# Funds Quarterly Legal and Regulatory Update

**Period covered:**
**1 July 2015 – 30 September 2015**

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO

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# FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

## UCITS

### (i) UCITS V

Directive 2014/91 ("**UCITS V**") is required to be transposed into the national laws of each EU member state by 18 March 2016. As outlined in previous legislative updates, UCITS V focuses on three main areas namely, (i) depositary eligibility, functions and liability (ii) rules governing remuneration policies which UCITS will be obliged to introduce (these are expected to be similar to the remuneration rules which already apply under AIFMD) and (iii) the harmonisation of minimum administrative sanction across EU member states. There have been delays in the accompanying Level 2 legislation which will provide further detail in relation to these amendments.

As a consequence of the changes being introduced pursuant to UCITS V, UCITS funds will be required to update their documentation, notably their prospectus and depositary agreements/trust deed. In addition, they should arrange for other relevant documents (such as their constitutional documents and KIIDs) to be reviewed in case they contain any provisions which may need to be updated.

### (ii) Publication of UCITS Regulations and Feedback Statements

On October 5, 2015 the Central Bank of Ireland ("**Central Bank**") issued a new set of regulations relating to Irish domiciled UCITS, their management companies and depositaries, titled *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015* ("**CBI UCITS Regulations**"). The CBI UCITS Regulations will replace the UCITS Notices with effect from November 1, 2015, and consolidate into one location all of the requirements which the Central Bank imposes on UCITS, UCITS management companies and depositaries of UCITS. The CBI UCITS Regulations supplement existing legislative requirements, in particular the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011.

The Central Bank UCITS Guidance Notes are also being replaced with website guidance which "*will retain all of the guidance currently located in the Guidance Notes and UCITS Notices*". That website guidance is now accessible on the Central Bank's website. New UCITS Application Forms will also shortly be available on the website.

Simultaneously, the Central Bank has also published its Feedback Statements to 2014's CP77 (*Consultation on publication of UCITS Rulebook*) and CP84 (*Consultation on the*

*adoption of ESMA's revised guidelines on ETFs and other UCITS issues*). In its Feedback Statement on CP77, the Central Bank says "*As stated in CP77, the Central Bank is issuing the final UCITS Rulebook on a statutory basis. Having considered the options available to the Central Bank to achieve this, the Central Bank has decided to publish the final UCITS Rulebook in the form of Central Bank regulations".*

Dillon Eustace has published an article on this topic, which will provide further detail, as well as commentary, which can be accessed using this link:

New Central Bank UCITS Regulations.pdf

**(iii) Central Bank updates its Q&A on UCITS**

The Central Bank published the 6th and 7th edition of its UCITS Questions and Answers ("**Q&A**") document on 15 July and 5 October 2015 respectively.

The aim of the UCITS Q&A is to outline answers to queries likely to arise in relation to UCITS. It is published in order to assist in limiting uncertainty, but is not relevant to assessing compliance with regulatory requirements.

The 6th edition sees the addition of two new questions;

- Question ID 1014 which clarifies the position in relation to the object of a ICAV, and
- Question ID 1015 which details the regulatory considerations around Irish funds seeking to acquire Chinese shares through the Shanghai-Hong Kong Stock Connect infrastructure. (see Central Bank section below for further details)

The 7th edition has taken account of the introduction of the CBI UCITS Regulations, and accordingly the following changes have been made:

- Questions ID 1007 and 1008 have been deleted as they are no longer relevant;
- Question ID 1008 has been updated to reference the CBI UCITS Regulations; and
- Questions ID 1016 onwards are new.

The updated Q&A's is available via the following links:

Central bank update Documents FINAL FULL UCITS QA DOC.pdf

Central bank regulation industry sectors UCITS QA FINAL.pdf

**(iv) The European Fund and Asset Management Association ("EFAMA") industry fact sheet on net sales of UCITS**

On 21 September 2015, the EFAMA published its latest investment funds industry fact sheet, which provides net sales of UCITS and non UCITS for July 2015.

The main developments for July 2015 are as follows:

- UCITS experienced a sharp increase in net sales of UCITS which totaled €63 billion compared with net outflows of €17 billion in June;
- long term UCITS registered net inflows of €39 billion, up from €18 billion in June;
- money market funds recorded net inflows of €24 billion, compared to €35 billion in June;
- total non UCITS net sales amounted to €8 billion in July, down from €19 billion in June. This was mainly due to a drop in sales of special funds (these are reserved for institutions investors of €10 billion);
- net assets of UCITS equated to €9,070 billion at the end of July, representing an increase of 1.8% during the month. Net assets of non UCITS increased by 0.8% to stand at €3,594 billion at the end of July.

The industry fact sheet is available via the following link:

Significant-recovery-of-net-sales-of-UCITS-in-July-2015-supported-by-stronger-investors

**(v) ESMA consults on UCITS Remuneration Guidelines and Directive on Investment AIFMD**

On 23 July 2015, ESMA issued a consultation paper (the "**Consultation Paper**") with respect to the proposed Guidelines on Sound Remuneration Policies under the UCITS V Directive and AIFMD (the "**Guidelines**").

This Consultation Paper is designed to assist in the development of the Guidelines and details ESMA's formal proposals in this respect. ESMA intends taking its Guidelines on Sound Remuneration Policies under AIFMD (ESMA/2013/232) ("**AIFMD Remuneration Guidelines**") as the starting point for developing the UCITS V Remuneration Guidelines. In addition, it proposes a specific and focused revision of the AIFMD Remuneration Guidelines which were published on 3 July 2013. The purpose of the revision is to clarify that, in a group context, non-AIFM sectoral prudential supervisors of entities may be permitted to deem certain staff of an AIFM in that group to be identified staff for the purpose of their sectoral remuneration rules.

The Guidelines are designed to ensure the coordinated and consistent application of the remuneration provisions within the EU and provide guidance on issues such as proportionality, governance of remuneration, requirements on risk alignment and disclosure. Once the Guidelines are approved, they will apply to UCITS management companies and national competent authorities.

The key elements outlined in the Guidelines and the Consultation Paper include:

- proportionality
- management companies as part of a group
- definition of performance fees
- application of different sectoral rules
- application of the rules to delegates
- payment in instruments

The period for feedback on the Consultation Paper and the Guidelines will close on 23 October, 2015. ESMA has indicated that it will aim to finalise and publish the UCITS Remuneration Guidelines and a final report by Q1 2016 ahead of the transposition deadline for UCITS V, being 18 March 2016.

The final report is expected to also include the revision of the AIFMD Remuneration Guidelines as proposed in the consultation paper.

Dillon Eustace has published an article on the above which is available via the following link:

ESMA Consults UCITS Remuneration Guidelines and AIFMDv2.pdf

## AIFMD

**(i) Central Bank publishes reporting requirements for AIFMs (excluding Internally Managed AIFs)**

On 18 September 2015, the Central Bank published a document setting out the reporting requirements for AIFMs (excluding Internally Managed AIFs). The document lists the scheduled return, their frequency and relevant guidance.

The reporting requirements can be accessed via the following link:

Central bank. Reporting Requirements for AIFMs.pdf

**(ii) Update to the AIFMD Memoranda of Understanding ("MoU") signed by the EU authorities**

On 4 September 2015, ESMA published an updated list of AIFMD MoUs signed by the EU authorities.

The list is available via the following link:

Aifmd_mous signed_by_eu_authorities_by_4_september_15.xlsx

### (iii) Central Bank publishes updated AIFMD Q&A

The Central Bank published the 14th and 15th editions of the AIFMD Q&A on 15 July and 12 August 2015 respectively.

The updates see the addition of three new questions:

- Question ID 1094 which details the regulatory considerations around Irish Funds seeking to acquire Chinese shares through the Shanghai-Hong Kong Stock Connect infrastructure (see Central Bank section below for further detail);
- Question ID 1095 which deals with investments in unregulated master funds and derogations from the AIF Rulebook; and
- Question ID 1096 which deals with Feeder AIFs.

The AIFMD Q&A is available via the following link:

Central bank update AIFMD Q&A.pdf

### (iv) ESMA updates Q&A on application of AIFMD

On 21 July 2015, ESMA published an updated version of its Q&A paper on its AIFMD guidelines. The intention of the Q&A is to promote common supervisory approaches and practices in the regulation of AIFMD.

The updates to the Q&A are to the following sections:

- Section III: Reporting to NCAs under Articles 3, 24 and 42, and
- Section IX: Calculation of the total value of assets under management.

The updated Q&A can be accessed via the following link:

Esma updates Q&A_on_the_application_of_the_aifmd.pdf

### (v) ESMA issues Advice and Opinion on the European Passport Extension

The AIFMD currently offers a marketing passport ("**Passport**") to compliant EU AIFMs of EU AIFs. The AIFMD contemplates that this Passport can be extended to non-EU AIFs, and to non-EU AIFMs from 2015. The extension of the Passport is subject to the acceptance by European Parliament, Council and Commission of positive advices from ESMA.

On 30 July 2015 ESMA published its advice in relation to the application of the Passport to non-EU AIFMs and AIFs ("**Advice**") together with its opinion on the functioning of the passport for EU AIFMs and the national private placement regimes ("**NPPRs**") ("**Opinion**"). The Advice and Opinion, required under AIFMD, will now be considered by the European Commission, Parliament and Council.

Regarding the advice on the potential extension of the passport, ESMA opted for a country-by-country assessment to allow for a distinction to be made between the different situations of non-EU countries with respect to the aspects that ESMA has to consider in its assessment. In the advice, ESMA assessed six jurisdictions (Guernsey, Hong Kong, Jersey, Singapore, Switzerland and the United States of America).

Dillon Eustace has published an article on the above which is available via the following link:

ESMA Issues Advice and Opinionon for European Passport Extension.pdf

## European Long Term Investment Funds ("ELTIF")

**(i) ESMA publishes consultation paper on draft regulatory technical standards under the European Long-Term Investment Funds Regulation (the "Regulation")**

On 31 July 2015, ESMA published a consultation paper on the draft regulatory technical standards (the **"RTS**") required under the Regulation which concerns ELTIFs. The Regulation, governing the operation of ELTIFs, was adopted by the Council of the European Union on 20 April 2015 and came into force on 8 June 2015. However, the Regulation will not have actual application in EU member states until 9 December 2015.

The consultation paper represents the first stage in the development of the draft RTS and sets out proposals for their content on which ESMA is seeking the views of external stakeholders. ESMA will consider all comments received by 14 October 2015.

The Consultation paper is available at the following link:

Esma europa system files 2015-1239.pdf

## Irish Collective Asset – Management Vehicles ("ICAV")

**(i) SI 371 of ICAV Act 2015 (Section 145(2)) (Relevant Jurisdictions) Regulations 2015 and SI 371 of ICAV Act 2015 (Section 149(2)) (Relevant Jurisdictions) Regulations 2015 (the "Regulations")**

These Regulations, which were issued on 3 September 2015, provide for the prescription of the British Virgin Islands and the Cayman Islands for the purposes of s. 145(2) and s. 149(2) of the ICAV Act 2015.

Designation as a relevant jurisdiction permits a corporate entity which is a collective investment scheme in that jurisdiction to migrate to Ireland, becoming, in the process, an ICAV.

The Regulations can be accessed via the following links:

http://www.finance.gov.ie/sites/default/files/SI%20371%20of%202015.pdf

http://www.finance.gov.ie/sites/default/files/SI%20372%20of%202015.pdf

**(ii) Central Bank publishes revised edition of ICAV Q&A**

On 12 August 2015, the Central Bank published a revised edition of the ICAV Q&A. This edition includes new questions and answers and also revisions to those featured in the last edition dated 6 March 2015.

The Q&A can be accessed via the following link:

Central bank regulation/industry sectors/funds/Documents/ ICAV FAQ FINAL.pdf

## ESMA

**(i) ESMA raises its market risk indicator to highest level**

On 14 September 2014, ESMA published its Trends, Risks and Vulnerabilities Report No. 2 for 2015 on European Union (EU) securities markets, covering market developments from January to June 2015 (**the** "**Report**"). It also published its Risk Dashboard No. 3 for 2015 (**the** "**Risk Dashboard**").

Overall, market risks for the European securities markets have increased with ESMA's risk indicator for market risk now at its highest level, "very high". This increase is due to high volatilities and fluctuating performances across asset classes.

ESMA's credit risk indicators remain unchanged at very high levels. While at a lower level, liquidity risk is expected to intensify further, while contagion and operational risk remain unchanged, at high and elevated levels respectively. Key overall risk sources remain: the improved but uneven economic outlook, ultra-low interest rates, high public sector indebtedness and potential weaknesses in market functioning.

The Report also monitors possible vulnerabilities which are provided through specific in-depth analyses, which include:

- shadow banking;
- market liquidity; and
- alternative funding

ESMA will update its Report semi-annually, complemented by its quarterly Risk Dashboard.

The Report and Risk Dashboard can be accessed via the following links:

https://www.esma.europa.eu/system/files/esma_trv_2-2015.pdf

https://www.esma.europa.eu/system/files/esma_risk_dasboard_3-2105.pdf

**(ii) EMSA report on European Economic Area ("EEA") prospectus activity in 2014**

On 23 July 2015, ESMA published its Periodic Report (**the** "**Report**") on statistical data regarding prospectus activity within the EEA, covering 2014.

The Report has been expanded in comparison to previous versions and contains more detailed information on the structure and content of prospectuses approved during 2014.

While the Report has previously been published semi-annually, it will now be on an annual basis going forward.

The Report can be accessed via the following link:

Esma_EEA_prospectus_activity_in_2014.pdf

**(iii) ESMA publishes 17th extract from the European Enforcers Coordination Sessions' ("EECS") enforcement decisions**

On 21 July 2015, ESMA published extracts from the EECS' confidential database of enforcement decisions on financial statements (the "extracts"). The decisions included in this extract were taken by national enforcers in the period February 2013 to November 2014.

The aim of the publication is to strengthen supervisory convergence and to provide issuers and users of financial statements with relevant information on the appropriate application of the International Financial Reporting Standards ("**IFRS**").

Publication of enforcement decisions will inform market participants about which accounting treatments European national enforcers may consider as complying with IFRS; that is, whether the treatments are considered as being within the accepted range of those permitted by IFRS. Such publication, together with the rationale behind these decisions, will contribute to a consistent application of IFRS in the EEA.

The 17th extract can be accessed via the following link:

Esma 17th_extract_of the_eecs_database.pdf

**(iv) ESMA publishes the Final Report and draft Regulatory Technical Standards on prospectus related issues under the Omnibus II Directive (Directive 2014/51/EU).**

On 1 July 2015, ESMA published its Final Report (**the** "**Report**") containing draft RTS on prospectus related issues in accordance with its mandate under the Omnibus II Directive

(**the** "**Directive**"). The Report also includes a summary of the main responses received to ESMA's September 2014 Consultation Paper on these issues.

The draft RTS included in the Report specify procedures for the approval of prospectuses, publication of approved prospectuses and dissemination of advertisements and other information relating to an offer or admission of securities to trading.

Following the consultation, and based on the feedback received, ESMA decided not to respond to the part of the mandate regarding approval which concerns adjustment of time limits and the mandate regarding incorporation by reference. The Report also explains the changes made to the original proposals contained in the consultation paper.

The Report was required to be submitted to the European Commission (EC) by 1 July 2015, following which the EC has three months to decide whether to endorse the RTS. The Directive must be applied by member states from 1 January 2016.

The Report can be accessed via the following link:

Esma final report draft rts on prospectus related issues under the omnibus ii directive.pdf

**(v) ESMA Guidelines on Alternative Performance Measures**

On 30 June 2015, ESMA published a final report on the guidelines on Alternative Performance Measures (the **"Guidelines**").

The Guidelines will apply to issuers with securities traded on regulated markets, and persons responsible for drawing up a prospectus, and they will be supervised by competent authorities and other bodies in the EU with responsibilities under the Transparency Directive, Prospectus Directive or Market Abuse regulation.

The aim of the guidelines is to encourage European issuers to publish transparent, unbiased and comparable information on their financial performance in order to provide users a comprehensive understanding of their performance.

The guidelines set out the principles that issuers should follow when presenting Alternative Performance Measures ("**APMs**") in documents which qualify as regulated information and address their labelling, calculation, presentation and comparability. Adherence to the guidelines will improve the comparability, reliability and comprehensibility of APMs.

The guidelines provide an overview of feedback received from stakeholders and the ESMA Securities and Markets Stakeholder Group ("**SMSG**") regarding APM issues and ESMA's response to it. The final guidelines presented in Annex IV takes into account the comments and suggestions raised by respondents. The final texts will be published on

ESMA's website in the course of 2015 following the translation of the guidelines into the official languages of the EU. The guidelines will become effective on 3 July 2016.

The final report can be accessed via the following link:

Esma_final_report_on_guidelines_on_alternative_performance_measures.pdf

**(vi) ESMA Consultation on draft RTS on the Central Securities Depositories Regulation ("CSDR")**

On 30 June, ESMA published a second Consultation Paper ("**CP**") on the draft RTS on the CSDR. This second CP is limited to the provisions on buy-in (including appropriate time frames to delivery) of the draft RTS.

ESMA consulted on all the CSDR technical standards from 18 December 2014 to 19 February 2015. The feedback to the consultation called for changing the approach on buy-in with a move of the responsibility for the execution of the buy-in at trading level. ESMA has further analysed the issue and proposed 3 possible options that will serve as the basis for its cost-benefit analysis, namely; (i) trading level execution, (ii) trading level with fallback option execution, and (iii) CSD participant level execution.

ESMA will consider the responses received to this Paper (submissions have closed) when finalising the technical standards for submission to the EC in September 2015.

The Paper can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-1065.pdf

## European Markets Infrastructure Regulation ("EMIR")

**(i) Delegated Regulation extending central clearing exemption for pension scheme arrangements under EMIR published in the Official Journal of the EU**

On 15 September 2015, Commission Delegated Regulation ((EU) 2015/1515)), (the "**Delegated Regulation**") amending EMIR as regards the extension of the transitional periods related to pension scheme arrangements ("**PSAs**") was published in the Official Journal of the EU.

Article 89(1) of EMIR provides that, for three years after its entry into force, the clearing obligation set out in Article 4 of EMIR does not apply to OTC derivative contracts that are objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements. The three year transitional period also applies to entities established for the purpose of providing compensation to members of PSAs in the event of a default.

The Delegated Regulation extends the three year transitional period referred to in Article 89(1) of EMIR by two years (i.e. until 16 August 2017).

**(ii) ESMA discussion paper on review of EMIR standards relating to CCP client accounts**

On 27 August 2015, ESMA published a discussion paper seeking stakeholders' views on Article 26 of the Commission Delegated Regulation No 153/2013, which ESMA had drafted under EMIR, and which includes a Regulatory Technical Standard ("**RTS**") for central counterparties ("CCPs") on the time horizons for the liquidation period (within which the CCP should be able to either transfer or liquidate the position of a defaulting clearing member and have sufficient margins to cover the exposures arising from the transfer or liquidation of relevant positions) (the "**Discussion Paper**"). This Discussion Paper is aimed at;

- CCPs;
- Clearing Members; and
- Financial Counterparties ("**FCs**") and Non-Financial Counterparties ("**NFCs**") accessing CCPs services of Clearing Members.

Input from stakeholders will help ESMA review the RTS with respect to client accounts and, if necessary, develop a revised draft to submit to the European Commission in the form of a Commission delegated regulation. Before finalising any draft RTS, ESMA will consult with the European Banking Authority ("**EBA**") and the European System of Central Banks ("**ESCB**").

The closing date for responses was 30 September 2015. The Discussion Paper and response received can be found at the following link;

Esma Consultation-Review-EMIR-Article-26-RTS-1532013

**(iii) ESMA reports to European Commission on functioning of EMIR framework**

On 13 August 2015, ESMA published four reports (the "**Reports**") on how the EMIR framework has been functioning, and providing input and recommendations to the European Commission's EMIR Review. Three of the Reports are required under Article 85 of EMIR, and cover NFCs, pro-cyclicality and the segregation and portability for CCPs. The fourth Report responds to the European Commission's EMIR Review Consultation and includes recommendations on amending EMIR in relation to the clearing obligation, the recognition of third country CCPs and the supervision and enforcement procedures for trade repositories.

The Reports are available on ESMA's website at the following link;

Esma recommends changes EMIR framework

**(iv) Provisional version of European Commission's Delegated Regulation on IRS clearing under EMIR**

On 6 August 2015, the European Commission published the provisional text of the Delegated Regulation it has adopted that sets out regulatory technical standards for the introduction of a central clearing obligation for over-the-counter interest rate swaps under EMIR (the "**Delegated Regulation**"). The explanatory memorandum to the Delegated Regulation states that the Regulation is in line with the formal opinion adopted by ESMA in January 2015, which was revised in March 2015.

The Delegated Regulation covers interest rate swaps denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features, including the index used as a reference for the derivative, its maturity, and the notional type (that is, the nominal or face amount that is used to calculate payments made on the derivative). The contracts are:

- Fixed-to-float interest rate swaps ("**IRS**"), known as plain vanilla interest rate derivatives;
- Float-to-float swaps, known as basis swaps;
- Forward rate agreements; and
- Overnight index swaps

The Delegated Regulation sets out four different categories of counterparties to which the clearing obligation applies and specifies the phase in periods for each. The different categories and the phase-in periods are as follows;

| Category | Counterparty Type | Clearing Obligation Commencement |
|---|---|---|
| 1 | Clearing members of a recognised or authorised central counterparty ("**CCP**") for at least one of the classes of interest rate swaps covered by the Delegated Regulation | 6 months after the Delegated Regulation enters into force |
| 2 | Financial Counterparties ("**FCs**") and certain alternative investment funds ("**AIFs**") belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion for each of the 3 months after the Delegated Regulation is published in the Official Journal, excluding the month of publication | 12 months after the Delegated Regulation enters into force |

| | | |
|---|---|---|
| 3 | FCs and AIFs not in either category 1 or 2 above | 18 months after the Delegated Regulation enters into force |
| 4 | Non-Financial Counterparties that exceed the clearing threshold ("**NFC+**") not falling within another category | Three years after the Delegated Regulation enters into force |

A contract between two counterparties in different categories would be subject to the clearing obligation from the later date.

The obligation to clear the above referenced OTC derivative instruments will apply not only to transactions entered after the effective date applicable to the relevant category of counterparty but also to transactions concluded between the first authorisation of a CCP under EMIR (which took place on 18 March 2014) and the later date on which the clearing obligation actually takes effect for the relevant category of counterparty (the "**frontloading requirement**"), unless the OTC derivative entered into has a remaining maturity lower than the minimum remaining maturities which are laid down in the RTS and which are based on the category of counterparty and type of OTC derivative.

The Delegated Regulation is subject to the scrutiny of the European Parliament and the Council of the European Union before it can be published in the Official Journal. If neither body raises an objection it will be published in the Official Journal and will enter into force 20 days after its publication.

An accompanying press release states that this is the first clearing obligation that ESMA has proposed and it is expected to propose obligations for other types of OTC derivative contracts in the near future.

The text of the Delegated Regulation is available at this link:

Europa financial markets derivatives

**(v) Feedback statement to CP90 on the supervision of NFCs under EMIR**

On 16 July 2015, the Central Bank published a feedback statement to its consultation on the supervision of NFCs under EMIR (which closed on 30 January 2015), (the "**Feedback Statement**"). The Feedback Statement acknowledges the difficulty facing the Central Bank in terms of supervision of NFCs given that the majority of NFCs themselves are not regulated by the Central Bank for the purposes of derivatives trading and only become subject to supervision following the entry into a derivative trade.

Following industry feedback, this approach has been revisited with the Central Bank preferring a risk-based model, thereby focussing on larger users of more complex derivative products.

The Feedback Statement can be found at this link;

Central bank regulation consultation papers

**(vi) ESMA report proposes to include ETDs in EMIR's interoperability arrangements for CCPs**

On 1 July 2015 ESMA published its final report on interoperability arrangements between EU-based CCPs together with related guidelines and recommendations (the "**Report**"). An interoperability arrangement is an arrangement between two or more CCPs that involves a cross-system execution of transactions.

The Report considered the scope of interoperability arrangements under EMIR to transactions in classes of financial instruments other than transferable securities and money-market instruments. In its Report, ESMA recommends to extend the EMIR provisions related to interoperability arrangements to Exchange-Traded Derivatives ("**ETDs**"). A further extension to OTC derivatives will be assessed at a later stage.

ESMA will submit the Report to the European Commission, Parliament and Council so that its recommendation can be endorsed and implemented.

**(vii) ESAs consult on margin requirements for non-centrally cleared derivatives**

The Joint Committee of the European Supervisory Authorities ("**ESAs**") (i.e. ESMA, EBA, and EIOPA has published a second consultation paper on draft RTS on risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty under EMIR, (the "**draft RTS**").

For OTC derivative transactions that will not be subject to central clearing, the draft RTS prescribe the regulatory amount of initial and variation margin that counterparties should exchange as well as the methodologies for their calculations. In addition, the draft RTS outline the criteria for eligible collateral.

The draft RTS provides that its requirements will apply from 1 September 2016 but provides for a staggered implementation of the initial margin requirements (from 1 September 2016 to 1 September 2020 depending on each counterparty's aggregate average gross notional amount of non-centrally cleared derivatives) and a different staggered implementation of the variation margin requirements. The proposed implementation aims to give more time to market participants to adapt the legal documentation, develop internal and bilateral processes and implement operational changes.

However, the draft RTS provides that entities with (or belonging to groups with) aggregate average gross notional outstanding of non-centrally cleared OTC derivatives under a threshold value of EUR 8 billion are not subject to the initial margin requirements as provided for in the draft RTS.

The draft RTS proposes that the variation margin requirements will apply from 1 September 2016 where both counterparties have or belong to groups, each of which has an aggregate average notional amount of non-centrally cleared OTC derivatives above EUR 3.0 trillion and from 1 March 2017 for all other counterparties.

The consultation period closed on 10 July 2015 and it is expected that a comprehensive feedback statement including industry stakeholders' comments will accompany the final draft RTS.

**(viii) ISDA EMIR Classification Letter and accompanying Guidance Note**

ISDA has published a new classification letter that will enable counterparties to notify each other of their status for clearing and other regulatory requirements under EMIR (the "**Classification Letter**"). The Classification Letter enables a derivatives counterparty to provide to the other sufficient status information to determine the application of certain clearing requirements under EMIR.

The ISDA EMIR Classification Letter and accompanying Guidance Note are available on ISDA's website at; http://www2.isda.org/emir/

**(ix) Responses to European Commission services consultation on EMIR implementation**

As previously reported in our last legislative update, the European Commission's Financial Stability, Financial Services and Capital Markets Union Directorate General ("**DG FISMA**") published a consultation to enable it to judge market participants' experience in implementing EMIR (the "**Consultation**"). The Consultation closed on 13 August 2015.

The responses include a joint response from HM Treasury, the Bank of England and the FCA on behalf of the UK, in which the UK Authorities identify areas of concern and make suggestions for potential amendments to the requirements under EMIR. It is expected that a summary of all of the responses received will be published at a later date.

Responses to the Consultation can be found at this link;

Europa finance consultations 2015 emir-revision

## Packaged Retail Investment Products

**(i) Joint Committee update ECON on the work on the RTS under the Regulation on PRIPs**

On 14 September 2015, Steven Maijoor, Chairman of the ESAs Joint Committee, updated ECON on the work on the RTS under the Regulation on PRIPs.

According to Mr Maijoor, the work on the PRIIPs Key Information Document ("**KID**") is one of the most important projects that has been undertaken so far by the Joint Committee, particularly given its relevance to investor and consumer protection.

Mr Maijoor believes that the success of the KID will depend on the presentation and content of the document. Mr Maijoor outlines that the risk indicator in the KID will be one of the main elements that consumers consider when making their investment decision. On the presentation side of things, Mr Maijoor outlines that the Joint Committee will be guided principally by the feedback from the consumer testing.

As regards costs, Mr Maijoor states that the key objective is to provide comprehensive information on costs by means of a summary cost indicator that includes both explicit and implicit costs.

The statement is available in full via the following link:

Esma2015_056_statement_by_steven_maijoor_chair_esas_joint_committee_econ_scrutiny_session_on_priips_14092015.pdf

**(ii) EIOPA delivers technical advice on product intervention powers**

On 3 July 2015, EIOPA published its technical advice to the European Commission on product intervention powers regarding insurance-based investment products. EIOPA is providing its technical advice, as requested by the European Commission, on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the financial system of the EU or to the stability of the financial system within at least one Member State. The report analyses feedback received by EIOPA following consultation on powers to monitor and temporarily restrict/prohibit the sale of insurance-based investment products.

EIOPA's technical advice takes into account the work that has already been undertaken by ESMA and EBA on product intervention powers in respect to financial instruments and structured deposits respectively, under the Regulation on Markets in Financial Instruments ("**MiFIR**").

This technical advice proposes criteria and factors to be taken into account in determining when such threats or concerns occur. These can be listed in two categories:

- elements concerning the protection of the investor: the ease and cost to switch or sell a product, the situation of the issuer of an insurance-based investment product, the degree of complexity of the insurance-based investment product, type of financial activity or practice of an insurance or reinsurance undertaking; and

- elements that could constitute a potential threat to the integrity and functioning of the financial market such as the risk to resilience or smooth operation of markets.

The full report is available via the following link:

Europa Publications Technical Advice on certain product intervention criteria(published).pdf

**(iii) Joint Committee update ECON on the work on the RTS under the Regulation on PRIIPs**

On 14 September 2015, Steven Maijoor, Chairman of the ESAs Joint Committee, updated ECON on the work on the RTS under the Regulation on Packaged Retail and Insurance based Investment Products ("**PRIIPs**").

According to Mr Maijoor, the work on the PRIIPs KID is one of the most important projects that has been undertaken so far by the Joint Committee, particularly given its relevance to investor and consumer protection.

Mr Maijoor believes that the success of the KID will depend on the presentation and content of the document. Mr Maijoor outlines that the risk indicator in the KID will be one of the main elements that consumers consider when making their investment decision. On the presentation side of things, Mr Maijoor outlines that the Joint Committee will be guided principally by the feedback from the consumer testing.

As regards costs, Mr Maijoor states that the key objective is to provide comprehensive information on costs by means of a summary cost indicator that includes both explicit and implicit costs.

The statement is available in full via the following link:

Esma2015_056_statement_by_steven_maijoor_chair_esas_joint_committee_-_econ_scrutiny_session_on_priips_14092015.pdf

## The Joint Committee (ESMA, EIOPA and EBA)

**(i) Joint Committee Report on Risks and Vulnerabilities in the EU financial system**

On 9 September 2015, the Joint Committee issued its August 2015 Joint Committee Report on Risks and Vulnerabilities in the EU financial system (the "**Report**").

The Report informs on risks in the EU financial system (banking, securities and insurance sector), with a particular focus on cross-sectoral vulnerabilities and developments.

The Report identifies that risks to the EU financial system have persisted since March 2015. Risks resulting from low interest rates, search for yield and low profitability of financial institutions remain present, along with risks related to reductions in market liquidity and their possible implications for asset managers. The fragile recovery of European economies continues to adversely affect profitability and asset quality of the EU's financial sector.

The Report can be accessed via the following link:

Europa documents Autumn Risk Report.pdf

**(ii) The Joint Committee of the three European Supervisory Authorities' ("ESAs") report on prudential assessment of acquisitions and increases of qualifying holdings**

On 3 July 2015, the Joint Committee of ESAs published a consultation paper on updated guidelines for the prudential assessment of acquisitions and increases of qualifying holdings in a credit institution, assurance, insurance or re-insurance undertaking or an investment firm.
The main objective of the Guidelines is to provide the necessary legal certainty and clarity with regard to the assessment process contemplated in the sectoral Directives and Regulations[1], by:

- harmonising the conditions under which the proposed acquirer of a holding in a financial institution is required to notify its decision to the competent authority responsible for the prudential supervision of the target undertaking;
- defining a clear and transparent procedure for the prudential assessment by the competent authorities of the proposed acquisition or increase of a qualifying holding;
- specifying clear criteria of a strictly prudential nature to be applied by the competent authorities in the assessment process; and
- ensuring that the proposed acquirer knows what information it will be required to provide to the competent authorities in order to allow them to assess the proposed acquisition.

[1] (a) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;
(b) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II);
(c) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, on OTC derivatives, central counterparties and trade repositories;
(d) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;
(e) Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012; and
(f) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;

The Guidelines are intended to bring into line the supervisory practices in the financial sector throughout the EU and further clarify the position of proposed acquirers in relation to notifying the competent supervisory authorities that are responsible for the prudential supervision of the undertaking. Common procedures are defined to assist supervisory authorities in the assessment process as laid out in EU Legislation.

The ESAs will consider all comments received by 2 October 2015. The guidelines can be accessed via the following link:

Joint Guidelines on Qualifying Holdings.pdf

## The European Fund and Asset Management Association ("EFAMA")

### (i) EFAMA releases its latest international statistical release

On 6 August 2015, EFAMA released its latest international statistical release containing the worldwide investment fund industry results for the first quarter of 2015. It included the following highlights:

- investment fund assets worldwide stood at a new all-time high of €37.8 trillion at end March 2015, reflecting growth of 13.7 percent during the first quarter;
- worldwide net cash inflows increased in the first quarter to €574 billion, up from €495 billion in the fourth quarter of 2014, due to increased net inflows to equity, bond and balanced/mixed funds;
- long-term funds recorded net inflows of €585 billion during the first quarter, a 54 percent increase from the previous quarter (€379 billion);
- money market funds registered net outflows of €12 billion during the first quarter of 2015, compared to net inflows of €116 billion in the fourth quarter of 2014 which is largely attributable to net outflows in the United States (€70 billion), whereas Europe registered net inflows during the quarter of €43 billion;
- assets of equity funds represented 40 percent and bond funds represented 21 percent of all investment fund assets worldwide at the end of the first quarter. Of the remaining assets, money market funds represented 11 percent and the asset share of balanced/mixed funds was 17 percent; and
- the market share of the ten largest countries/regions in the world market were the United States (49.2%), Europe (32.5%), Australia (3.9%), Japan (3.8%), Brazil (3.2%), Canada (3.1%), China (2.0%), Rep. of Korea (0.9%), South Africa (0.4%) and India (0.4%).

The full international statistical release is available via the following link:

Quarterly_International150808_International_Statistical_Release_2015_Q1.pdf

## Payment Services Directive

**(i) ECON publishes a supplementary report on the Payment Services Directive ("PSD2")**

On 29 September 2015, the European Parliament's Committee on Economic and Monetary Affairs ("**ECON**") published a supplementary report on the proposed PSD2. The report contains proposed amendments to the European Commission's original proposals.

PSD2 will repeal the 2009 Payment Services Directive ("**PSD1**"), and seeks to further standardise and make interoperable card, internet and mobile payments, as well as reducing barriers to entry, align charging and ensuring consistent application across the EU.

The link to the report is included below:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2015-0266+0+DOC+PDF+V0//EN

## Market Abuse

**(i) ESMA publishes final report on technical standards on Market Abuse Regulation ("MAR")**

On 28 September 2015, ESMA published its final technical standards ("**TS**") on the Market Abuse Regulation ("**MAR**"). MAR will generally take effect in Ireland on 3 July 2016 and will replace the existing Market Abuse Directive from that date.

The TS fleshes out certain requirements of MAR and translates how the legislation will apply in practice to market participants, market infrastructures and national supervisors.

The draft technical standards will now be submitted to the European Commission for it to decide whether to endorse them. The European Commission has three months in which to approve them.

The report is available via the following link:

https://www.esma.europa.eu/system/files/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf

## Fitness and Probity

**(i) Central Bank publishes updated FAQ document**

On 14 July 2014, the Central Bank published an updated version of the "Fitness and Probity – Frequently Asked Questions" document ("**FAQs**"). The FAQs were drawn up to address commonly asked questions which have been raised in relation to the operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010.

The document further addresses certain questions that may arise in the context of the amendments made to the Central Bank Reform Act 2010 by the European Union (Single Supervisory Mechanism) Regulations 2014.

The updated FAQs are available via the following link:

Central bank regulation processes and service providers/Documents/FINALUpdated FAQ 20150402.pdf

**(ii) Central Bank publishes Individual Questionnaire (IQ) Application Guidance**

On 13 July 2015, the Central Bank published the Fitness and Probity Individual Questionnaire Guidance. This document provides guidance for regulated financial service providers and applicant firms in relation to submitting Individual Questionnaires through the Central Bank of Ireland's Online Reporting System ("**ONR**") for individuals who are proposed to hold Pre-Approval Controlled Functions ("**PCFs**").

The full guidance document is available at the following link:

Central bank regulation processes and Documents Individual Questionnaire User Manual.pdf

## Central Bank of Ireland

**(i) Central Bank publication on Investment Fund Statistics**

On 29 September 2015, the Central Bank published Investment Fund Statistics for Quarter 2 of this year. The key developments include the following:

- the net asset value ("**NAV**") of investment Funds resident in Ireland ("**IFs**") expanded by over 29 per cent in the year to Q2 2015, rising to €1,456, while they remained broadly stable since Q1 2015, rising by just over 0.3 per cent.;
- net transaction inflows were offset by negative asset revaluations, primarily in debt security holdings. Conversely hedge funds benefitted from relatively strong revaluations over the quarter;

- The press release indicates that overall debt holdings declined by 2.5 per cent as net purchases by funds were more than offset by negative revaluations over the quarter. At end Q2 2015, 31 per cent of total debt held had residual maturities of between one and five years.

- IFs appear to have been only slightly impacted by uncertainty surrounding Greece and increasing concerns regarding emerging economies. The release indicates that overall exposure to Greece by Irish resident IFs amounted to just €565 million.

The press release is available at the following link:

Central bank press area Pages Investment Funds Q22015.aspx

**(ii) Central Bank publishes results of Themed Inspections on Cyber-Security**

The Central Bank has, on 23 September 2015, published the findings of its review of the management of cyber security and related operational risks across investment firms, funds service providers and stockbrokers. The objective of the review was to examine the status of firms' control environments, (including policies and procedures), to detect and prevent cyber-security breaches, as well as to assess board oversight of cyber-security.

While the review focused on the entity types highlighted above, it is also very relevant to, among others, insurance companies. Indeed, while cyber-security is a current theme for the Central Bank, it should, in any case, be a central focus for all firms.

The Central Bank indicated that it is the board's responsibility to ensure that a firm is properly governed and that it has the necessary processes and systems in place to protect the firm and its assets against cyber risk. It stressed that effective corporate governance should be combined with appropriate I.T. and cyber-security risk management to protect against cyber-crime.

The Central Bank has issued a list of best practices that firms should consider with regard to cyber-security risk, which includes the following recommendations:

1) the board should drive a culture of security and resilience throughout the firm;
2) cyber-security should be a standing agenda item for discussion at board meetings;
3) a clear reporting line to the board should be established for incidents; and
4) firms should report any substantial attacks, or successful breaches of their systems to the Central Bank.

A questionnaire has also been issued by the Central Bank, which is designed to assist firms when carrying out an evaluation of their cyber-security capabilities.

The Central Bank has highlighted that, where there is non-compliance with relevant regulatory requirements, it will have regard to its list of best practices when exercising its

regulatory and enforcement powers.

The full Dillon Eustace article, which contains some recommendations for firms, along with supporting material, may be accessed using the following link:

Publications Regulatory and Compliance Update on the Central Bank Themed Inspections on Cyber-Security.pdf

**(iii) Central Bank key dates for filing fund applications over Christmas period**

On 22 September 2015, the Central Bank issued a letter detailing the key dates for filing fund/sub fund applications and Irish qualifying investor alternative investment fund ("**QIAIF**") applications over the Christmas period.

The following deadlines apply for fund applications:

- funds and non-fast track sub funds - 16 October 2015
- fast track sub funds - 13 November 2015
- post authorisation, major items - 16 October 2015
- post authorisation, all other items - 13 November 2015

The following deadlines apply for QIAIF applications:

- 22 December 2015 - for authorisation/approval on 24 December 2015
- 23 December 2015 - for authorisation/approval on 29 December 2015
- 31 December 2015 - for authorisation/approval on 4 January 2016

Manual QIAIF applications must be submitted to the Central Bank by **3pm** on the above dates, while **5pm** is the deadline for automatic applications on the same dates.

For QIAIF change of service provider filings ("**COSPS**") that are effective from 29 December 2015 to 1 January 2016, complete applications must be submitted by close of business on Friday 18 December 2015.

**(iv) Central Bank's Quarterly Statistical Release on Money Market Funds ("MMFs")**

On 31 July 2015, the Central Bank published its quarterly statistics on MMFs, which follows from the introduction of security by security reporting in December 2014.

The statistics outline that the NAV of MMFs resident in Ireland grew by over 4 per cent from December 2014 to June 2015, rising to €402,295 million in June 2015. Total assets held by MMFs in June were €405,415 million.

MMFs also sought to enhance returns by expanding their holdings into securities with longer residual maturities. In addition, securities with residual maturities greater than 3 months increased by 17 percent over the period from December 2014 to June 2015.

The statistics are available at the following link:

CentralbankstatsinvestfundsDocuments2015q2_money_market_fund_information_release.pdf

**(v) Central Bank permits Irish Authorised Investment Funds to acquire Chinese shares**

On 15 July 2015, the Central Bank clarified, in an updated UCITS Q&A, that Irish authorised investment funds may acquire Chinese shares via the Shanghai – Hong Kong Stock Connect programme.

Stock Connect is a joint collaboration between Hong Kong Stock Exchanges and Clearing Limited and the Shanghai Stock Exchange. Stock Connect involves two central securities depositaries – Hong Kong Securities Clearing Company Limited ("**HKSCC**") and China Securities Depository & Clearing Corporation Limited (ChinaClear).

The Central Bank has imposed the following conditions:

- the depository must to satisfy itself that the manner in which the shares are to be held meet with the requirements of the UCITS/AIFM Regulations and any conditions imposed by the Central Bank;
- the depository or an entity within its custodial network (i.e. a sub-custodian) must ensure that it retains control over the shares at all times;
- in order to meet its legal obligations, the depository (or its sub-custodian) must be a participant in the HKSCC (arrangements where the broker of the investment fund is a participant of HKSCC but not an entity within the depositary's custodial network will not satisfy the provisions of the relevant legislation);
- the depository or a member of its custodial network can be a General Clearing Participant, Direct Clearing Participant or Custodian Participant as appropriately determined by the depositary in line with its legal obligations as depositary; and
- the depository must keep under review the Stock Connect infrastructure arrangements to ensure that its legal obligations can be met.

The updated Q&A is available via the following link:

Central bank regulation markets update_FINALUCITS QA DOC.pdf

**(vi) Central Bank speech on regulatory perspectives on financial technologies**

On 8 September 2015, a speech given by the Central Bank's Director of Markets Supervision, Gareth Murphy addresses the financial regulation in the era of innovation, technology and disruption. Mr. Murphy outlines that cyber-security is currently a focus for

the Central Bank in light of the increased incidence of attacks on personal and corporate IT systems globally.

On the topic of regulatory engagement, Mr. Murphy outlined five core elements that underline the process:

- data collection;
- analysis of data;
- input from political and social stakeholders;
- a legal system; and
- a supervisory model

Mr. Murphy states that each step is sequential and should only be undertaken after a deliberate cost benefit assessment has been conducted.

The regulatory consequences are plainly evident according to Mr. Murphy. New distribution technologies are becoming faster and cheaper, with firms increasingly using mobile devices and applications that directly link to a person's bank account, enabling that person to carry out a wide variety of transactions more efficiently within the existing payments infrastructure.

Mr. Murphy outlines that, in a small number of cases, the Central Bank has seen fraudulent redemption requests being paid by regulated firms operating inadequate identity verification processes. New forms of identification are currently being explored such as social media profiles and cryptography which uses public and private keys to lock and unlock information and products.

The speech is available in full via the following link:

Central bank press area speeches Pages Gareth Murphy Regulatory Perspectives .aspx

**(vii) Central Bank refers Case to Inquiry**

On 10 July 2015, the Central Bank has for the first time used special powers to launch an inquiry into the former Irish Nationwide Building Society ("**INBS**") and a number of unnamed managers connected with INBS.

Following an investigation conducted by the Central Bank under its Administrative Sanctions Procedure (pursuant to Part IIIC of the Central Bank Act 1942 (as amended) (the "**Act**"), the Central Bank concluded that it had reasonable grounds to suspect that INBS had committed certain prescribed contraventions and that certain persons who were concerned in the management of INBS at the relevant time participated in the commission of those suspected prescribed contraventions.

The Central Bank's decision can be accessed via the following link:

Central bank press releases pages Central Bank refers INBS Administrative Sanctions Procedure case to Inquiry.aspx

**(viii) Central Bank Publication on Funding the Cost of Financial Regulation**

On 3 July 2015, the Central Bank and the Department of Finance published a Joint Consultation Paper in relation to "Funding the Cost of Financial Regulation". This paper outlines a number of proposed changes to the current funding structure, and deals with a number of topics including:

- the case for full industry funding;
- the current regulatory cost model;
- the future cost of financial regulation;
- international comparisons;
- domestic comparisons; and
- regulatory landscape for each of the regulatory sectors.

The Consultation Paper suggests that any change to the funding levy arrangements will have due regard to the impact not just on the financial services sector and individual firms, but also to the fiscal impact and any potential impact on consumers.

The most significant change outlined in the Consultation Paper is to move from partial (i.e., 50% with certain exceptions) to full industry funding, so that it aligns the funding levies paid by regulated entities with the costs of their supervision.

The public consultation is open for submissions until 25 September 2015 and submissions received will be published on the Central Bank website.

The consultation paper is available via the following link;

Central bank regulation consultation papers/Documents/CP95 Consultation Paper on Funding the Cost of Financial Regulation CP95 Consultation Paper on Funding the Cost of Financial Regulation.pdf

## Anti-Money Laundering ("AML")/Counter-Terrorist Financing ("CTF")

**(i) New ESMA Q&A on AML and CTF risks associated with investment-based crowdfunding**

On 1 July 2015, ESMA published a set of questions and answers ("**Q&A**") to promote the sound, effective and consistent application of EU rules on AML and CTF to crowdfunding.

ESMA has been carrying out a programme of work on crowdfunding. In December 2014, it published an opinion and advice to clarify existing EU rules applicable to crowdfunding and identify regulatory gaps. In the course of its work, ESMA identified a

need to clarify the extent of the risks involved in investment-based crowdfunding relating to the potential for money laundering and terrorist financing. The Q&A provides responses to questions raised by NCAs and draw on expert input from the Joint Committee's AML sub-committee.

The Q&A are aimed at NCAs to support them in delivering common supervisory approaches and practices in this area, taking into account the characteristics of, and risks associated with, different aspects of crowdfunding. However, ESMA considers the Q&A will also help market participants by providing clarity on the issues involved.

ESMA does not expect to produce any further Q&A on this topic, but it will consider, as appropriate, whether any aspects of the Q&A should be revised in the light of new legislation (for example, the Fourth Money Laundering Directive (**"MLD4"**) or significant developments in the crowdfunding market.

The updated Q&A is available via the following link:

http://www.esma.europa.eu/system/files/esma_2015_1005_qa_crowdfunding_money_laundering_and_terrorist_financing.pdf

**(ii) FATF objectives for July 2015 - June 2016**

The Financial Action Task Force ("**FATF**") published a paper (dated 23 June 2015) in which the incoming FATF President, Je-Yoon Shin, outlines the objectives of the Korean Presidency of the FATF for the plenary year July 2015 to June 2016. In particular the paper identifies seven key priorities as follows;

- enhancing FATF and FSRB's efforts in countering terrorist financing;
- addressing the challenges faced by the fourth round of mutual evaluation;
- addressing capacity constraints;
- work prioritisation and strategic allocation of resources;
- mid-term review of FATF Mandate;
- reinforcing the global AML/CFT network;
- closer engagement with the private sector and civil society

The paper is available on the FATF website at the following link:

http://www.fatf-gafi.org/media/fatf/documents/Objectives-for-FATF-XXVII-2015-2016.pdf

**(iii) MLD4 published in the Official Journal**

On 5 June 2015, the MLD4 (Directive (EU) 2015/849) was published in the Official Journal of the EU. MLD4 extends and replaces the Third Money Laundering Directive ("**MLD3**"), which is the existing EU AML and counter terrorist financing CTF regime. Member States are obliged to transpose MLD4 into national law by 26 June 2017.

The introduction of MLD4 is largely driven by revisions to the FATF Recommendations which were adopted in February 2012 in order to address emerging AML and CTF concerns. The European Commission also published a report in 2012, which reviewed MLD3.

MLD4 provides that the ESAs, through their Joint Committee must publish guidelines on the risks of money laundering and terrorist financing affecting the EU financial sector. MLD4 also makes provision for the publication of delegated acts and technical standards by the European Commission. As outlined above, Member States must bring into force the laws, regulations and administrative provisions to comply with MLD4 by 26 June 2017. It should also be borne in mind that Member States may impose more stringent obligations than those outlined in the directive itself. Firms must now start preparing for compliance with the new rules and will need to consider the effect that MLD4 may have on their business.

## Data Protection

**(i)** On Tuesday 6 October, 2015 the Court of Justice of the European Union ("**ECJ**") ruled, in the case of *Schrems* v *Data Protection Commissioner,* that the 'Safe Harbour' arrangements between the United States and the European Commission are invalid.

These arrangements, agreed between the United States and the European Commission, allowed companies based in the U.S. to store personal data about European citizens on U.S. based computer servers without breaching E.U. data protection law (in Ireland; the Data Protection Acts 1988 and 2003). Companies agree to adhere to the Safe Harbour principles, enforced by the U.S. Federal Trade Commission, and as a result are deemed to provide sufficient protection for the personal data. This has allowed Irish subsidiaries of U.S. companies, or even Irish companies which use service providers based in the U.S., transfer personal data to the U.S. without breaching data protection laws.

Please find attached Dillon Eustace article on the recent decision by the ECJ and its possible implications at the following link;

Publications Corporate European Court of Justice Data Protection Ruling.pdf

**(ii) European Commission statement on data retention laws**

On 16 September 2015, the European Commission published a statement on national data retention laws. The European Commission has indicated that ever since the European Court of Justice annuled the EU Data Retention Directive, the decision of whether or not to introduce national data retention laws is a national decision. The European Commission has stated that it has no intention to reopen old discussions.

In the absence of EU rules, Member States are free to maintain their current date retention systems or set up new ones, providing they comply with basic principles under EU law.

The statement is available via the following link:
http://europa.eu/rapid/press-release_STATEMENT-15-5654_en.htm

**(iii) European Protection Data Protection Supervisor issues recommendations on the General Data Protection Regulation**

On 27 July 2015, the European Protection Data Protection Supervisor ("**EDPS**") sent his recommendations to the EU co-legislators negotiating the General Data Protection Regulation ("**GDPR**"). The report sets out recommendations which include simplifying the rules on data protection impact assessments and the reporting of data breaches to regulators and affected consumers.

The recommendations include:

- more independent, more authoritative supervision: The EU's data protection authorities should be ready to exercise their roles the moment the GDPR enters into force, with the European Data Protection Board fully operational as soon as the Regulation becomes applicable;
- effective safeguards, not procedures: The EDPS recommends a scalable approach which reduces documentation obligations on controllers into a single policy on how it will comply with the regulation taking into account the risks, with compliance demonstrated transparently, whether for transfers, contracts with processors or breach notifications;
- a better equilibrium between public interest and personal data protection: Those responsible must make the necessary arrangements to prevent personal information being used against the interest of the individual;
- trusting and empowering supervisory authorities: The EDPS recommends allowing supervisory authorities to issue guidance to data controllers and to develop their own internal rules of procedure;

A full list of the recommendations can be accessed via the following link:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2015/15-07-27_GDPR_Recommendations_EN.pdf

## Irish Stock Exchange

**(i) Irish Stock Exchange publishes Quarterly Statistics**

On 15 July 2015, the Irish Stock Exchange ("**ISE**") published its quarterly statistics for Quarter 2 of 2015. The statistics indicate that the ISE had more than 33,700 securities from over 4,100 issuers in 82 countries around the globe on its markets at the end of June 2015.

The statistics paint a positive picture in that new debt securities for Q2 were 2,088 as compared to 1,691 in Q1. Among the new bonds and debt instruments listed were issuers such as:

- Spanish airline Iberia which raised €125m from a new corporate bond;
- French automotive parts manufacturer Faurecia, a subsidiary of Peugeot which raised €500m; and
- Italian broadcaster Radio Televisione Italiana which listed its first ever bond (€350m) on the ISE's Main Securities Market ("**MSM**").

Trading in Irish shares has increased according to the statistics with over 1.2m equity trades done on the ISE's electronic trading platform in the quarter to June 2015. This increase brings the total for the first six months of 2015 to 2.7m, 20% more than the first half of 2014.

Irish Government bonds and Treasury Bills performed well in the Q2 of this year with turnover reaching €54.9bn, bringing the total for the first half to €160bn, an increase of 28% on the first half of 2014.

The statistics are available in full via the following link:

http://www.ise.ie/Media/News-and-Events/2015/Quarterly-statistics-show-33-700-securities-listed-on-ISE-markets.html

**(ii) Irish Stock Exchange has a new approach to annual fees**

The Irish Stock Exchange ("**ISE**") has announced that issuers of Collateralized Loan Obligations, collateralized Debt Obligations and Collateralized Bond Obligations ("**CLO/CDO/CBO**") securities will now be required to choose one of the following two options:

- pay a capped upfront payment of €10,000 in respect of annual fees; or
- include wording within the offering document which provides for designation of ISE annual listing fees in the Priority of Payments section.

ISE has clarified that the annual fee amount remains unchanged; it is only the manner in which such fees are collected that is changing.

The ISE has confirmed that this requirement will be applicable to all new CDO / CLO / CBO submissions to the Main Securities Market and the Global Exchange Market received on or after 1 September 2015.

For more information please visit the ISE website via the following link:

http://www.ise.ie/

**(iii) New ISE NAV Submission Process**

The process for submitting Net Asset Values ("**NAVs**") to the ISE moves online from 28 September 2015. It will operate through the ISE's online portal https://www.isedirect.ie/

The new system will provide a more secure environment for users and will facilitate real time intraday updates, together with having one centralised location where users can access ISE services in relation to ISIN, NAVs and LEIs all via their account.

The key changes that will occur after 28 September are:

- all users submitting NAVs need to register on www.isedirect.ie
- files for automated submission need to be set up in advance via www.isedirect.ie, approved as suitable by the ISE and emailed to a new email address navdirect@ise.ie
- for users who do not use files, each NAV will be processed individually via www.isedirect.ie
- the current email addresses will no longer be in use so files sent these email addresses will not be processed, Also, fax and other hard copy forms containing NAV details will no longer be processed

More information can be accessed via the following link:

http://www.ise.ie/Media/News-and-Events/2015/New-NAV-submission-process-being-introduced-in-September-2015.html

**(iv) ISE attracts new investment managers**

The ISE Fundhub, set up in 2014, has had considerable success in attracting Investment Managers of ISE-listed funds to sign up to the site. As of September 2015, there are over 300 professional investors and 37 investment managers signed up, including E.I Sturdza and EFG Asset Management.

ISE Fundhub is a portal for investment managers and professional investors that provides information on listed funds and allows investment managers to post information on the investment management company and upload documents such as the Prospectus/Supplements, KIIDS, reports and for their listed funds. The site automatically performs analytics and peer performance on funds which have signed up. This is based on NAV history and on-going pricing, which is automatically uploaded to the FundHub when a NAV is reported to the ISE.

## Companies Act 2014

As advised in our Quarter 2 update, the Companies Act 2014 ("**CA 2014**") commenced on 1 June 2015 and the previous Companies Act 1936-2013 has been almost entirely repealed, save a number of limited exceptions.

CA 2014 provides for an 18 month transition period that commenced on 1 June 2015. All existing companies limited by shares that have not converted prior to 31 August 2016 will be treated as Designated Activity Companies ("**DACs**"). From 1 December 2016, all existing private companies limited by shares that have not converted to a Company Limited by Shares ("**LTD**") or re-registered as a DAC, will automatically be converted to an LTD.

Please see our website http://www.dilloneustace.ie/Publications/Regulatory-and-Compliance for various Dillon Eustace updates on the key elements of CA 2014.

## Consumer Protection (Regulation of Credit Servicing Firms) Act 2015

On 8 July 2015, the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015 (the "**Act**") came in to effect. The Act aims to ensure that borrowers have the benefit of the regulatory safeguards that they enjoyed prior to the sale of their loans to unregulated entities, including pursuant to the Central Bank Code of Conduct on Mortgage Arrears, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code (together the "**Codes**") as well as the right to make complaints to the Financial Services Ombudsman (the "**FSO**"). It is proposed that the legislative changes envisaged by the Bill will be brought about by way of amendment to the Central Bank Acts 1942 – 2014.

The Act introduces a new type of regulated entity called a "Credit Servicing firm". Credit servicing is defined broadly in the Bill and includes the following activities:-

- notifying the relevant borrower of changes in interest rates or in payments due under the credit agreement or other matters of which the credit agreement requires the relevant borrower to be notified,

- taking any necessary steps for the purposes of collecting or recovering payments due under the credit agreement from the relevant borrower.

Entities falling within the scope of the new credit servicing regime will be required to apply for authorisation from the Central Bank under Section 30 of the Central Bank Act 1997 (as amended), and will be regulated by them. The Consultation Paper, issued by the Central Bank on 14 July 2015, covers its proposed Authorisation Requirements and Standards that applicants must satisfy. The consultation period closed on 30 September 2015.

For more information please see article on Dillon Eustace's website:

Publications BankingCapitalMarketsThe ConsumerProtection (RegulationofCreditServicingFirms) Bill 2015.pdf

## Regulation of Lobbying Act 2015

The Regulation of Lobbying Act 2015 (the "**Act**"), which came into effect on 1 September 2015, applies to a diverse range of individuals who would not be generally regarded as lobbyists.

The Act obliges those engaged in lobbying activities to register on the online lobbying register (the "**Register**"), which is maintained by the Standards in Public Office Commission (the "**Standards Commission**"), and to provide certain information in respect of those activities for inclusion in the Register. The Act is intended to ensure that the influence of lobbying in public-decision making practices is more transparent.

Under the Act, a person will be considered to be a lobbyist where they make a "relevant communication". A communication will relate to a "relevant matter" if it relates to the:

- initiation, development or modification of any public policy or of any public programme;
- preparation or amendment of an enactment; and
- award of any grant, loan or other financial support, contract or other agreement or of any licence or other authorisation involving public funds.

The Act further provides that a person is deemed to be carrying on lobbying activities if they fall within certain categories. An outline of these categories is provided below:

- persons in the course of their business being paid to make, manage or direct the making of a relevant communication on behalf of a client who has more than ten full time employees or is a representative body or an advocacy body which has at least one full time employee;
- an employer, or their agent or employee, with more than ten employees where the communications are made on behalf of the employer;
- a representative body with at least one employee communicating on behalf of its members and the communication is made by a paid employee or office holder of the body;
- an advocacy body with at least one employee that exists primarily to take up particular issues and a paid employee or office holder of the body is communicating on such issues; and
- any person communicating about the development or rezoning of land.

The Standards Commission will be responsible for the regulation of lobbying. There is a positive obligation on lobbyists to register under the Act and to provide returns to the Standards

Commission every four months. The first returns are due to be submitted to the Register by 21 January 2016, i.e., registration is mandatory from this date if you have engaged in lobbying during the period 1 September 2015 to 31 December 2015.

The Act provides for various contraventions, which include making a late return, failing to make a return, or making a false or misleading return. The Standards Commission can carry out investigations of alleged contraventions and have extensive powers to demand information, explanations and documents. It also has powers of search and seizure.

For more information on the Act, please visit Dillon Eustace's website:

Publications Regulatory and Compliance Regulation of Lobbying Act 2015.pdf

## Irish Taxation Update

### (i) Common Reporting Standard ("CRS") Update

As noted in our prior update, the effective start date of CRS in Ireland is currently set at 1 January 2016. Relevant due diligence procedures are required to be in place for new accounts opened from this date.

For the purposes of on-boarding these new accounts (i.e. new accounts opened from 1 January 2016), it will generally be necessary to obtain self-certification forms (which is very similar to the due diligence presently required for FATCA). For these purposes, the Irish Fund's CRS Committee is currently in the process of drafting template self-certification forms. It is intended that these templates will combine the required self-certifications for both FATCA and CRS (thus, reducing the requirement for new accountholders to complete separate self-certifications for both FATCA and CRS).

Notwithstanding the above, please note that the CRS has yet to be fully implemented into Irish law. Irish tax legislation was introduced in the Finance Act 2014 that allowed for the making of regulations to introduce CRS, however, these regulations are still in draft format. It is envisaged that they will be finalised in the very near future, and that any related data protection issues will be resolved at this point.

**Dillon Eustace**
**October 2015**

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