EFAMA issued a letter to the European Commission in connection with its review of the regulatory technical standards (**RTS**) set out in Commission Delegated Regulation (EU) 2017/653 (**PRIIPs Delegated Regulation**). In the letter, EFAMA called for an urgent review of the Regulation on key information documents for packaged retail and insurance-based investment products (Regulation 1286/2014) (**PRIIPs Regulation**) and for an immediate extension of the UCITS exemption (currently set to expire on 01 January 2022).

A copy of the EFAMA press release can be can be accessed here.

4. EUROPEAN MARKET INFRASTRUCTURES REGULATION (EMIR)

4.1 ESMA publishes updated EMIR Q&As (July 2020)

On 8 July 2020, ESMA published an updated EMIR Questions and Answers on EMIR Implementation (**Q&A**). The Q&A includes an updated question and answer to clarify the concept of the "working day" in the context of determining the deadline for reporting under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (**EMIR**).

The ESMA Q&A can be accessed here.

The ESMA briefing on this update is available here.

5. COVID – 19

5.1 Companies (Miscellaneous Provisions) (COVID-19) Act 2020

The Companies (Miscellaneous Provisions) (COVID-19) Act 2020 (**Act**) was signed into law on 1 August 2020. The Act provides relief to companies which have faced difficulties in complying with certain statutory requirements as a result of the COVID-19 pandemic by way of temporary amendments to the Companies Act 2014. Please see Dillon Eustace's briefing concerning the temporary amendments made with effect on 21 August 2020 to the Companies Act 2014 by the Act.

A copy of the Dillon Eustace briefing can be accessed here.

6. ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT)

6.1 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020

On 22 September 2020, the Criminal Justice (Money t and Terrorist Financing) (Amendment) Bill 2020 (**Bill**) commenced Dáil Éireann, Second Stage. The purpose of the Bill is to transpose the criminal justice elements of the Fifth EU Anti-Money Laundering Directive (**AMLD 5**) by amending the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 in line with AMLD 5. The Bill seeks to:

- improve the safeguards for financial transactions to and from high-risk third countries;
- bring a number of new 'designated persons' under the existing legislation (notably certain letting agents, virtual currency providers and custodian wallet providers);
- improve the transparency of beneficial ownership of legal entities. Where a designated person is entering a business relationship with another entity, the designated person must take steps to obtain the relevant information from the appropriate register of beneficial ownership prior to commencing the business relationship;
- provide for a new defence in relation to 'tipping off' where the designated person can prove that the entity to whom the information was disclosed was a specified financial institution, which is connected to the designated person or part of the same group structure;
- enhance existing customer due diligence (**CDD**) requirements;
- set new limits on the use of anonymous pre-paid cards. A person supplying such an instrument will now be required to conduct CDD when the value of the requested card is €150 or higher;
- broaden the definition of a politically exposed person (**PEP**) to include 'any individual performing a prescribed function';
- provide for Ministerial guidance which will clarify domestic 'prominent public functions' that will give rise to a person being designated as a politically exposed person PEP; and
- make a number of technical amendments to other provisions of Acts already in force.

The Bill's progress can be tracked here.

6.2 EBA publishes response to European Commission call for advice on the future of EU AML and CTF framework

On 10 September 2020, the European Banking Authority (**EBA**) published its response to the European Commission's call for advice, issued 3 March 2020, on the future of the EU's anti-money laundering (**AML**) and counter terrorist financing (**CTF**) framework. The response comprises an opinion together with a report.

In its response, the EBA recommends that the Commission establish a single rulebook to:

- harmonise the EU's legal framework where evidence suggests divergence of national rules, in particular with respect to CDD measures and AML/CTF systems and controls requirements that determine what financial institutions do to tackle money laundering and terrorist financing;

- strengthen the EU's legal framework where current provisions are insufficiently robust, particularly in relation to the powers AML/CTF supervisors have at their disposal to monitor and take the measures necessary to ensure financial institutions' compliance with their AML/CTF obligations and in relation to financial institutions' reporting requirements;

- review of the scope of the EU's CTF/AML legislation to ensure the list of obliged entities is sufficiently comprehensive and in line with international AML/CTF standards; and

- clarify provisions in sectoral financial services legislation to ensure that they are compatible with the EU's AML/CTF objectives.

The opinion, which gives a high-level overview of the EBA's advice, may be accessed here.

The report, which sets out the EBA's detailed response, may be accessed here.

6.3 Central Bank publishes FAQ on the Beneficial Ownership Register

On 10 September 2020, the CBI published a page on its website entitled "FAQ regarding the Beneficial Ownership Register". The purpose of the FAQ is to answer frequently asked questions in respect of the new CBI's Beneficial Ownership Register and the requirement for Irish Collective Asset-management Vehicles (**ICAVs**), Unit Trusts, common contractual funds (**CCFs**) and investment limited partnerships (**ILPs**) and those that manage them to ensure that the beneficial ownership information is filed with the CBI within the appropriate deadlines.

The FAQ can be accessed here.

Key Action Point	All ICAVs and Unit Trusts in existence before 25 June 2020 must file relevant information on beneficial owners with the Central Register maintained by the CBI by 25 December 2020. Newly established entities must file the information within six months of their date of authorisation.

7. DATA PROTECTION

7.1 Implications of Schrems II Ruling for Investment Funds

On 16 July 2020, the Court of Justice of the European Union (**CJEU**) published its much anticipated ruling in the Schrems II case1 in which it considered whether the transfer of personal data by Facebook Ireland to Facebook Inc which is located in the U.S. under the EU-U.S. Privacy Shield or through the use of standard common contractual clauses (**SCC**) was permissible.

The CJEU ruled that: (i) the Privacy Shield was no longer a valid mechanism by which to transfer personal data to the US on the basis that it did not ensure EEA data subjects the same protections they are afforded under Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**); and (ii) although the SCC remained valid, upon assessment of the data controller, 'supplementary measures' may be required to ensure that the adequate level of protection is given to data subjects.

The ruling has significant implications for personal data transfers between EEA member states and third countries whose data protection regimes have not yet been assessed by the European Commission as offering an equivalent level of protection to data subjects. Notably, the UK will become a 'third country' for data protection purposes on 31 December 2020.

Dillon Eustace has prepared a briefing on the potential ramifications of the ruling for Irish funds and their service providers, which can be accessed here.

1 Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximillian Schrems

Key Action Points	See the section entitled "What action should funds be taking now" set out in the Dillon Eustace briefing paper.

7.2 Data Protection Commission statement on Schrems II ruling

On 16 July 2020, the Data Protection Commissioner (**DPC**) published its response strongly welcoming the Schrems II ruling. The DPC's case was that data transfers between the EU and the USA were highly problematic in light of the CJEU's decision in the Safeharbour case of 2015 and the structure of the US legal system.

The DPC indicated that "it *had brought these proceedings – and resisted objections from both Facebook and Mr Schrems -specifically in order to secure a decisive statement of position from the CJEU in relation to the key issues of principle at stake when an EU citizen's personal data is transferred to the United States*".

The DPC indicates that the CJEU's decision in the Schrems II case endorses *"the substance of the concerns expressed by the DPC (and by the Irish High Court) to the effect that EU citizens do not enjoy the level of protection demanded by EU law when their data is transferred to the United States".* The DPC also indicates that whilst the SCCs transfer mechanism used to transfer data to countries worldwide is, in principle, valid, "*it is clear that, in practice, the application of the SCCs transfer mechanism to transfers of personal data to the United States is now questionable*".

The DPC also welcomes the clarity provided by this judgment in regards to the allocation of responsibility between data controllers and NSAs. It looks forward to cooperating with its fellow EU supervisory authorities in giving effect to this judgment.

The DPC statement can be accessed here.

7.3 Frequently Asked Questions on the Schrems II case

On 23 July 2020, following the ruling in the Schrems II case, the European Data Protection Board (**EDPB**) published its Frequently Asked Questions (**FAQ**) document. In this FAQ, the EDPB confirmed that the Privacy Shield was invalidated with immediate effect. Therefore data exporters which relied on the Privacy Shield as a legitimate means of transferring personal data from the EEA to the U.S. will need to consider an alternative mechanism for any future transfers.

The EDPB FAQ can be accessed here.

The decision of the CJEU is available here and the press release of the CJEU, here.

7.4 Guidance for Data Controllers who Lose Control of Data to a Third Party

On 27 August 2020, the DPC published guidance on its website highlighting the steps that should be taken by data controllers in the event of the loss of control to third parties (such as where personal data is disclosed to an unintended recipient).

The GDPR and the Data Protection Act 2018 are the primary pieces of legislation governing the control of data and list the responsibilities of data controllers. The Guidance indicates that the main responsibility for securing the deletion or return of wrongly held personal data lies with the lawful data controller.

If a third party refuses to return or delete wrongly held personal data, the DPC recommends that data controllers act promptly and use all reasonable measures to address and mitigate the risks posed to data subjects and their rights. The breach and all relevant information should be reported to the DPC. In addition, the following steps are recommended:

- Inform the third party that retention of this data is unlawful;

- If necessary, contact An Garda Síochána;
- Consult with legal advisers regarding possible remedies, including injunctions.

The guidance can be accessed here.

7.5 EDPB adopts guidelines on the concepts of controller and processor in the GDPR

On 2 September 2020, the EDPB adopted guidelines entitled "Guidelines 07/2020 on the concepts of controller and processor in the GDPR" (**Guidelines**).

The Guidelines seek to provide guidance on the concepts of controller and processor by clarifying the meaning of these concepts and clarifying the different roles and the distribution of responsibilities between these actors. The Guidelines specifically address the extent to which the GDPR brought changes to these concepts, including the implications of joint controllership under Article 26 GDPR and the relationship between controller and processor under Article 28 GDPR.

The Guidelines replace the previously issued Article 29 Working Party guidance on these concepts (Opinion 1/2010 (WP169)). The new Guidelines aim to give more developed and specific guidance in order to ensure consistent application of the rules throughout the EU and the EEA.

The EDPB is now seeking feedback on the Guidelines in the form of a public consultation. The closing date for receipt of comments is October 19 2020.

The Guidelines are available here, and the public consultation can be accessed here.

8. SUSTAINABLE GROWTH

8.1 Stakeholders publish responses to European Commission Consultation on Renewed Sustainable Finance Strategy

On 8 April, 2020 the European Commission launched a consultation relating to a renewed sustainable finance strategy. The aim of the strategy is to set out a roadmap to increase private investment in sustainable projects. The deadline for submission of responses was 15 July 2020. The consultation can be accessed here.

A number of stakeholders have since published their responses to the consultation.

- On 14 July 2020, the CBI published its response, which can be accessed here. The response focused on effective implementation, protecting consumer and investor interests, maintaining a risk-based approach and increased cooperation and convergence.
- On 15 July 2020, Irish Funds published its response, which can be accessed here. The response cited the availability of high quality environmental, social and governance (**ESG**) data reporting and the practical implementation of the EU sustainable finance regime as challenges associated with mainstreaming sustainability. In this regard, Irish Funds highlighted the need for pragmatic timeframes with regard to the implementation of the final rules.
- On 15 July 2020, EFAMA published its response, which can be accessed here. The response made a number of recommendations, including the improvement of availability of ESG data and the relevance of non-financial reporting, ensuring that the preferences of (retail) investors are taken in due consideration and enhancing the transparency of sustainability research and ratings.

- On 16 July 2020, ESMA published its response, which can be accessed here**.** Steven Maijoor, Chair said: *"In setting the strategic direction to mainstream sustainable finance in the EU, ESMA sees three key areas for intervention: improving the accessibility and standardisation of sustainability data, ensuring effective regulation and supervision at EU level in emerging areas, such as green bonds and ESG ratings, and maintaining strong international coordination and cooperation*.

8.2 Adopted text of three Commission Delegated Regulations supplementing BMR on sustainable finance issues

On 22 July 2020, the European Commission published the adopted text of the following Delegated Regulations supplementing the Benchmarks Regulation ((EU) 2016/1011) (**BMR**) on sustainable finance issues:

- Delegated Regulation supplementing the BMR as regards minimum standards for EU climate transition benchmarks and EU Paris-aligned benchmarks (C(2020) 4757 final). This Regulation can be accessed here.

- Delegated Regulation supplementing the BMR as regards the minimum content of the explanation on how ESG factors are reflected in the benchmark methodology (C(2020) 4748 final) and Annex. The Regulation is available here.

- Delegated Regulation supplementing the BMR as regards the explanation in the benchmark statement of how ESG factors are reflected in each benchmark provided and published (C(2020) 4744 final) and Annexes 1 and 2. This Regulation can be viewed here.

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulations. If neither the Council nor the Parliament object to the Delegated Regulations, they will be published in the Official Journal of the EU (**OJ**).The Delegated Regulations will enter into force and apply 20 days after publication in the OJ.

8.3 Irish Funds publishes overview of EU Sustainable Finance Regulatory Overview

On 29 July 2020, the Irish Funds ESG Working Group published an overview of the EU sustainable finance regulatory framework and the impact these measures will have on Irish Funds. The publication addresses the EU Action Plan, the various Regulations employed to achieve the Plan's objectives and the proposed amendments to the UCITS Directive and AIFMD.

The publication can be accessed here.

8.4 EFAMA response to ESA consultation on the draft RTS under the Sustainable Finance Disclosures Regulation

On 1 September 2020, EFAMA published its response to the European Supervisory Authorities' (**ESAs**) consultation of 23 April 2020 on the draft RTS under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (**Sustainable Finance Disclosures Regulation** or **SFDR**). The draft RTS concern disclosure obligations at an entity and product level under the SFDR.

The consultation period closed on 1 September 2020.

EFAMA's response sets out a number of key recommendations:

- a reduction in the number of mandatory, uniform indicators, with an increased emphasis on proportionality and materiality considerations;

- the adoption of a phased approach to disclosure requirements, with a focus on optional indicators, narrative disclosures and qualitative information, in order to narrow the ESG data gap;

- the limitation of mandatory indicators to a smaller subset of more generic metrics that are meaningful, relevant across different sectors and measurable with available data, in order to improve the consistency of data;

- the templates for financial product disclosures should be sufficiently flexible in order that ESG considerations may be captured more accurately;

- more clarity is needed on what products will qualify as Article 8 and 9 products; and

- the postponement of the application date of the SFDR to at least 1 January 2022 to allow market participants time to properly implement the new rules. ESMA has stated "*Our most critical concern is the extremely tight and practically unrealistic deadline to implement the new rules. In case the draft RTSs are published by the end of January 2021, market participants will be faced with only around five to nine weeks for the legal assessment and the subsequent operational and technical implementation of the new rules. Such a short timeline makes it very hard or even impossible to properly implement this entirely new and complex legal framework. Therefore, we fully back the ESAs' suggestion in their joint letter to the Commission to revisit the application date of SFDR and we call for a postponement of the application date to at least 1 January 2022".*

The EFAMA response can be accessed here.

8.5 ESA publish survey on template ESG disclosures under the SFDR

On 21 September 2020, the ESAs published a survey seeking feedback on the presentation of ESG information to be disclosed under the SFDR.

The ESAs have produced three mock-ups of pre-contractual and periodic disclosure templates pursuant to Article 8 and 11 SFDR. The ESAs note that while the mock-ups relate to an Article 8 fund, a similar approach would be taken with Article 9 funds. The disclosures are intended to be included in existing disclosures provided by AIFMs, UCITS management companies, insurance undertakings, IORPs and PEPPs. The ESAs are seeking comments from stakeholders, particularly with respect to the presentational aspects of the mock-ups.

The closing date for feedback is 16 October 2020. The ESAs intend to finalise the templates subject to the outcome of a concurrent consumer testing exercise and the final report of the ESAs on the draft RTS under SFDR.

The survey may be accessed here.

9. MONEY MARKET FUND REGULATION (MMFR)

9.1 COVID-19: ESMA statement on external support under MMFR

On 9 July 2020, ESMA published a statement regarding Article 35 of Regulation (EU) 2017/1131 (**Money Market Funds Regulation** or **MMFR**) concerning external support for money market funds (**MMFs**) which is prohibited under the MMFR.

MMFR prohibits an MMF from receiving external support. External support is defined as "direct or indirect support offered to an MMF by a third party, including a sponsor of the MMF, that is intended for or in effect would result in guaranteeing the liquidity of the MMF or stabilising the net asset value (**NAV**) per unit or share of the MMF".

The ESMA statement refers to recent actions taken by central banks and securities regulators to mitigate the impact of COVID-19 on the EU's financial markets, such as the purchase of short-term assets and other intermediation of credit institutions. In the statement, ESMA indicates that it seeks to clarify any potential interaction between this intermediation of credit institutions and the Article 35 requirements. ESMA indicates that MMFs are permitted to enter into transactions with third parties, including affiliated or related parties, once the Article 35 requirements are satisfied. For that purpose, ESMA states that is important to consider, in particular, the following requirements of Article 35 of the MMFR:

- point (b) of the second subparagraph of Article 35(2) of the MMFR which provides that external support shall include, amongst other examples, the "purchase by a third party of assets of the MMF at an inflated price". For the purposes of examining whether a third party provides the external support referred to in that point, transactions with third parties relating to the assets of the MMF are not purchased at an inflated price where they are executed at arm's length conditions; and

- point (e) of the second subparagraph of Article 35(2) of the MMFR which provides that external support shall also include "any action by a third party the direct or indirect objective of which is to maintain the liquidity profile and the NAV per unit or share of the MMF". An indication of the direct or indirect objective referred to in that point is where third parties execute transactions solely with the MMFs to which they are affiliated.

ESMA's statement is available to access here.

9.2 Central Bank publishes updated reporting guidance for Money Market Funds

On 1 September 2020, the CBI published Volume 2.0 of its Guidance Note on reporting requirements for MMFs. The Guidance Note provides information and direction on the completion of MMF Reporting by (1) all self-managed Irish authorised MMFs; and (2) UCITS management companies and AIFMs of Irish authorised MMFs.

The Guidance Note has been updated to provide additional information regarding the completion of;

- MMF returns under Article 37 MMFR (quarterly or for funds with AUM of less than €100 million annually);

- ad-hoc stress test reporting under Article 28 of the MMFR (following stress test failure);

- other ad-hoc reporting under MMFR outside of points (i) and (ii) (following breach of relevant MMFR thresholds); and

- daily reporting for MMFs.

The Guidance Note can be accessed here.

Key Action Point	The deadline for the submission of the quarterly MMF returns for Q1 and Q2 2020 was 6 October 2020. Thereafter MMF returns must be submitted to the CBI within 25 calendar days of the reporting quarter-end through the online reporting (**ONR**) portal.

10. BREXIT

10.1 European Commission publishes a stakeholder preparedness notice on readiness at the end of the transition period for the asset management industry

On 9 July 2020, the European Commission published a stakeholder preparedness notice on readiness at the end of the transition period for the asset management industry. In this notice, the European Commission reminded UCITS ManCos and AIFMs of the need to take appropriate action in good time ahead of the UK's transition period coming to an end on 31 December 2020. European Commission has also updated its webpage on getting ready for the end of the Brexit transition

The updated notice can be accessed here.

10.2 ESMA tells market participants to continue preparations for the end of the UK transition period

On 17 July 2020, ESMA published a statement reminding all market participants to continue preparations for the end of the UK Brexit transition period on 31 December 2020. Several recommendations are made in this statement regarding the implementation of contingency arrangements and the importance of informing clients of the potential consequences of a no-deal scenario between the UK and the EU.

This statement also confirms that the memorandum of understanding (**MoU**) agreed between ESMA and the FCA in 2019 remains valid and will come into effect upon the expiry of the transition period.

ESMA's statement can be accessed here.

10.3 European Commission adopts time-limited decision granting equivalence to UK CCPs

On 21 September 2020, the European Commission adopted a "time-limited" decision deeming the legal and supervisory arrangements governing UK central clearing counterparties (**CCPs**) are determined as equivalent to those laid down in EMIR. This equivalency decision only extends for the period of 18 months from the end of the transition period on 31 December 2020.

The purpose of the decision is to give financial market participants time to reduce their exposure to UK CCPs and allow EU CCPs the time to build up their clearing capability, in turn protecting financial stability in the EU. This equivalency decision will expire on 30 June 2022.

The text of the decision is available here.

Key Action Point	This decision enables UK CCPs to continue the provision of clearing services to EU counterparties, such as Irish funds and their management companies prior to 30 June, 2022. What will happen beyond that date is not clear.

10.4 Temporary Permissions Regime in the UK

On 30 September 2020, the FCA in the UK re-opened the notification window under the TPR. The notification window for registrations under the TPR closes on 30 December 2020.

Any fund managers that wish to update an existing TPR application (to include additional sub-funds or AIFs) should emailrecognisedcis@fca.org.uk by the end of 9 December 2020 at the latest confirming their intention to update and including their FRN.

While the FCA will acknowledge the request to update a notification, it will not be possible to submit a revised notification until after 14 December 2020 at which stage the FCA will advise what steps should be taken. While the FCA will acknowledge the request to update a notification, it will not be possible to submit a revised notification until after 14 December 2020 at which stage the FCA will advise what steps should be taken. Fund managers should only submit their updated notification when they are certain that all the correct funds are included. Updated notifications must be received before the end of 30 December 2020.

The TPR allows continued access to the UK market for a period of up to 3 years after the transition period on 31 December 2020.

The TPR is available to UCITS and AIFs which are already approved to market in the UK and which make application for the regime prior to 30 December 2020 (**TPR Deadline**). Funds and sub-Funds which are authorised prior to the TPR Deadline, but do not apply for the TPR, will no longer be permitted to market in the UK after 31 December 2020. New UCITS umbrella funds authorised after 31 December 2020 will not be able to apply for the TPR and will not have a passport to the UK market pending an alternative recognition regime being put in place by the FCA.

Please see the latest Dillon Eustace briefing papers on this topic which can be accessed here and here.

Key Action Point	Any fund managers that wish to update an existing TPR application (to include additional sub-funds or AIFs) should emailrecognisedcis@fca.org.uk by the end of 9 December 2020 at the latest confirming their intention to update. New TPR applications for AIFs and UCITS must be made before the TPR Deadline of 30 December 2020.

11. MiFID/ MiFIR REVISION

11.1 Third Country Investment Firms Access to Wholesale Clients in the EU

On 28 September 2020, ESMA published its final report entitled "Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR" (**Final Report**).

Articles 46 to 49 of Regulation (EU) No 600/2014 on markets in financial instruments (**MiFIR**) permits third country firms to provide investment services and activities to eligible counterparties and per se professional clients if they are registered in the register of third-country firms held by ESMA (**ESMA Register**) where certain conditions are met, including the requirement that the European Commission has issued an adequacy decision in respect of a third country's investment firm regime. As no such an equivalence decision has been issued by the European Commission, this MiFIR third-country regime has not, so far, been triggered.

Alternatively, where no adequacy decision has been made in respect of the legal and supervisory framework of the relevant third country, it may be possible for the third country investment firm to provide investment services and activities to these categories of clients where the national regime of the relevant Member State permit this (known as the "Safe harbour" regime).

The Investment Firms Regulation (Regulation 2019/2033) (**IFR**) introduced changes, most of which will come into effect in June 2021, to the existing MiFIR third country regime, which includes:

- new reporting requirements to ESMA from third-country firms on the ESMA Register on an annual basis in accordance with Article 46 of MiFIR, and
- the ability of ESMA to require such third-country firms on the ESMA register to provide certain data relating to all orders and all transactions in the EU, whether on own account or on behalf of a client.

The MiFIR third country regime is particularly relevant in light of Brexit. If the European Commission decides to make an equivalence decision in respect to the UK's laws on the provision of investment services and activities, then UK authorised investment firms may be required to register with ESMA and comply with relevant registration and reporting requirements in continue to operate under the individual member state regimes (i.e. the relevant Safe Harbour regimes) after the end of the transitional period. The transitional period is provided for under Article 54 of MiFIR, whereby third country firms can continue to operate under the individual member state regime(s) for up to three years after the European Commission has announced its adequacy decision. Services and activities which are not covered by such an adequacy decision may continue to be provided in accordance with individual member state regime.

The draft technical standards published by ESMA expand on Article 46 of MiFIR to set down; (i) the detailed information which third country investment firms will be required to provide when registering with ESMA; and (ii) the detailed information which must be reported to ESMA on an annual basis once registered with ESMA. Please see the earlier Dillon Eustace briefing paper (February 2020) entitled "Non-EU Investment Firms - ESMA consults on technical standards" which can be accessed here.

The draft technical standards have been submitted to the European Commission for approval and are expected to be published in the OJ before the end of the year.

The final report containing the draft technical standards can be accessed here.

Key Action Point	It is not yet clear how the process for the clearance by the CBI of a third-country investment firm seeking to act as investment manager to an Irish domiciled fund will change if an adequacy decision is issued by the European Commission in respect of the third country's investment firm regime once the transitional period has ended.

12. BENCHMARKS REGULATION

12.1 ESMA publishes amendments to the Benchmarks Regulation

On 24 July 2020, the European Commission published proposed amendments to Regulation (EU) 2016/1011 (**Benchmarks Regulation** or **BMR**).

The amendments proposed seek to ensure that when LIBOR is phased out (currently anticipated to occur at the end 2021) this does not cause disruptions to the economy and harm financial stability in the EU. Hence the proposed amendments to the Benchmark Regulation include the power of the European Commission to designate a replacement benchmark in such an event. It is proposed that the statutory replacement rate, will be operation of law, replace all references to the "benchmark in cessation" in the financial contracts (such as derivative contracts) into by an EU supervised entity (such as banks, investment firms, insurance undertakings, UCITS, UCITS ManCos, AIFMs.

In addition, the European Commission is also proposing an amendment to the Benchmark Regulation that will allow EU users to continue using currency benchmarks provided outside the EU, thereby allowing EU companies covering the risk of foreign currency fluctuations in their exporting and foreign investment activities.

A copy of the press release can be accessed here.

The text of the legislative proposal can be accessed here.

12.2 ESMA publishes new draft RTS under the Benchmarks Regulation

On 29 September 2020, ESMA published its final report on draft RTS under the BMR. The report contains two new sets of draft RTS supplementing the BMR.

The draft RTS contain additional detailed rules relating to the behaviours and standards expected of administrators in order to enhance the robustness of financial benchmarks. More specifically, the draft RTS introduce provisions ensuring:

- that the governance arrangements of administrators are sufficiently robust;
- the potential manipulation of benchmarks is minimised, by introducing additional rules regarding methodology; and
- that common criteria are used across Member States for the assessment of the mandatory administration of critical benchmarks and the compliance statement for non-significant benchmarks.

The draft RTS will now be submitted to the European Commission for endorsement.

The report and new RTS may be accessed here.

13. INVESTMENT LIMITED PARTNERSHIPS BILL

13.1 Investment Limited Partnerships (Amendment) Bill 2020

On 21 September 2020, the Irish Government approved the draft text and publication of the Investment Limited Partnership (Amendment) Bill 2020 (**Bill**). The aim of the Bill is to make Ireland a more attractive domicile for private equity funds and in turn broaden the offering of Ireland's investment funds sector.

The Bill must now be considered by both houses of the Irish Parliament before it is enacted. The Bill's progress can be tracked here.

Please see Dillon Eustace's briefing on the Bill here.

14. CENTRAL BANK OF IRELAND

14.1 Central Bank Levy

On 4 September 2020, the Central Bank Act 1942 (Section 32D) Regulations 2020 (S.I. No. 345 of 2020) (**Regulations**) came into operation setting out the levy contribution payable by financial service providers in respect of the "levy period" meaning the period 1 January 2019 to 31 December 2019.

Category E of the Schedule to the Regulations addresses the amount of the levy contribution for investment funds, AIFMs, UCITS management companies and other investment fund service providers.

The text of the Regulations can be accessed here.

14.2 Central Bank publishes statement on use of electronic signatures

On 24 August 2020, the CBI published a statement on the use of electronic signatures in regulatory documents and forms, arising out of increased instance of remote working arising from the Covid-19 pandemic.

In its statement, the CBI confirms that, in the absence of any specific legal provisions to the contrary, regulated firms may use electronic signatures in submitting regulatory documents and forms to the CBI.

The CBI emphasised that those signing regulatory documents and forms in electronic form will be accountable for the content of the document in the same way as if they had signed the document in 'wet ink'.

The statement is available here.

14.3 Central Bank deadlines for pre-Christmas/ year-end applications 2020

The CBI has issued its annual letter to Irish Funds notifying the funds industry of its deadlines for receipt of fund applications seeking an effective date which is pre-Christmas or pre-year-end. Deadlines for receipt of complete applications are as follows:

INDIVIDUAL QUESTIONNAIRE (IQ) Filings	**Normal time frames apply until 20 November**
IQ APPLICATION TYPE	**DEADLINE FOR RECEIPT**
IQs relating to Qualifying Investor Alternative Investment Funds ("QIAIFs")	5pm on 1 December

IQs relating to Other Fund Types and Fund Service Providers	5pm on 20 November

FUND/POST-AUTHORISATION APPLICATIONS	**DEADLINE FOR RECEIPT**
Funds and non-fast-track sub-funds (this deadline also applies to self- managed/internally managed investment company/ICAV applications)	5pm on 16 October
Fast-track sub-funds	5pm on 13 November
Post-Authorisation – major items	5pm on 16 October
Post-Authorisation – all other items	5pm on 13 November
QIAIF Filings (submitted through ORION)	Normal timeframes apply until 22 December
FOR AUTHORISATION/APPROVAL/ NOTING ON:	**DEADLINE FOR RECEIPT**
23 December	5pm on 22 December
29 December[2]	3pm on 23 December
4 January[3]	5pm on 30 December

QIAIF Filings (non-ORION based applications)	**Normal time frames apply until 22 December**
FOR AUTHORISATION/APPROVAL/ NOTING ON:	**DEADLINE FOR RECEIPT**
23 and 24 December	3pm on 22 December
29 December[2]	3pm on 23 December
4 January[3]	3pm on 30 December

QIAIF change of service provider filings	
EFFECTIVE DATE	**DEADLINE FOR RECEIPT**
29 December 2020 – 1 January 2021	5pm on 15 December

Application Type	**DEADLINE FOR RECEIPT**
Investment Manager Applications	5pm on 13 November
ICAV Registration/Conversion/Migration Applications	5pm on 1 December

UCITS and RIAIF Authorisations/Approvals/Notings
Executed documentation for authorisations/approvals/notings required on 24 and/or 29 December must be received by 12pm on Wednesday 23 December. 4 January 2021 is the first day of 2021 that funds may be authorised/approved and documents must be received by 3pm on Wednesday 30 December.

Revocations
Funds seeking to revoke at end of December 2020 must submit a complete revocation application, including payment of the funding levy, by 5pm on 4 December.

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.

Keith Waine
E-mail: keith.waine@dilloneustace.ie
Tel : + 353 1 673 1822
Fax: + 353 1 667 0042

Karen Jennings
E-mail: karen.jennings@dilloneustace.ie
Tel : + 353 1 673 1810
Fax: + 353 1 667 0042

DISCLAIMER:

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

9552346v6