



Funds

Quarterly Legal and Regulatory Update

Period covered: 1 July 2021 – 30 September 2021

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1. APPROACHING DEADLINES

Approaching deadlines		
Q4 2021	23 October 2021	Deadline for Trustees of a “Relevant Trust”, created on or before 23 April 2021, to have completed the filing of information on the beneficial ownership of a Relevant Trust with the Central Register of Beneficial Ownership of Trusts, which is maintained by the Revenue Commissioners. Trusts created after 23 April 2021 must be filed within 6 months of their creation. Dillon Eustace has prepared a briefing entitled “New Regulations on Beneficial Ownership of Trusts published” providing a summary of the new filing requirements, which can be accessed here .
	31 December 2021	Deadline for ICAVs and unit trusts to provide to the Central Bank the PPS number of each of its beneficial owners (see Section 7.1).
Q1 2022	31 December 2021	Deadline for Irish UCITS management companies to have completed a documented review of their existing liquidity risk management practices and to have prepared an action plan.
	2 February 2022	Deadline for National Competent Authorities to notify ESMA whether they comply or not with ESMA Guidelines on Marketing Communications (see Section 4.2)

2. UCITS & AIFMD

2.1 ESMA updates Q&As on application of AIFMD

On 16 July 2021, the European Securities and Markets Authority (**ESMA**) published a revised version of its Q&A on the application of Directive 2011/61/EU (**Alternative Investment Fund Managers Directive** or **AIFMD**). The new Q&As relate to the ESMA Guidelines on performance fees in UCITS and certain types of AIFs which, in an Irish context, are relevant for Irish authorised retail AIFs.

The first of the new Q&As addresses a scenario where an authorised alternative investment fund manager (**AIFM**) has delegated portfolio management to different delegated portfolio managers and asks whether it is permissible to pay a performance fee to those delegated portfolio managers who have overperformed during the performance reference period notwithstanding that there has been a global underperformance of the fund during the same performance reference period. In its response, ESMA opines that it is not admissible to pay a performance fee to delegated portfolio managers that have overperformed during the performance reference period if the fund has globally underperformed during the same performance reference period.

The second new Q&A deals with the crystallisation of performance fees of: (i) a new share class in an existing AIF created in the course of a financial year and (ii) new AIFs created in the course of a financial year. According to ESMA, performance fees should be crystallised after at least 12 months from the creation of a new AIF or new share class within an existing AIF. In its response, ESMA also reminds market participants that in circumstances where a fund levies a performance fee, the crystallisation date should be the same for all share classes of the fund.

The Irish Funds Industry Association is liaising with the Central Bank of Ireland (**Central Bank**) on these matters.

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

2.2 ESMA updates Q&As on application of UCITS Directive

On 16 July 2021, ESMA published a revised version of its Q&A on the application of Directive 2009/65/EC (as amended) (**UCITS Directive**). The new Q&As relate to the ESMA Guidelines on performance fees in UCITS and certain types of AIFs which are relevant to Irish authorised UCITS which charge a performance fee.

The first of the new Q&As addresses a scenario where an authorised UCITS management company has delegated portfolio management to different delegated portfolio managers and asks whether it is permissible to pay a performance fee to those delegated portfolio managers who have overperformed during the performance reference period notwithstanding that there has been a global underperformance of the fund during the same performance reference period. In its response, ESMA opines that it is not admissible to pay a performance fee to delegated portfolio managers that have overperformed during the performance reference period if the fund has globally underperformed during the same performance reference period.

The second new Q&A deals with the crystallisation of performance fees of (i) a new share class in an existing UCITS created in the course of a financial year and (ii) a new UCITS fund created in the course of a financial year. According to ESMA, performance fees should be crystallised after at least 12 months from the creation of a new UCITS fund or new share class within an existing UCITS. In its response, ESMA also reminds market participants that in circumstances where a fund levies a performance fee, the crystallisation date should be the same for all share classes of the fund.

The Irish Funds Industry Association is liaising with the Central Bank on these matters.

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

2.3 Clarification from Central Bank on Irish domiciled funds gaining exposure to crypto-assets

On 29 July 2021, the Central Bank published the 32nd edition of its publication entitled “UCITS Questions and Answers” (**UCITS Q&A**) and the 40th edition of its publication entitled “AIFMD Questions and Answers” (**AIFMD Q&A**) in which it considers whether an Irish domiciled UCITS, RIAIF or QIAIF can gain exposure to crypto-assets, which it defines for such purposes as crypto-assets which are based on an intangible or non-traditional underlying asset and which it notes should be distinguished from tokenised traditional assets whose value is linked to an underlying traditional asset or pool of traditional assets.

In the case of UCITS, the Central Bank notes that it is not currently satisfied that crypto-assets are capable of complying with the eligible asset criteria applicable to UCITS or that indirect exposure to crypto-assets can be appropriately risk managed, identifying significant risks associated with crypto-assets as including liquidity risk, credit risk, market risk, operational risk, money laundering risk, legal risk and reputational risk. Considering these risks and the concern that a retail investor may not be able to appropriately assess the risks associated with investing in a fund which provides exposure to crypto-assets, it confirms that it is currently “highly unlikely” that the Central Bank would approve a UCITS gaining direct or indirect exposure to crypto-assets. It has adopted the same position for retail authorised AIFs regulated by it.

Any Irish-domiciled QIAIF which wants to gain exposure to crypto-assets must make a submission to the Central Bank outlining how the AIFM can manage the risks associated with such exposure effectively.

In both cases, the Central Bank’s position will be kept under review and will be informed by European regulatory discussions on the topic.

A copy of the revised UCITS Q&A can be accessed [here](#).

A copy of the revised AIFMD Q&A can be accessed [here](#).

2.4 Central Bank expectations of management companies experiencing a material increase in operations

On 10 September 2021, the Central Bank published the 33rd edition of its publication entitled “UCITS Questions and Answers” (**UCITS Q&A**) and 41st edition of its publication entitled “AIFMD Questions and Answers” (**AIFMD Q&A**). In these publications, the Central Bank sets out its expectations of management companies who win new business which results in a material increase in the nature, scale or complexity of its business, noting that it will be of particular relevance to third party management companies. It notes that this will include (but is not limited to) situations where there is a: (i) material increase in the number of funds under management; and/or (ii) material

increase in the number of delegates; and (iii) on-boarding of internally managed AIFs/UCITS who are changing their status to be externally managed.

In such circumstances, the relevant management company should be satisfied that it is appropriately resourced to service the additional business and is required to engage with the Central Bank in accordance with either (i) Regulation 107 of the Central Bank UCITS Regulations in the case of UCITS management companies; or (ii) in accordance with Regulation 11 of the European Union (Alternative Investment Fund Managers) Regulations 2013 (as amended) in the case of AIFMs. As part of this engagement, the management company must provide the Central Bank with revised financial and business growth projections, an up-to-date capital plan and a current business plan/programme of activity with increased resourcing projections for its review.

For further information, please refer to our [client briefing](#) on the topic.

A copy of the revised UCITS Q&A can be accessed [here](#).

A copy of the revised AIFMD Q&A can be accessed [here](#).

2.5 Central Bank clarifies action to be taken by an AIFM where an AIF under management believes it no longer meets criteria of an AIF

In the 41st edition of its publication entitled “AIFMD Questions and Answers” (**AIFMD Q&A**) published on 10 September 2021, the Central Bank confirmed that an Irish authorised AIFM must engage with it where an AIF under its management believes that it no longer meets the criteria of an AIF set down in Regulation 5 of the European Union (Alternative Investment Fund Managers) Regulations 2013 (as amended). However, the Central Bank does note that because of the wide definition of an AIF under the applicable legislation, it is unlikely that the activities of an AIF would change to the extent that they would no longer constitute an AIF.

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

3. EMIR & SFTR

3.1 Implementing Decisions on equivalence of regulatory regimes of third countries under EMIR published in the Official Journal

On 6 July 2021, the European Commission published separate Implementing Decisions on the recognition of legal, supervisory and enforcement arrangements of six third countries for derivative transactions entered into as equivalent to certain requirements of Article 11 of the Regulation on OTC derivatives, central counterparties (**CCPs**) and trade repositories (Regulation (EU) 648/2012) (**EMIR**) in the Official Journal of the EU (**OJ**).

The European Commission considers that the legal, supervisory and enforcement arrangements of each Brazil, Canada, Singapore, Australia, Hong Kong and the United States meet certain requirements of Article 11 EMIR.

A copy of the Implementing Decision for Brazil can be accessed [here](#);

A copy of the Implementing Decision for Canada can be accessed [here](#);

A copy of the Implementing Decision for Singapore can be accessed [here](#);

A copy of the Implementing Decision for Australia can be accessed [here](#);

A copy of the Implementing Decision for Hong Kong can be accessed [here](#);

A copy of the Implementing Decision for the United States can be accessed [here](#).

The Implementing Decisions entered into force on 26 July 2021, twenty days following their publication in the OJ.

3.2 ESMA launches consultation on draft guidelines for derivatives reporting under EMIR

On 13 July 2021, ESMA published a consultation paper on draft guidelines for derivatives reporting under Article 9 EMIR and on obligations for Trade Repositories (TRs) under Articles 78 and 81 EMIR (**Draft Guidelines**).

The Draft Guidelines will apply to financial and non-financial counterparties to derivatives as defined in Articles 2(8) and 2(9) of EMIR, to TRs as defined in Article 2(2) of EMIR and to national competent authorities (NCAs).

The Draft Guidelines address a wide set of topics related to reporting, data quality and data access under Regulation (EU) 2019/834 (**EMIR Refit Regulation**).

The Draft Guidelines, together with the EMIR validation rules, complement the revised draft EMIR technical standards on reporting by counterparties, data quality and data access, which were submitted to the European Commission on 16 December 2020.

ESMA intends to publish the finalised guidelines in Q4 2021/Q1 2022 (subject to the adoption of the draft Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) on reporting by the European Commission).

On 3 September 2021, ESMA announced that it would hold an open hearing on the Draft Guidelines as part of the consultation.

The Draft Guidelines can be accessed [here](#). ESMA invited comments from stakeholders on the Draft Guidelines, the closing date for responses was 30 September 2021.

3.3 Joint Associations request for extension to the European Commission's equivalence decision in relation to UK CCPs

On 16 September 2021, the Joint Associations (consisting of AFME, AIMA, EAPB, EBF, EFAMA, FIA, ICI, ISDA, SIFMA AMG) published a letter to the European Commission seeking an extension to its temporary equivalence decision determining that the regulatory and supervisory framework applicable to UK CCPs is equivalent under EMIR. The temporary equivalence decision is due to expire on 30 June 2022.

The Joint Associations are seeking a decision of the European Commission well in advance of March 2022, noting in the letter that certain UK CCPs will need to start serving termination notices at that time due to certain provisions contained in relevant CCP rulebooks. The Joint Associations perceive a significant risk of disruption to clearing for EU firms without such clarity from the European Commission and are looking to work with the European Commission to address its concerns and achieve the least disruptive outcome for EU Capital Markets.

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

3.4 ESMA updates Q&As on data reporting under SFTR

On 30 September 2021, ESMA published updated Questions and Answers on reporting requirements under Regulation (EU) 2015/2365 (**Securities Financing Transactions Regulation** or **SFTR**) (**SFTR Data Reporting Q&As**).

A new Question 11 has been added relating to LEI changes due to mergers and acquisitions.

The SFTR Data Reporting Q&As can be accessed [here](#).

3.5 ESMA updates Q&As on EMIR implementation

On 30 September 2021, ESMA published updated Questions and Answers on the implementation of EMIR (**EMIR Implementation Q&As**).

Part III: Trade Repositories, Question 3b on Reporting Valuations has been updated regarding sending valuation updates in specific cases under Article 9 of EMIR. Question 40 on LEI changes due to mergers and acquisitions has been amended.

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

4. CROSS-BORDER DISTRIBUTION FRAMEWORK

4.1 Central Bank publishes website guidance on marketing requirements and regulatory fees and charges for UCITS and AIFs

In order to comply with its obligations under Article 5(1) of Regulation (EU) 2019/1156 on cross-border distribution of funds (**Cross-Border Distribution Regulation**), the Central Bank has published new website guidance setting down new marketing requirements which must be satisfied by both UCITS which wish to market their shares in Ireland and AIFs which wish to market their shares to Irish retail investors. The Central Bank has published a separate set of guidance for UCITS funds and AIF funds.

This website guidance confirms that the Central Bank does not require notification or prior approval of marketing communications of UCITS or AIFs which intend to market their shares in Ireland.

The revised guidance for AIFs also confirms the various procedures to be followed where; (i) an Irish AIFM proposes to manage a non-EU AIF, (ii) an Irish AIFM or other EU AIFM proposes to market non-EU AIFs to Irish professional investors; and/ or (iii) a non-EU AIFM proposes to market AIFs to Irish professional investors.

The Central Bank has also issued website guidance setting down information on fees and charges levied by it in respect of cross-border distribution activities of UCITS management companies, AIFMs, EuSEF managers and EuVECA managers in accordance with Article 2 of Commission Implementing Regulation (EU) 2021/955.

In both sets of guidance, the Central Bank confirms that it does not currently impose any fees or charges for any of the following activities:

- registration;
- passporting;
- notification of documents and for any subsequent update of prior notification;
- de-notification;
- management;
- pre-marketing.

A copy of the guidance on marketing requirements and regulatory fees for UCITS can be accessed [here](#) and [here](#), respectively.

A copy of the guidance on marketing requirements and regulatory fees for AIFs can be accessed [here](#) and [here](#), respectively.

4.2 Official Translations of ESMA Guidelines on Marketing Communications under Cross-Border Distribution Regulation published

On 2 August 2021, ESMA published on its website the official translations of its Guidelines on marketing communications (**Marketing Communications Guidelines**) which it was mandated to publish under Article 4 of the Cross-Border Distribution Regulation. As a result,

UCITS management companies and AIFMs (including self-managed UCITS and internally managed AIFs) must comply with the Marketing Communications Guidelines from 2 February 2022.

The Marketing Communications Guidelines set down the requirements which must be satisfied in order for a marketing communication to comply with Article 4(1) of the Cross-Border Distribution Regulation and in particular set down detailed provisions on what constitutes “marketing communications” and how risks and rewards associated with the investment should be presented and measured to ensure that marketing communications are fair, clear and not misleading.

The Marketing Communications Guidelines can be accessed [here](#).

Key Action Points

Management companies should ensure that a full review of marketing communications is carried out before 2 February 2022 in order to be satisfied that their marketing communications meet the expectations of ESMA as set down in the Marketing Communications Guidelines from that date.

4.3 Transposition of Cross-Border Distribution Directive into Irish law

Directive (EU) 2019/1160 (**Cross-Border Distribution Directive**) has been transposed into Irish law via the European Union (Alternative Investment Fund Managers) Regulations 2021 and the European Union (Undertakings for Collective Investments in Transferable Securities) Regulations 2021, both of which entered into force on 6 August 2021.

From 6 August 2021, Irish authorised AIFMs and UCITS management companies (which include Irish domiciled self-managed UCITS funds and internally managed AIFs) must comply with new rules which are intended to facilitate the cross-border distribution of both UCITS and AIFs within the European Union and to harmonise the regulatory framework governing the distribution of such funds. These include complying with new rules on provision of local facilities to investors in UCITS and retail investors in AIFs, revised notification procedures, a new de-registration process and in the case of AIFMs and internally managed AIFs, complying with new rules when engaging in pre-marketing activities.

A copy of the European Union (Alternative Investment Fund Managers) Regulations 2021 can be accessed [here](#).

A copy of the European Union (Undertakings for Collective Investments in Transferable Securities) Regulations 2021 can be accessed [here](#).

Key Action Points

Management companies should ensure that they assess the new rules introduced under the transposing regulations and identify any required changes that need to be made to internal processes.

5. PRIIPs

5.1 Expiry of exemption afforded to UCITS from preparing a PRIIPS KID

In a “quick-fix” amendment proposed by the European Commission to Regulation 1286/2014/EU (**PRIIPS Regulation**) on 15 July 2021, the exemption currently afforded to UCITS from being required to prepare a PRIIPS KID, which had been due to expire on 31 December 2021, has been extended until 30 June 2022. This means that UCITS which are marketed to retail investors in the EEA will be required to prepare a PRIIPS KID from 1 July 2022.

A copy of the proposed amending Regulation can be accessed [here](#).

Key Action Points

All UCITS management companies should therefore assess their current distribution strategy for each UCITS under management to identify those funds for which it will be necessary to prepare a PRIIPS KID by 1 July 2022.

5.2 Proposal to amend UCITS Directive to address PRIIPS KID exemption

In a related development, the European Commission has also proposed a separate “quick-fix” amendment to the provisions of the UCITS Directive which oblige a UCITS to prepare a UCITS KIID document.

Under the proposals, UCITS management companies which prepare a PRIIPS KID in accordance with the requirements of the PRIIPS Regulation from 1 July 2022 onwards will be considered to have discharged their obligations to produce a UCITS KIID document under Chapter IX of the UCITS Directive. The purpose of this legislative amendment is to avoid a scenario where a UCITS is required to produce both a UCITS KIID and a PRIIPS KID document from 1 July 2022 onwards.

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

Key Action Points

All UCITS management companies should therefore assess their current distribution strategy for each UCITS under management to identify those funds for which it will be necessary to prepare a PRIIPS KID by 1 July 2022.

5.3 Draft RTS amending PRIIPS Level 2 Measures adopted by the European Commission

On 7 September 2021, the European Commission adopted proposed amendments to Commission Delegated Regulation (EU) 2017/653 (**PRIIPS Level 2 Measures**) which are now subject to scrutiny by the European Parliament and the Council and which are scheduled to apply from 1 July 2022.

The proposed amendments to the PRIIPS Level 2 measures include changes to rules on calculating and presenting forward-looking performance scenarios, calculating and presenting of costs-related information as well as introducing specific rules which must be complied with by any PRIIPS KID published by in-scope UCITS and AIFs. The amendments to the PRIIPS Level 2 Measures proposed by the European Commission remain largely unchanged from the RTS submitted to it by the European Supervisory Authorities (**ESAs**) in February 2021, save for clarifying that multi-option products producing a PRIIPS KID can continue to rely on UCITS KIID prepared by underlying UCITS funds until 1 July 2022.

A copy of the proposed amending Commission Delegated Regulation can be accessed [here](#).

Key Action Points

AIFs which already publish a PRIIPS KID as a result of being marketed to retail investors in the EEA, as well as UCITS funds which will be required to prepare a PRIIPS KID from 1 July 2022, should now identify and assess changes which will need to be made to existing processes. Such changes will include, in the case of in-scope UCITS funds, the gathering of a significant amount of additional data in order to produce a PRIIPS KID which complies with the new measures from 1 July 2022.

6. CENTRAL BANK

6.1 Senior Executive Accountability Regime

On 27 July 2021, the Department of Finance in Ireland published the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 (**General Scheme**). The General Scheme provides for the establishment of the Individual Accountability Framework

(IAF) which includes the Senior Executive Accountability Regime (**SEAR**) to be modelled on the United Kingdom's Senior Manager and Certification Regime.

The purpose of the IAF is to create a framework to facilitate individual accountability and responsibility, particularly for individuals performing senior executive functions (**SEFs**) within Irish Regulated Financial Service Providers (**RFSPs**).

The General Scheme can be accessed [here](#).

Please see our Dillon Eustace briefing paper entitled "Individual Accountability Framework and SEAR – Key Questions" which can be accessed [here](#) for further details.

6.2 Central Bank publishes Feedback Statement on consultation on enhancements to the Central Bank Client Asset Requirements

On 28 July 2021, the Central Bank published a Feedback Statement on its consultation on enhancements to the Central Bank Client Asset Requirements (**CAR**), as contained in the Central Bank Investment Firms Regulations (**CP133**).

The Feedback Statement summarises the material responses to CP133 and outlines the Central Bank's comments and decisions in respect of those responses. The Central Bank expects to publish the third edition of the Central Bank Investment Firms Regulations and accompanying CAR guidance in Q4 2021/Q1 2022.

The Feedback Statement can be accessed [here](#) and CP133 can be accessed [here](#).

6.3 Central Bank announces intention to change list of PCF functions

On 22 September 2021, the Central Bank published a Notice of Intention informing industry of its intention to make certain changes to pre-approval controlled functions (**PCFs**) under the Central Bank's Fitness and Probity regime. The proposed amendments to the PCF functions will apply to Irish RFSPs.

The Notice of Intention confirms that the Central Bank intends to introduce the following modifications to its PCF roles:

- PCF-2 (Non-Executive Director) will be divided into two individual positions to reflect the distinction between non-executive directors which are independent and those which are not. Under the new rules, PCF-2A relates to Non-Executive Directors and PCF-2B introduces the new PCF of Independent Non-Executive Director.
- There will no longer be a PCF-15 (Head of Compliance with responsibility for AML). Under the new rules, the PCF-12 (Head of Compliance) remains in place and a PCF-52 will be introduced as the new PCF of Head of Anti-Money Laundering and Counter Terrorist Financing. An individual can perform both PCF-12 and PCF-52.
- PCF-16 will be expanded so that managers of branches of Irish regulated entities established in non-EEA countries (which now includes the UK) will become PCF functions requiring the approval of the Central Bank prior to being appointed to the role.
- PCF-31 (Head of Investment) has been removed in light of the overlap with PCF-30 (Chief Investment Officer).

Such modifications to the PCF roles will be required to be implemented by new regulations amending the Central Bank Reform Act 2010 (as amended) (**Amending Regulations**). The Notice of Intention sets out the required action to be taken by individuals performing the amended PCF roles once the Amending Regulations come into effect. It notes that RFSPs will have six weeks from the date on which the Amending Regulations enter into force to make the appropriate filings with the Central Bank for PCF redesignation.

The following process will apply in respect of the amended PCFs:

- All PCF-2 will be automatically redesignated as PCF-2A. In the case of any non-executive director who is independent, the relevant RFSP will be required to notify the Central Bank that such individual should be redesignated as a PCF-2B and confirm that the necessary due diligence to assess independence has been undertaken.
- All those designated as PCF-15 will be required to notify the Central Bank of how they should be designated under the new regime (e.g. PCF-12, PCF-52 or both). RFSPs should assess whether anyone within their organisation performs the role of Head of Anti-Money Laundering and Counter Terrorist Financing, and if so, the relevant RFSP will need to confirm to the Central Bank that they have conducted the relevant assessment required under Section 21 of the Central Bank Reform Act 2010 before filing for the PCF.
- All individuals designated as PCF-31 will automatically be redesignated as a PCF-30 (without any action taken by the PCF-31 holders).

Any new appointments to these PCF functions which are made after the Amending Regulations enter into force will need to comply with the full application process.

The Notice of Intention can be accessed [here](#).

Key Action Points

RFSPs will need to consider all currently held PCF-2, PCF-15, PCF-16, PCF-30 and PCF-31 roles. RFSPs will have six weeks from the date on which the Amending Regulations enter into force to make the appropriate filings with the Central Bank for PCF redesignation.

6.4 Central Bank Levy

On 24 September 2021, the Central Bank Act 1942 (Section 32D) Regulations 2021 (S.I. No. 487 of 2021) (**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 2020 to 31 December 2020.

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](#).

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

7.1 Updates: Registration of Beneficial Ownership of Certain Financial Vehicles

On 1 July 2021, the European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) (Amendment) Regulations 2021 (S.I. No. 321 of 2021) (**Amending Regulations**), amending the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019, came into effect. The Amending Regulations require Certain Financial Vehicles (**CFVs**), being ICAVs and unit trusts to carry out the following actions:

- CFVs existing prior to commencement of the Amending Regulations must submit the PPS number of each beneficial owner of the entity to the Central Bank within 6 months of commencement of the Amending Regulations, by 31 December 2021;
- CFVs existing on or after the commencement of the Amending Regulations must submit the PPS number of each beneficial owner of the entity to the Central Bank within 6 months of the entity coming into existence.

The PPS numbers will be securely stored by the Central Bank.

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

7.2 The EU's new AML framework – overview of the draft legislation

On 20 July 2021, the European Commission published a set of four legislative proposals with the aim of strengthening the EU's AML/CFT rules (**AML Legislative Package**). The proposals also aim to create a more consistent and harmonious AML/CFT framework across the EU.

The AML Legislative Package consists of four legislative proposals:

- A new EU Authority for AML and CFT, which can be accessed [here](#);
- A Single EU Rulebook for AML/CFT, which can be accessed [here](#);
- A sixth Directive on AML/CFT, repealing Directive (EU) 2015/849 (**Fourth Money Laundering Directive** or **MLD4**), which can be accessed [here](#); and
- A revised Regulation on Transfers of Funds to trace transfers of crypto-assets, which can be accessed [here](#).

The European Commission is seeking the views of stakeholders on each of the proposed legislative measures. The consultation period closes on 25 October 2021.

Please see the Dillon Eustace briefing paper entitled “The EU's new AML framework – overview of the draft legislation” which can be accessed [here](#).

7.3 European Commission launches consultation on the EU rules on public-private partnerships in AML/CFT

On 27 July 2021, the European Commission launched a public consultation on the EU rules on public-private partnerships (**PPPs**) in the area of AML/CFT (**Consultation**).

The Consultation aims to obtain information with regard to, for example, the types of PPPs currently operating in the EU, the public authorities (e.g. FIUs, law enforcement, supervisory authorities) and private sector entities which participate, the types of information exchanged within these partnerships and the measures put in place to guarantee the preservation of fundamental rights.

The European Commission intends to gather information and evidence in order to prepare guidance and issue best practices with regard to the set-up of PPPs in the AML/CFT framework.

Launch of the Consultation follows publication by the European Commission, on 23 July 2021, of a Roadmap setting out how the Commission intends to approach this initiative (**Roadmap**).

The consultation period closes on 2 November 2021.

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

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

7.4 EBA publishes draft guidelines on role of AML/CFT compliance officers

On 2 August 2021, the European Banking Authority (**EBA**) launched a public consultation on draft guidelines on policies and procedures in relation to compliance management and the role and responsibilities of the AML/CFT compliance officer under Article 8 and Chapter VI AMLD4 (**Draft Guidelines**).

The purpose of the Draft Guidelines is to set clear expectations of the role and responsibilities of the AML/CFT compliance officer and the management body with regards to AML/CFT (or the senior manager where no management body exists).

The Draft Guidelines, when finalised, will apply to all financial services firms regulated by the Central Bank.

The Draft Guidelines can be accessed [here](#). The EBA has invited comments from stakeholders on the Draft Guidelines. Comments may be submitted via a consultation form, which can be accessed [here](#). The closing date for receipt of comments is 2 November 2021.

Please see the Dillon Eustace briefing paper entitled “EBA publishes draft guidelines on role of AML/CFT compliance officers” which can be accessed [here](#).

7.5 Central Bank updates FAQ on the Beneficial Ownership Register

On 20 September 2021, the Central Bank updated its webpage entitled “FAQ regarding the Beneficial Ownership Register” (**FAQ**).

The updated FAQs introduce two further categories of CFVs to be filed with the Central Bank’s Beneficial Ownership Register, namely Investment Limited Partnerships and Common Contractual Funds. The Investment Limited Partnership (Amendment) Act 2020 provides as follows:

- Investment Limited Partnerships and Common Contractual Funds in existence on or before the commencement of the Investment Limited Partnerships (Amendment) Act 2020 (i.e. 1 March 2021) are required to report beneficial ownership information to the Central Bank’s Beneficial Ownership Register from 1 September 2021; and
- Investment Limited Partnerships and Common Contractual Funds formed after the commencement of the Investment Limited Partnerships (Amendment) Act 2021 (i.e. 1 March 2021) are required to report beneficial ownership information to the Central Bank’s Beneficial Ownership Register within six months from the date of its formation.

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

Key Action Points

General Partners and management companies for Investment Limited Partnerships and Common Contractual Funds should each ensure that the beneficial ownership information for their respective entity is filed with the Central Bank’s Beneficial Ownership Register within the applicable timeframe above.

7.6 European Data Protection Supervisor publishes Opinion on AML Legislative Package

On 24 September 2021, the European Data Protection Supervisor (**EDPS**) published an Opinion on the AML Legislative Package (**EDPS Opinion**), which can be accessed [here](#).

The EDPS Opinion broadly welcomes the objectives of the AML Legislative Package, however notes that the conditions and limits for the processing of special categories of personal data should be better described and should specify in particular which types of special categories should be processed, taking into account the necessity and proportionality principles and the specific purpose pursued. The EDPS Opinion further recommends that the necessity and proportionality of “general access” to central beneficial ownership registers should be assessed and that such access be limited to competent authorities in charge of enforcing the law and to ‘designated persons’ when taking Customer Due Diligence measures. Finally, the EDPS Opinion recommends that the necessity and proportionality of the extensive access powers conferred to Financial Intelligence Units (**FIUs**) be re-assessed.

8. DATA PROTECTION

8.1 EDPB adopts final version of guidelines on the concepts of controller and processor in the GDPR

On 7 July 2021, the European Data Protection Board (**EDPB**) adopted the second and final version of its Guidelines on the concepts of Controller and Processor (**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 Regulation (EU) 2016/679 (**General Data Protection Regulation** or **GDPR**) introduced 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 Guidelines had been subject to a public consultation in Q3 2020.

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

8.2 Data Protection: International Data Transfers

On 14 September 2021, Dillon Eustace published a briefing paper entitled Data Protection: International Data Transfers (**Briefing**).

Under the GDPR, data controllers and data processors are only permitted to transfer personal data outside the European Economic Area (**EEA**) in accordance with one of the safeguards set down in Chapter V of the GDPR.

Since the Court of Justice of the European Union (**CJEU**) issued its ruling in the Schrems II¹ case in July 2020, there have been a number of significant developments in the area of international data transfers, including the publication of new Standard Contractual Clauses (**New SCCs**), the publication of two new sets of recommendations by the EDPB and the adoption by the European Commission of a time limited adequacy decision in favour of the UK.

The Briefing addresses the New SCCs and the related requirements to carry out an assessment of the laws and practices of the third country of destination and the supplementary measures which may be needed in order to legitimise the transfer of personal data using the New SCCs.

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

8.3 Data Protection Commission launches revised breach notification web-form

On 15 September 2021, the Data Protection Commission (**DPC**) published an overview of its revised breach notification web-forms (**DPC Briefing**). Data controllers currently use a web-form, available on the DPC website, to notify personal data breaches in accordance with Article 33 of the GDPR and Section 86 of the Data Protection Act 2018.

The purpose of the revised breach notification web-form is:

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

- to improve ease-of-use for data controllers;
- to streamline the method of notifying “cross-border” personal data breaches and “national” personal data breaches into a single channel; and
- to expand the questions that are asked in order to reduce the requirement for the DPC to issue follow-up enquiries to data controllers.

On foot of this review, data controllers will be required in the coming weeks to use a revised web-form.

The DPC briefing can be accessed [here](#).

9. SUSTAINABLE GROWTH

9.1 European Commission adopts Delegated Regulation containing disclosure obligations under Taxonomy Regulation

On 6 July 2021, the European Commission adopted a Delegated Regulation supplementing Regulation (EU) 2020/852 (**Taxonomy Regulation**) by specifying disclosure obligations under Article 8 of the Taxonomy Regulation. The aim of the Delegated Regulation is to increase transparency and reduce greenwashing in the market.

The Taxonomy Regulation applies to financial market participants that offer financial products, financial and non-financial undertakings within the scope of Directive 2014/95/EU (**Non-Financial Reporting Directive** or **NFRD**) and applies to market participants engaging in environmentally sustainable economic activities. The European Commission has been developing delegated acts to identify technical screening criteria for environmentally sustainable economic activities.

Article 8 of the Taxonomy Regulation requires certain large undertakings to publish non-financial information under the NFRD informing the public how and to what extent their activities are associated with environmentally sustainable economic activities. The Delegated Regulation specifies the content, methodology and presentation of the information to be disclosed by undertakings. It also clarifies rules related to key performance indicators (**KPIs**).

The Delegated Regulation will enter into force 20 days following publication in the OJ. Certain provisions will apply from 1 January 2022 as specified in Article 10 of the Delegated Regulation with further provisions applying from 1 January 2023 and beyond.

The Delegated Regulation can be accessed [here](#) and accompanying annexes can be accessed [here](#).

9.2 European Commission confirms delay in application of SFDR Level 2 measures

On 8 July 2021, in a letter to the Committee on Economic and Monetary Affairs and the Ecofin Council, the European Commission confirmed that the date of application for RTS under the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) (**SFDR**) (known as the Level 2 measures) would be deferred from 1 January 2022 to 1 July 2022 (**Letter**).

The Commission cites the length and technical detail of the RTS as the reason it needs additional time to complete the adoption process.

The Commission plans to bundle all thirteen RTS in a single delegated act (i.e. a single rulebook) which will incorporate all of the Level 2 measures published under the SFDR.

Fund management companies with ESG funds under management will need to address amendments to both prospectus and website disclosures required under such Level 2 measures. Fund management companies which have decided to report principal adverse impacts of investment decisions on sustainability factors under Article 4 of the SFDR will also need to monitor the application date of SFDR Level 2 measures.

For the avoidance of doubt, the Letter relates only to the delay in the application of the Level 2 measures (including those Level 2 measures addressing taxonomy-related disclosures). It does not change the application date of the Level 1 Taxonomy disclosures. Therefore, those funds falling in the scope of the Taxonomy Regulation will still be required to update their prospectuses by 1 January 2022 to address Level 1, but such disclosures will be more high level than the prescriptive disclosures required under Level 2 (which involve the inclusion of the template disclosure which must be annexed to the relevant fund supplement).

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

9.3 European Commission publishes SFDR Q&A

In July 2021, the European Commission issued a decision, annexed to which was a Q&A document which provides answers to questions raised by the ESAs on the interpretation of certain provisions of the SFDR in a letter dated 7 January 2021 (**Commission Q&A**). This follows its confirmation earlier in the month that delegated acts prepared under the SFDR will now not apply until 1 July 2022.

While the Commission Q&A provides welcome clarity on certain provisions of the SFDR, some responses have raised additional questions for financial market participants.

Financial market participants should now consider the contents of the Commission Q&A to assess any potential implications for their business and funds under management.

Please see the Dillon Eustace briefing paper entitled “European Commission publishes SFDR Q&A” which can be accessed [here](#). The briefing outlines some of the key takeaways for financial market participants from the Commission Q&A.

The Commission Q&A can be accessed [here](#).

9.4 Delegated Directive on sustainability factors published in the Official Journal

On 2 August 2021, Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 (**Amending Directive**) amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations for investment firms was published in the OJ (**Delegated Directive**).

Under the Delegated Directive, investment firms which are product manufacturers must identify a potential target market for the relevant product and must ensure that all relevant risks to such identified target market are assessed. Under the Amending Directive, the assessment of the potential target market should now include any sustainability related objectives with which the product is compatible. Such product manufacturers must also ensure that any distributors of the product are provided with adequate information of the sustainability factors of the product so that the distributor can, in turn, provide the relevant information to its clients or potential clients.

The Amending Directive entered into force on 22 August 2021, twenty days following its publication in the OJ. The Amending Directive will apply from 22 November 2022 after transposition by Member States.

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

9.5 Corrigendum to delegated legislation integrating sustainability into AIFMD

On 23 September 2021, a Corrigendum to Commission Delegated Regulation (EU) 2021/1255 of 21 April 2021 amending Delegated Regulation (EU) No 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by AIFMs was published to remove the text “of Article 4” from line 2 of the new paragraph 6 to Article 18 of Delegated Regulation (EU) No 231/2013.

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

10. IFR / IFD

10.1 Calculation of own funds requirements for UCITS management companies and AIFMS

The European Union (Investment Firms) Regulations 2021 (**Regulations**) entered into force on 21 September 2021 and give partial effect to Directive (EU) 2019/2034 (**Investment Firms Directive**).

The Regulations amend the European Union (Alternative Investment Fund Managers) Regulation 2013 (as amended) and the European Union (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (as amended) to provide that, when calculating and maintaining its minimum capital requirements, a management company must ensure that the “own funds” retained by it cannot be less than the amount required under Article 13 of Regulation (EU) 2019/ 2033 (**Investment Firms Regulation**).

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

11. BENCHMARKS

11.1 European Commission publishes draft Implementing Regulation on the designation of a replacement rate for the EONIA benchmark

On 3 August 2021, the European Commission published a draft implementing regulation designating a replacement rate for the European Overnight Index Average (**EONIA**) in contracts and instruments referred to in Article 23a of the Benchmarks Regulation (EU) 2016/1011 (**BMR**) (**Implementing Regulation**).

EONIA is a critical benchmark representing the interest rates on unsecured overnight lending transactions denominated in euros. It is used in a variety of contracts and financial instruments. On 3 January 2022, EONIA will be discontinued. The Implementing Regulation designates the Euro short-term rate (**€STR**) plus 8.5 basis points as the replacement for EONIA. The new designated rate will, by operation of law, replace all references to that benchmark in contracts and financial instruments provided that such contracts do not contain fall-back provisions or suitable fall-back provisions.

The Implementing Regulation will enter into force twenty days following its publication in the OJ. The Implementing Regulation, and replacement rate, will apply from 3 January 2022.

The Implementing Regulation can be accessed [here](#). The European Commission sought feedback from stakeholders on the text of the Implementing Regulation, the consultation period closed on 31 August 2021.

12. MONEY MARKET FUNDS

12.1 Central Bank publishes notice of intention regarding ESMA Guidelines on stress test scenarios under the MMFR

On 19 August 2021, the Central Bank published a Notice of Intention in relation to the application of the ESMA Guidelines (**MMFR Guidelines**) on stress test scenarios under the Money Market Fund Regulation ((EU) 2017/1131) (**MMFR**), published on 29 June 2021 (**Notice**).

The MMFR Guidelines relate to Article 28 of the MMFR and establish common reference parameters for the stress test scenarios to be included in the stress tests conducted by money market funds (**MMFs**) or managers of MMFs in accordance with that Article. The MMFR Guidelines apply to competent authorities, MMFs and managers of MMFs as defined in the MMFR.

The Notice states that the Central Bank will, in due course, consult on the incorporation of a provision in the Central Bank UCITS Regulations and AIF Rulebook that all managers of MMFs adhere to the MMFR Guidelines. In the interim, the Central Bank expects full compliance with the MMFR Guidelines from 29 August 2021.

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

The MMFR Guidelines can be accessed [here](#).

Key Action Points

In-scope firms should be satisfied that the stress-testing procedures in place have been calibrated in accordance with the parameters set down in the MMFR Guidelines.

12.2 Commission Delegated Regulation on investment requirements under the MMFR published in the Official Journal

Commission Delegated Regulation (EU) 2021/1383 amending Delegated Regulation (EU) 2018/990 with regards to requirements for assets received by MMFs as part of reverse repurchase agreements was published in the OJ on 23 August 2021 (**Commission Delegated Regulation**).

Under existing rules, an MMF manager is not required to comply with certain supplementary qualitative and quantitative requirements applicable to reverse repurchase agreements (including applying haircuts to the value of an asset) in certain circumstances. These include reverse repurchase agreements where the relevant counterparty is a credit institution, investment firm or insurance undertaking regulated in the EU or in a jurisdiction in respect of which an equivalence decision has been issued by the European Commission.

The Commission Delegated Regulation now sets down the relevant legislative provisions on which such equivalence decisions are to be adopted in order for such exemptions to apply. This will provide greater legal certainty on the applicable equivalence procedure.

The Commission Delegated Regulation entered into force on 12 September 2021, twenty days following its publication in the OJ.

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

12.3 Revised Reporting Guidelines for Fund Management Companies of Irish Authorised MMFs

On 24 August 2021, the Central Bank published a revised guidance note relating to the reporting requirements for fund management companies of Irish authorised MMF funds (**Guidance Note**).

The Guidance Note provides information and directions on the submission of MMF related reporting to the Central Bank, including the “Money Market Fund Returns” for authorised MMFs under Article 37 of the MMFR, ad-hoc Stress Test Reporting under Article 28 of the MMFR, other Ad-Hoc reporting under MMFR and daily reporting for MMFs.

The Guidance Note can be accessed [here](#).

13. MISCELLANEOUS

13.1 Dillon Eustace contributes to the International Comparative Legal Guide on Alternative Investment Funds 2021

Dillon Eustace Partners Brian Kelliher and Richard Lacken contributed the Ireland chapter to the International Comparative Legal Guide on Alternative Investment Funds Legislation and Regulations 2021. This guide covers key issues including regulatory framework, licencing

and authorisation, fund structures (unit trusts, Investment Companies, ILPs, CCFs and ICAVs) and fund types (AIFs, QIAIFs and RIAIFs), fund governance, marketing, disclosure requirements and tax treatment.

The Ireland chapter can be accessed [here](#).

13.2 Update on the Companies (Corporate Enforcement Authority) Bill 2021

The Companies (Corporate Enforcement Authority) Bill 2021 (**Bill**) provides for the amendment of the Companies Act 2014 to establish a new independent statutory agency, the Corporate Enforcement Authority (**CEA**). Under the terms of the Bill, the CEA will take over the functions and responsibilities of the Office of the Director of Corporate Enforcement (**ODCE**) with certain additional powers.

On 17 August 2021, the Director of Corporate Enforcement issued a press release welcoming the Government's approval of the Bill and announced that it was a "watershed moment in Ireland's strategic approach towards addressing economic and white-collar crime".

The Bill was published on 3 September 2021 and is now through to the third stage, referred to the Select Committee on Enterprise, Trade and Employment.

The text of the Bill can be accessed [here](#).

13.3 ESMA work programme for 2022

On 28 September 2021, ESMA published its work programme for 2022 which aims to promote investor protection, and stable and orderly financial markets. ESMA has identified the following areas as key priorities in 2022:

- **Cross-Cutting Themes** – ESMA considers the development of the capital markets union (**CMU**) as one of its strategic priorities and will work to implement the relevant actions of the European Commission's CMU action plan. ESMA has also addressed strategic finance, and innovation and digitalisation as areas of focus in 2022.
- **Supervisory Convergence** – ESMA is promoting supervisory convergence for a sound and efficient EU single market. ESMA will prioritise its supervisory convergence action through risk-driven assessments and its commitment to consumer protection. ESMA will assess the results of the Union's strategic supervisory priorities and pledges to review and update its toolkit for supervisory convergence where appropriate.
- **Risk Assessment** – ESMA is looking to strengthen its risk identification work and its co-operation with NCAs and other public authorities by intensifying the use and analysis of its proprietary financial market data. ESMA will engage with NCAs to act as a data hub and will continue to focus on stress-testing to identify risks and implement appropriate supervisory responses to ensure financial stability within the market.
- **Single Rulebook** – ESMA will continue to develop financial market regulations and identify potential shortcomings in regulations. Specifically, ESMA intends to contribute to reviews on Regulation (EU) 2017/1129 (**Prospectus Regulation**), MiFID II/MiFIR, PRIIPS, Regulation (EU) No 236/2012 (**SSR**) and Regulation (EU) No 909/2014 (**CSDR**).

ESMA confirms that it will continue to identify its risk-based approach to supervision and will enhance its enforcement processes where relevant. A copy of ESMA's 2022 annual work programme 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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