Funds
Quarterly Legal and Regulatory Update

Period covered:
1 October 2016 – 31 December 2016

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Undertakings in Collective Investments and Transferrable Securities ("UCITS")

(i) Irish Funds letter to the Central Bank regarding UCITS V Depositary Agreements

On 13 October 2016, Commission Delegated Regulation (EU) 2016/438 regarding the obligations of UCITS funds, their relevant management companies and their depositaries (the "**Delegated Regulation**") came into effect.

The Delegated Regulation, supplementing the UCITS V Directive, provides further detail on the obligations imposed on depositaries under UCITS V and includes certain elements that must be included in depositary agreements.

On 10 October 2016, Irish Funds submitted a letter to the Central Bank regarding Depositary Agreements subject to UCITS V. Irish Funds state that given the volume of UCITS V depositary agreements for completion, and having regard to some of the other amendments which have been required to be made to fund documentation, there were a number of cases where the relevant depositary agreement had not yet been cleared of comment and in some instances not filed.

In the letter, Irish Funds advised that any outstanding depositary agreements which address the Delegated Regulation will be filed with the Central Bank as soon as practicable and that where the Central Bank is already aware of the status of a depositary agreement, as a result of submissions already made with the Central Bank, no further notification will be made via the Central Bank ONR system.

(ii) ESMA updates to Q&A on application of UCITS Directive

During the quarter, ESMA published two updated versions of its Q&A paper on the application of the UCITS Directive (2009/65/EC) as recently revised by UCITS V (2014/91/EU), the first on 12 October 2016 and the second version on 21 November 2016. The Q&A aims to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures. UCITS V introduces rules on remuneration policies and sanctions and strengthens the depositary regime.

The Q&A published on 12 October 2016 clarifies the following:

- **Section I Question 3** – A multi-lateral trading facilities ("**MTF"**) operating in the EU can be considered to be a "regulated market" for the purposes of the UCITS Directive provided that certain requirements are complied with including that the MTF constitutes an MTF as defined in Article 4(1)(15) of MiFID Directive 2004/39/EC and operates regularly, is open to the public and is recognised.

- **Section II Question 7** – Information on remuneration which is posted on a UCITS website as required under UCITS V need not be translated and can be provided in English;

- **Section III Question 6(o)** – Where a UCITS invests cash collateral which it receives in short term money market funds, those short term money market funds should be taken into account when complying with limits imposed on the UCITS with respect to investment in other funds; and

- **Section VII Question 1** – This question deals with the reporting obligation under the Regulation on reporting and transparency of securities financing transactions (**"SFT Regulation"**) and outlines that the obligation to provide information on the use of securities financing transactions (**"SFT"**) and total return swaps used by the UCITS during the relevant period in the periodic reports of the UCITS must be included in the next annual or half-yearly report to be published after 13 January 2017. This may relate to a reporting period beginning before 13 January 2017.

The Q&A was again amended on 21 November 2016 to include clarification on investment limits applicable where a UCITS invests in other underlying funds.

- **Section 1 Question 4a** clarifies that a UCITS can acquire no more than 25% of the units of any "single UCITS" or other collective investment schemes (**"CIS"**). It also confirms that the reference to any "single UCITS or other CIS" relates to any individual sub-fund of a UCITS umbrella/other CIS umbrella.

  Therefore when complying with this requirement, the investing UCITS must make sure that it does not acquire more than 25% of the units of any individual sub-fund within an umbrella UCITS/other umbrella CIS rather than applying this 25% limit at the umbrella fund level.

  It should be noted that the Central Bank has always interpreted the above UCITS requirements in the same way; and

- **Section 1 Question 4b** provides the same clarification with respect to the requirement that a UCITS cannot invest more than 10% of net assets in any one single UCITS/other CIS (or up to 20% of net assets if so permitted by the national regulators) and confirms that for the purposes of complying with this investment restriction, reference to "single UCITS or other CIS" relates to any one individual sub-fund within a UCITS umbrella/other CIS umbrella.

  It should be noted that this was already clarified for Irish domiciled UCITS in the Irish legislation by virtue of Regulation 73(1) of the UCITS Regulations.

A copy of the October version of the Q&A can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1455_qa_on_application_of_the_ucits_directive.pdf

The November version of the Q&A can be located at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1586_qa_on_ucits_directive.pdf

(iii) Central Bank Guidance on Fund Management Company Effectiveness

Following on from its third and final consultation on Fund Management Company Effectiveness – Managerial Functions, Operational Issues and Procedural Matters ("**Third Consultation"**) issued in June 2016, which related to Consultation Paper 86, the Central Bank published the final version of the Fund Management Companies Guidance (the **"Guidance"**) on 16 December 2016. It also published a feedback statement which outlines the rationale for the final position taken on certain matters (the **"Feedback Statement"**).

The Guidance now sets out, in final form, the following six chapters:

- Delegate Oversight;
- Organisational Effectiveness;
- Directors Time Commitments;
- Managerial Functions;
- Operational Issues; and
- Procedural Matters.

The term ***fund management company*** includes an Irish domiciled UCITS management company, authorised AIFM, self-managed UCITS investment company or ICAV and an internally managed AIF.

In its Feedback Statement, the Central Bank has confirmed the following decisions:

- Location of Directors & Designated Persons

The new rule around the location of Directors and Designated Persons which was proposed in the Third Consultation (the **"Location Rule"**) was the focus of a significant number of responses received by the Central Bank.

In the Feedback Statement, the Central Bank discussed the responses received and it presented its analysis of the issues arising under the Location Rule, under the headings of 'Effective Supervision', 'Impact' and 'Indirect Impact'.

The outcome of this analysis by the Central Bank is that, having been 'swayed...to a certain extent by arguments concerning expertise and the need to facilitate organisational models which draw appropriately on the expertise of the promoter/investment manager' it has decided to adjust the calibration of the "effective supervision” requirement to permit more involvement by persons located outside the EEA by reducing the ratio from “at least two thirds” to “at least half” of directors and managerial functions in the EEA. The Guidance also confirms that at least half of the managerial functions must be carried out by at least two designated persons in the EEA.

The final Location Rule is as follows:

A fund management company which has a PRISM impact rating of **Medium Low** or above will be required to have at least:

1. Three Irish resident directors or at least two Irish resident directors and one designated person based in Ireland;

2. Half of its directors in the EEA; and

3. Half of its managerial functions performed by at least two of designated persons in the EEA.

A fund management company which has a PRISM impact rating of **Low** will be required to have at least:

1. Two Irish resident directors;

2. Half of its directors in the EEA; and

3. Half of its managerial functions performed by at least two of designated persons in the EEA.

The proposal to allow half of the directors and designated persons to be located outside the EEA is to be welcomed to the extent that it brings greater flexibility and potential operational efficiency. It may also result in the promoters / investment managers who are not located in the EEA carrying out those managerial functions which are most suited based on their expertise for example, the investment management, risk management or distribution managerial functions.

- Managerial Functions Guidance

The guidance on managerial functions is largely in the manner proposed in the Third Consultation. However there are certain changes, the principal changes being the following:

1. The deletion of the so-called ‘co-location rule’ which had required that where designated persons were not working in the same location, they should be employed by the same group of companies;

2. Clarification of the Central Bank's expectations as regards its minimum requirements for record retention, archiving and retrievability of the relevant documents of a fund management company. The Guidance now provides that the fund management company must ensure that there are adequate procedures and processes in place to seek to avoid any manipulation of its hard copy or soft-copy documents;

3. Clarification of what the Central Bank considers the term 'immediate' to mean in the context of providing relevant documents to the Central Bank. The Guidance now provides that where documentation is requested by the Central Bank before 1pm, it should be provided to the Central Bank on the same day. Any request by the Central Bank made after 1pm should be provided before 12 noon on the next business day; and

4. The Guidance provides that the retention of records policy of the fund management company should be independently audited, with the Central Bank noting in the Feedback Statement that this audit may be undertaken by an external party or by the internal audit function.

- Timing and Transitional Arrangements

Existing management companies must comply with the new rules introduced by the Central Bank by **1 July 2018**.

These new rules relate to (i) streamlining of managerial functions to six managerial functions, (ii) the organisational effectiveness role (iii) the retrievability of records rule and (iv) the Location Rule.

It should be noted that any fund management companies authorised between **1 November 2015** and **30 June 2017** are required to comply with the new managerial functions and organisational effectiveness role as at the date of authorisation.

In addition, the Central Bank will only approve applications for authorisation from any new management company submitted on or after **1 July 2017** where the fund management company will be organised in a way which complies with the new rules introduced by the Guidance.

The new rules will be included in the amended Central Bank UCITS Regulations and in the forthcoming Central Bank AIF Regulations (which will replace the Central Bank's AIF Rulebook).

The Central Bank has updated its UCITS and AIFMD Q&A's to address the transitional arrangements related to the Guidance.

A copy of the Guidance and the Feedback Statement is available via the following links:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/161219_FINAL%20FUND%20MANCOS%20GUIDANCE%20_CD.pdf

http://www.centralbank.ie/regulation/marketsupdate/Documents/161219_CP86%20FEEDBACK%20STATEMENT_THIRD%20CONSULT_FINAL_RHD%20(002).pdf

(iv) Central Bank UCITS Q&A

On 19 December 2016, the Central Bank published a fifteenth edition of the UCITS Q&A, which include the following:

- **Existing question ID 1015** has been updated to confirm that the existing regulatory considerations relating to acquisition of shares via the Shanghai-Hong Kong Stock Connect apply equally to the Shenzhen-Hong Kong Stock Connect. This follows an earlier announcement that the Central Bank will now permit UCITS to acquire shares via the Shenzhen-Hong Kong Stock Connect;

- **Question ID 1053** has been deleted and replaced to clarify the transitional arrangements applicable to specific provisions of the final version of the Fund Management Companies Guidance (discussed in section (iii) above);

- **New question ID 1075** confirms that an existing UCITS management company or UCITS SMIC availing of the transitional arrangements under ID 1053 can make changes to its organisational structure during the transitional period provided the changes bring it closer to compliance with the final version of the Fund Management Companies Guidance;

- **New Question ID 1073** has been added to confirm that it is not possible for sub-funds of an ICAV to have different auditors; and

- **New Question ID 1074** has been added to clarify that the business plan of a UCITS management company or a UCITS SMIC must be kept up to date but there is no obligation to submit changes to the business plan to the Central Bank for review or approval. However, the business plan must be provided on request to the Central Bank. If the relevant party intends to engage in any significant new activities, they must consult in advance with the Central Bank.

The latest version of the Central Bank's UCITS Q&A can be located at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/161219_UCITS%20QA%20NO%2015%20FINAL_CC.pdf

Alternative Investment Fund Management Vehicle (“AIFMD”)

(i) ESMA Chair Statement to ECON on AIFMD passport

On 11 October 2016, Steven Maijoor, Chairman of ESMA, made a statement to the Economic and Monetary Affairs Committee (“**ECON**”) of the European Parliament on ESMA's advice on the application of the passport to non-EU alternative investment fund managers (“**AIFMs**”) and alternative investment funds (“**AIFs**”) under the Alternative Investment Fund Managers Directive (2011/61/EU) (“**AIFMD**”).

The statement identifies ESMA’s priorities in the short term as:

- Continuing the assessment of Bermuda and the Cayman Islands with a view to reaching a definitive conclusion on whether to extend the passport to these countries;
- Commencing the assessment of another group of non-EU countries when ESMA has more clarity on the next steps envisaged by co-legislators; and
- Preparing a framework to deal with the possibility of the passport being extended to one or more non-EU countries covering ESMA's role in the functioning of the passport and strengthening supervisory co-operation.

A copy of the statement can be accessed at the following link:

https://protect-eu.mimecast.com/s/enQ8BH0Zm9sx0

(ii) ESMA Q&A on AIFMD

During the quarter, ESMA published three updates of its Q&A paper on the application of AIFMD, the first on 6 October 2016, the second on 16 November 2016 and the third on the 16 December 2016.

The Q&A published on 12 October 2016 clarifies the following:

- **Section VII Question 1** – This question deals with the reporting obligation under the Regulation on reporting and transparency of securities financing transactions (**“SFT Regulation”**) and outlines that the obligation to provide information on the use of securities financing transactions (**“SFT”**) and total return swaps used by an AIF during the relevant period in the periodic reports of the AIF must be included in the next annual or half-yearly report to be published after 13 January 2017. This may relate to a reporting period beginning before 13 January 2017.

On 16 November 2016, ESMA published an updated version of its Q&A on AIFMD dealing with cross-border notification requirements and delegation, which clarifies the following:

- **Section II Questions 6 and 7 –** These confirm that (i) where an existing fund is marketed in a host Member State and it creates a new share class, no new notification is required under Article 32 of AIFMD and (ii) when material changes are being made to existing notifications, the AIFM must submit a full set of documentation with the revised notification letter again. Any amendments to the original notification letter and accompanying documentation must be highlighted by the AIFM; and

- **Section VIII Questions 2 and 3** – In the case of Question 2, it suggests that where a third party other than the AIFM discharges a function set out in Annex I of AIFMD (such as administration), the AIFM must consider them to be a delegate and ensure that all requirements relating to delegation must be complied with by the AIFM in respect of that third party. Question 3 confirms that in the case of an externally-managed AIF, the AIF itself cannot perform the investment management/risk management/administration functions itself. These must be discharged by the AIFM or a delegate of the AIFM.

On 16 December 2016, ESMA published an updated version of its Q&A on AIFMD, which updates the existing Q&A (**Section III Question 1**) on reporting obligations imposed on non-EU AIFM under Article 42 by adding an additional sentence which confirms that a non-EU AIFM should report information on any EU master AIF which is not marketed in the EU which has an EU feeder AIF or a non-EU feeder AIF marketed in the EU.

The full and updated Q&A can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1669_qa_on_aifmd.pdf

(iii) Central Bank Q&A on AIFMD

On 19 December 2016, the Central Bank published a twenty second edition of the AIFMD Q&A, which clarifies the following:

- **Existing Question ID 1094** has been updated to confirm that the existing regulatory considerations relating to acquisition of shares via the Shanghai-Hong Kong Stock Connect apply equally to the Shenzhen-Hong Kong Stock Connect. This follows an earlier announcement that the Central Bank will now permit AIFs to acquire shares via the Shenzhen-Hong Kong Stock Connect;

- **New Question ID 1113** has been added to clarify the transitional arrangements applicable to specific provisions of the final version of the Fund Management Companies Guidance (discussed under UCITS section (iii) above);

- **New question ID 1114** confirms that an existing AIFM or internally managed AIF availing of the transitional arrangements under ID 1113 can make changes to its organisational structure during the transitional period provided the changes bring it closer to compliance with the final version of the Fund Management Companies Guidance;

- **New Question ID 1115** has been added to clarify that the programme of activities (**"POA"**) of an AIFM or internally managed AIF must be kept up to date but there is no obligation to submit changes made to the POA to the Central Bank for review or approval. However, the POA must be provided on request to the Central Bank. If the relevant party intends to engage in any significant new activities, they must consult in advance with the Central Bank;

- **New Question ID 1112** has been added to confirm that for a wholly owned subsidiary that is converting to a private company limited by shares, the new constitutional document of the subsidiary should state that the subsidiary will be run in a manner which reflects the investment objective and policy of the QIAIF; and

- **New Question ID 1116** has been added to confirm that it is not possible for sub-funds of an ICAV to have different auditors.

The full and updated Q&A can be found at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/161219_Version%2022%20AIFMD%20QA%20FINAL_CC.pdf

Irish Collective Asset – Management Vehicles ("ICAV")

(i) ICAV Winding-Up Forms

On 28 October 2016, the Central Bank published additional forms on its website relating to the winding up of a Registered and Authorised ICAV called Form W7 – Notification of Annulment of Winding Up. This applies to the Notification of Annulment of Winding Up pursuant to Section 154 of the Irish Collective Asset-management Vehicles Act 2015 (**"ICAV Act"**) which applies Part 11 of the Irish Companies Act 2014 (**"Companies Act"**) with specific reference to Section 669(2) of the Companies Act.

A link to this form can be found on the Central Bank's website via the following:

http://www.centralbank.ie/regulation/industry-sectors/funds/ICAV%20Registration%20and%20Post-Registration/Pages/Forms.aspx

European Venture Capital Funds ("EuVECA") & European Social Entrepreneurship Funds ("EuSEF")

(i) Proposed Regulation amending the EuVECA and EuSEF Regulations

The European Venture Capital Funds Regulation ("**EuVECA**") and European Social Entrepreneurship Funds Regulation ("**EuSEF**") (together the **"existing Regulations"**) created two new types of collective investment funds in order to make it easier and more attractive for investors to invest in unlisted SMEs. The existing Regulations were adopted on 17 April 2013 and came into force on 22 July 2013.

Although the existing Regulations were not due for a general review until July 2017, the European Commission decided to bring the date of this review forward in the light of responses to its February 2015 green paper on building the capital markets union. The European Commission identified that, although the existing Regulations have applied since 2013, only a small number of EuVECA or EuSEF funds have so far been launched.

In July 2016, the European Commission published its proposal to amend the existing Regulations (the **"Proposed Regulation"**) and the proposed amendments include the following:

- To allow all AIFMs (not just those managing less than €500m in AUM) to use the EuVECA and EuSEF designations when marketing such funds in the EU;

- To widen the potential investment universe of EuVECAs beyond the current limitation to SMEs, allowing EuVECA to invest in larger unlisted companies employing less than 500 and SMEs listed on growth markets with a market capitalization not exceeding 200 million euro;

- To entrust ESMA with the responsibility for drafting regulatory standards to determine what constitutes "sufficient own funds" for managers of EuVECAs and EuSEFs to ensure that Member States do not impose different standards across the EU; and

- To streamline cross-border marketing and cross-border registration.

The Proposed Regulation was submitted to the European Parliament and the Council of the EU for adoption under the co-decision procedure. The latest compromise proposal was published by the Council of the EU on 28 November 2016.

On 16 December 2016, the Council of the EU published a press release announcing that it has agreed its negotiating stance on the Proposed Regulation and requested the incoming Maltese Council presidency to start negotiations with the European Parliament, with a view to reaching an agreement at first reading.

The compromise proposal published by the Council of the EU on 28 November 2016 is available at the following link:

http://data.consilium.europa.eu/doc/document/ST-14935-2016-INIT/en/pdf

Securities Financing Transactions Regulation ("SFTR")

(i) Securities Transactions Regulation Reporting: Upcoming Deadline

Entities engaging in securities financing transactions and total return swaps, including UCITS management companies, UCITS investment companies and AIFMs will be aware of the EU Regulation on reporting and transparency of securities financing transactions (the "**SFT Regulation**") that entered into force on 12 January, 2016.

The SFT Regulation provides for reporting and disclosure requirements (subject to certain transitional implementation dates) with the aim of improving the transparency of securities financing transactions ("**SFTs**") in the shadow banking sector. SFTs are specifically defined in the SFT Regulation as follows:

- A repurchase transaction (to include reverse repos);
- Securities or commodities lending/borrowing;
- A buy-sell back or sell-buy back transaction; and
- A margin lending transaction.

Article 13 of the SFT Regulation, which applies from **13 January 2017**, requires UCITS management companies, UCITS investment companies, and AIFMs to provide information to investors on the use made of SFTs and total return swaps in the annual report of each UCITS/AIF under management, as well as in each half-yearly report for UCITS.

In October 2016, ESMA confirmed that the information should be included in the next annual or half-yearly report to be published after 13 January 2017. This now clarifies that the requirements apply to financial statements covering a reporting period before 13 January 2017 (e.g. investment funds with a year end as of 30 September or annual/half yearly reports with a reporting period ending 31 December, 2016) and which are published after 13 January 2017.

The SFT Regulation does not prescribe whether disclosure needs to be included in any specific section of the financial statements; however the disclosure in the annual report will be subject to audit.

Dillon Eustace has prepared an article setting out what needs to be included in the disclosure and the next steps to be taken. A copy of the article is available at the following link:

http://www.dilloneustace.com/download/1/Publications/Financial%20Services/The%20Securities%20Financing%20Transaction%20Regulation%20-%20Upcoming%20Jan%202017%20deadline.PDF

Money Market Funds Regulation

(i) Final compromise text agreed on MMF Regulation

On 16 November 2016, the Council of the EU published a press release announcing that its Presidency had reached provisional agreement with representatives of the European Parliament on the proposed Regulation on Money Market Funds ("**MMF Regulation**").

On 8 December 2016, the final compromise text of the European Parliament on the proposed Regulation on Money Market Funds ("**MMF Regulation**") was agreed. The

Committee of Permanent Representatives of Member States to the EU ("**COREPER**") also endorsed the text on this date on behalf of the Council.

The MMF Regulation is described as one of the most contentious and complex pieces of legislation, which has been held up for more than three years. The MMF Regulation is designed to ensure the smooth operation of the short-term funding market and follows efforts by the G20 and the Financial Stability Board ("**FSB**") to strengthen the oversight and regulation of the shadow banking system.

The final compromise text is now subject to a technical jurist/linguist review which is expected to be completed in the first quarter of 2017. It is expected that the text will be formally approved by the Council of the EU and the European Parliament by the end of the first quarter of 2017. If proceeding at this expected pace, the MMF Regulation will be published in the Official Journal of the EU in the second quarter of 2017 and will apply in the second quarter of 2018. While much of the detail is contained in the MMF Regulation, the Commission is mandated to adopt delegated acts for further detail on certain technical aspects. ESMA will also be expected to implement a reporting template.

To view the compromise text, please see the following link:

http://data.consilium.europa.eu/doc/document/ST-14940-2016-INIT/en/pdf

Packaged Retail Insurance-based Investment Products ("PRIIPs")

(i) PRIIPs Commission Delegated Regulation (EU) 2016/1904 on product intervention published in the Official Journal of the EU

On 29 October 2016, Commission Delegated Regulation (EU) 2016/1904 of 14 July 2016 supplementing Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (the **"PRIIPs KID Regulation"**) with regard to product intervention (the **"Commission Delegated Regulation"**) was published in the Official Journal of the EU.

The Commission Delegated Regulation is based on the empowerments set out in Articles 16 and 17 of the PRIIPs KID Regulation, which give National Competent Authorities (**"NCAs"**) and EIOPA the power to monitor financial products under their supervision and, subject to certain conditions, to prohibit or restrict temporarily the marketing, distribution or sale of insurance-based investment products, financial activities or practices.

The powers of the NCAs and EIOPA to prohibit or restrict the marketing, distribution and sale of insurance-based investment products laid down in PRIIPs KID Regulation are subject to a number of specific conditions including the requirement to determine the relevant significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of at least one Member State of the EU. Another condition for the exercise of these powers is that existing regulatory requirements under EU law applicable to the insurance-based investment products, or activity or practice are not sufficient to address those concerns and risks.

The Commission Delegated Regulation sets out the criteria and factors to be taken into account by both the NCAs (Article 2 of the Commission Delegated Regulation) and EIOPA (Article 1 of the Commission Delegated Regulation) when determining the existence of a significant investor protection concern or threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of at least one Member State of the EU.

The Commission Delegated Regulation entered into force on 18 November 2016 and applies from 31 December 2016. It can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1904

(ii) Update on status of PRIIPs KID Regulatory Technical Standards

The draft PRIIPs KID Regulatory Technical Standards (the **"RTS"**), adopted by the European Commission on 30 June 2016, were rejected by the European Parliament on 14 September 2016. The European Parliament called for modifications to the RTS which relate to multi-option PRIIPs, the inclusion of a fourth performance scenario (the 'stress scenario') and the use of the comprehension alert.

On 10 November 2016, the European Commission wrote to the European Supervisory Authorities (**"ESAs"**) informing them of its intention to amend the draft RTS to address the concerns expressed by the European Parliament. In the letter, the European Commission set out its proposed amendments relating to multi-option PRIIPs, the fourth performance scenario and the comprehension alert and invited the ESAs to amend the draft RTS within six weeks on the basis of the proposed amendments. The European Commission also invited the ESAs to develop guidance in line with the relevant provisions of the RTS and without altering their substance on the practical application of credit risk mitigation factors under the RTS for insurers.

The European Commission's letter to the ESAs can be found at the following link:

https://esas-joint-committee.europa.eu/Publications/Letters/Ares%206353871_Letter%20to%20EBA%20ESMA%20and%20EIOPA%20-%20PRIIPs%20draft%20RTS.pdf

On 22 December 2016, the ESAs issued their response to the intention of the European Commission to amend the draft RTS. Following a discussion of the proposed amendments, the ESAs presented an Opinion to the three Boards of Supervisors covering all areas addressed by the European Commission's letter and the amendments in the RTS. The EBA and ESMA Boards adopted the Opinion on the basis of a qualified majority. However, the Opinion did not receive the support of a qualified majority of the EIOPA Board as there were different views in particular concerning the treatment of multi-option products, the criteria to determine whether a comprehension alert should be included in a KID and the provision in the RTS on the credit risk mitigation factors for insurers. Consequently, the three ESAs are not in a position to provide an agreed opinion on the amended draft RTS. The ESAs did however convey in the letter the main concerns raised during the discussions that the amendments to the performance scenarios proposed by the Commission raised comprehension issues and may be misleading.

The ESAs response to the European Commission can be found at the following link:

https://esas-joint-committee.europa.eu/Publications/Letters/ESAs-2016-81%20Joint%20letter%20on%20RTS%20on%20PRIIPs.pdf

(iii) Regulation amending application date of PRIIPs KID Regulation published in the Official Journal of the EU

On 23 December 2016, Regulation (EU) 2016/2340 of the European Parliament and of the Council of 14 December 2016 amending Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products as regards the date of its application (the **"Amending Regulation"**) was published in the Official Journal of the EU.

The publication of the Amending Regulation follows the European Parliament's rejection of the European Commission's Regulatory Technical Standards (adopted 30 June 2016) in September 2016 along with its call, together with a large majority of Member States, for a deferral of the date of application of the PRIIPs KID Regulation.

The Amending Regulation provides that the PRIIPs KID Regulation will now apply from 1 January 2018. This deferral of twelve months will give additional time for those concerned to adhere to the new requirements.

The Amending Regulation entered into force on 24 December 2016 and can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2340&from=EN

European Markets Infrastructure Regulation ("EMIR")

(i) Central Bank publishes letter on EMIR reporting requirements

On 30 September 2016, the Central Bank published a letter to industry to provide feedback on the EMIR Regulatory Return ("**ERR**"), by outlining on the main issues identified from this review to facilitate appropriate amendments to ensure complete, accurate and timely reporting of derivate trades.

The letter contains recommendations for how firms' compliance with EMIR reporting requirements could be improved.

The letter can be found at the following link:

https://www.centralbank.ie/regulation/EMIR/Documents/EMIR%20Industry%20Feedback%20Letter.pdf

(ii) European Commission adopts and publishes text of Implementing Regulation on ITS on format and frequency of trade reports to trade repositories

On 26 October 2016, the European Commission adopted an Implementing Regulation (the "**Implementing Regulation**") amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards ("**ITS**") with regards to the format and frequency of trade reports to trade repositories under EMIR.

On 27 October 2016, the European Commission published the text (plus Annex) of the Implementing Regulation. The Implementing Regulation will enter into force 20 days following its publication in the Official Journal of the EU and will apply from the first day of the ninth month from the date of entry into force.

The Implementing Regulation can be found in full at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/161026-implementing-regulation_en.pdf

(iii) European Commission reports on outcome of EMIR review

On 23 November 2016, the European Commission published a report on the review of EMIR. Article 85(1) of EMIR, required the European Commission to review and prepare a general report on EMIR to be submitted to the European Parliament and the Council, together with any appropriate proposals.

The European Commission considered that no fundamental change should be made to the nature of the core requirements of EMIR, which are integral to ensuring transparency and mitigating systemic risks in the derivatives markets. Nonetheless, a number of areas were highlighted where the EMIR requirements could be adjusted without compromising on its overall objectives in order to:

(i) Simplify and increase the efficiency of the requirements; and

(ii) Reduce disproportionate costs and burdens.

Some of the identified issues and considered actions are:

- Review of the categorisation of non-financial counterparties;
- Adjustment of trade reporting requirements to reduce operational burden;
- A possible mandate for supervisory approval of initial margin models;
- Review of extent of frontloading requirements;
- Potential clearing solutions for small financial counterparties; and

- A possible longer-term exemption from clearing for pension schemes.

In the report the European Commission also stated that it will propose a legislative review of EMIR in 2017. This review will also assess the technical standards made under EMIR.

The European Commission's full review can be found at the following link:

http://ec.europa.eu/finance/financial-markets/docs/derivatives/161123-report_en.pdf

(iv) ESMA publishes final report on delaying EMIR clearing obligations for financial counterparties with a limited activity volume

On 14 November 2016, ESMA published its final report (ESMA/2016/1565) on the amended application of the clearing obligations for financial counterparties with a limited volume of activity under EMIR.

The aim of the report is to present amended regulatory technical standards (**"RTS"**) as a result of the difficulties facing some financial counterparties with a limited volume of activity in preparing for the clearing obligation.

The following changes to the timeframe for application of the clearing oblgiation proposed by ESMA, along with the reasoning for the changes, are outlined in the final report:

- An extension of the phase in period of the clearing obligations by two years, for financial counterparties with a limited volume of activity; and

- Modification of the compliance dates in the Delegated Regulation on interest rate swaps and credit default swaps. This compliance date is now 21 June 2019.

The European Commission must now make a decision whether to endorse the RTS within three months from the date of submission of the final report.

The final report, along with the draft RTS, can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1565_final_report_on_clearing_obligation.pdf

(v) ESMA opinion defines supervisory approach for CCPs' product and service extensions and significant changes to risk models under EMIR

On 15 November 2016, ESMA published an opinion (ESMA/2016/1574) on common indicators for new products and services under Article 15 and for significant changes under Article 49 of EMIR.

ESMA provides this opinion to NCAs for the purpose of building a common supervisory culture and consistent supervisory practices, as well as ensuring uniform procedures and consistent approaches throughout the EU.

The opinion states that national competent authorities (**"NCAs"**) supervising authorised CCPs should follow some commonly agreed indicators to identify when a change is significant (as required by Article 15) and seek the NCAs and ESMA's opinion on the project of extension of the services and activities and on the significant change of the risk models and parameters (as required by Article 49).

The opinion is available via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1574_-_opinion_on_significant_changes_for_ccps.pdf

(vi) Delegated Regulation on RTS on risk mitigation techniques for uncleared OTC derivative contracts under EMIR published in OJ

On 15 December 2016, Commission Delegated Regulation ((EU) 2016/2251) supplementing EMIR with RTS on risk mitigation techniques for uncleared OTC derivative contracts under Article 11(15) of EMIR was published in the Official Journal of the EU.

The European Commission adopted the Delegated Regulation on 4 October 2016, and it came into force 20 days following its publication in the Official Journal of the EU on 4 January 2017.

The Delegated Regulation can be found in full at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2251&from=EN

(vii) ESMA consults on draft RTS on data to be made publicly available by trade repositories under EMIR

On 15 December 2016, ESMA published a consultation paper on draft RTS on data to be made publicly available by trade repositories ("**TRs**") under article 81 of EMIR (ESMA/2016/1661).

Article 81(5) of EMIR requires ESMA to develop RTS specifying the frequency and the details of the information to be made available to the relevant authorities and the information to be published by TRs. Annex III to the consultation sets out the proposed RTS in the form of a draft Commission Delegated Regulation, including discussions and analysis on exchange-traded derivatives ("**ETDs**"), data aggregation and aggregation on commodity derivatives.

The consultation closes on 15 February 2017 at which point ESMA will analyse the responses received and submit the draft RTS for inclusion in a final report to the European Commission.

The consultation paper can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1661_consultation_paper_on_tr_public_data_under_emir.pdf

(viii) ESMA publishes peer review report on CCP compliance with margin and collateral requirements under EMIR

On 22 December 2016, ESMA published a report (ESMA/2016/1683), for information purposes only; outlining the results of a peer review it conducted on how NCAs assess compliance by CCPs with the margin and collateral requirements under EMIR.

The report identifies a number of areas where there is a lack of consistency in the supervisory approaches of NCAs, including differences in the frequency and depth of the supervision of CCPs that are similar in terms of size, systemic importance, nature and complexity. The report makes a series of recommendations to improve consistency in supervisory practices.

ESMA also identified differing supervisory approaches regarding the frequency and proactivity of NCAs' assessments and reviews of margin requirements. This includes areas of CCPs' back testing and sensitivity analysis reports, the adequacy of CCPs' confidence levels and the liquidation period and the efficiency of countercyclical tools used by CCPs.

The report is available via the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1683_ccp_peer_review_report.pdf

(ix) European Commission adopts Delegated Regulation further extending temporary clearing exception for Pension Scheme Arrangements under EMIR

On 20 December 2016, the European Commission adopted a Delegated Regulation amending EMIR as regards the extension of the transitional periods related to pension scheme arrangements ("**PSAs**") (C (2016) 8542 final).

The reasoning for this extension was outlined in European Commission press release, where it was noted, that in the absence of such as extension, PSAs would have to source cash for central clearing. Since PSAs hold neither significant amounts of cash nor highly liquid assets, imposing central clearing requirements on them would require very far-reaching and costly changes to their business model which could ultimately affect pensioners' income. Therefore the European Commission concluded that CCPs need this additional time to find solutions for pension funds

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither of them objects, it will enter into force the day after it is published in the Official Journal of the EU.

The text of the Delegated regulation is available via the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/C-2016-8542-F1-EN-MAIN-PART-1.PDF

Benchmark Regulation

(i) ESMA publishes list of designated NCAs under the Benchmark Regulation

On 7 November 2016, ESMA published a new webpage containing a list of the national competent authorities ("**NCAs**") that have been designated under Article 40 of the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds ((EU) 2016/1011) ("**Benchmark Regulation**").

The countries/NCAs listed are as follows:

- Luxembourg – CSSF;
- Spain – CNMV;
- Sweden – Finansinspektionen;
- UK – FCA; and
- Belgium – FSMA.

ESMA's new webpage can be located at the following link:

https://www.esma.europa.eu/designated-national-competent-authorities-under-benchmarks-regulation

(ii) ESMA publishes technical advice on future rules for financial benchmarks

On 10 November 2016, ESMA published its final report to the European Commission setting out technical advice on the Benchmark Regulation.

Key areas addressed in ESMA's final report are:

- How benchmarks' reference values can be calculated by using data reporting structures under existing EU rules, such as MiFID II and EMIR;
- The criteria for deciding whether third country benchmarks can be endorsed for use in the EU; and
- The definition of the criteria of what constitutes making a benchmark figure available to the public.

The European Commission will now prepare the final rules for benchmarks which should enter into force by 1 January 2018.

The final report can be found at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1560_final_report_on_technical_advice_on_benchmarks_regulation.pdf

(iii) ESMA publishes responses to consultation on technical standards under the Benchmark Regulation

On 8 December 2016, ESMA published the responses it received to its consultation launched in September 2016 on draft regulatory technical standards and implementing technical standards required under the Benchmark Regulation. Respondents included;

- The Investment Association ("**IA**");
- European Fund and Asset Management Association (**"EFAMA"**); and
- Federation of European Securities Exchanges (**"FESE"**).

ESMA expects to issue its final report on these draft technical standards in April 2017.

The responses can be found at the following link:

https://www.esma.europa.eu/press-news/consultations/consultation-draft-technical-standards-under-benchmarks-regulation

Credit Rating Agencies ("CRAs")

(i) European Commission publishes report on the CRA Regulation

On 19 October 2016, the European Commission published a report responding to reporting requirements set out in the CRA Regulation (Regulation 1060/2009). The report seeks to:

- Analyse references to external credit ratings contained in both EU legislation and private contracts between parties in financial markets and consider potential alternatives to these current credit ratings, however the European Commission is of the view that there is currently no alternative which can entirely replace external credit ratings;
- Analyse the impact and effectiveness of the CRA Regulation measures governing competition in the credit rating industry. This will be an ongoing task as some provisions are in the process of being implemented;

- Evaluate the effectiveness of the CRA Regulation on the prevention of conflict of interests and the use of alternative remuneration models; and

- Consider the possibility of the establishment a European CRA for the assessment of foreign debt and a European credit rating foundation for all other European credit ratings.

The full report containing all of the European Commission's findings can be found at the following link:

http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-664-EN-F1-1.PDF

(ii) Joint Committee of ESAs' publishes final report on good supervisory practices for reducing mechanistic reliance on credit ratings

On 20 December 2016, the Joint Committee of European Supervisory Authorities (**"ESAs"**) published a report on good supervisory practices for reducing sole and mechanistic reliance on credit ratings. The purpose of the report is to provide for a level of cross-sectoral consistency in the implementation of elements of the CRA Regulation.

The report is designed for use by national competent authorities (**"NCAs"**) responsible for supervising credit institutions, investment firms, insurance and reinsurance undertakings, institutions for occupational retirement provision, management companies, investment companies, AIFMs and central counterparties (**"CCPs"**).

The report aims to do this using a common framework of non-binding good supervisory practices for NCAs, which are set out in two groups:

- The first group of good practices, detailed in section IV of the report, creates a general framework for NCAs regarding how they should monitor the use of credit ratings by their supervised entities, what alternative and complementary measures are available, and how NCAs can address issues of nature, scale and complexity; and

- The second set of good practices, detailed in section V of the report, provides greater detail on how mechanistic reliance on credit ratings can be addressed within the different business processes of NCAs' supervised entities.

The report can be located at the following link:

https://esas-joint-committee.europa.eu/Publications/Reports/JC%202016%2071%20Final%20Report%20Good%20Supervisory%20Practices%20for%20Reducing%20Mechanistic%20Reliance%20on%20Credit%20Ratings.pdf

The Joint Committee (ESMA, EIOPA and EBA)

(i) Joint Committee of ESAs 2017 work programme

On 12 October 2016, the Joint Committee of the ESAs (the "**Joint Committee**") published its 2017 work programme, dated 30 September 2016.

In the work programme, the Joint Committee states that, during 2017, it aims to assess more closely cross-sectoral opportunities and threats created by the increasing digitalisation of finance and financial technology. The ESAs will also continue to explore synergies in their activities (by launching joint procurements) and cooperate on financial reporting issues relevant to the banking, insurance and securities sectors. They will also continue to provide operational and secretarial support to the ESAs' Board of Appeal.

The Joint Committee states that its aims for 2017 are to:

- Provide further guidance (via Q&As) on the implementation of the Regulation on key information documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs**") (Regulation 1286/2014) ("**PRIIPs Regulation**");
- Conclude its work on the automation in financial advice and continue to monitor the market during 2017;
- Continue to assess the opportunities and challenges relating to the use of "big data" and personal data by financial institutions to profile consumers, identify patterns of consumption and make targeted offers;
- Aim to prepare a general mapping of the rules for different firms operating in the banking, securities and insurance sectors and analyse issues experienced by supervisors;
- Continue to analyse the key trends and vulnerabilities to financial stability and continue to include appropriate cross-referencing in the sectoral risk reports with possible further analysis gathered on the digitalisation of finance and on financial technology from this perspective;
- Publish, in 2017, guidelines under Article 25 of the revised Wire Transfer Regulation ((EU) 2015/847) ("**WTR**"), draft regulatory technical standards (**"RTS"**) on central contact points under Article 45(10) of the Fourth Money Laundering Directive ((EU) 2015/849) ("**MLD4**");
- Publish draft RTS under Article 45(6) of MLD4 on measures firms should take to handle the risk of money laundering or terrorist financing where a third country's

laws prohibit the application of equivalent anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") standards;

- Continue their work to fulfil their mandates under MLD4 and carry on their work on fostering the cooperation of competent authorities in relation to the AML/CTF supervision of credit and financial institutions that operate on a cross-border basis; and

- Take action to respond to AML/CTF issues as they arise, including in response to emerging findings from the "Panama papers", amending existing guidelines to take account of new legal and regulatory developments and new guidelines on virtual currency exchange platforms.

A copy of the ESAs full 2017 work programme can be located at the following link:

http://www.eba.europa.eu/documents/10180/1615338/JC+2016+42+%28Joint+Committee+Work+Programme+2017+-+Final%29.pdf

(ii) EBA publishes Consultation Paper on draft guidelines on internal governance released

On 28 October 2016, the EBA published a Consultation Paper on the draft guidelines on internal governance. The purpose of the draft guidelines is to:

- Complete the various governance provisions in the Capital Requirements Directive (**"CRD"**) by taking into account the principle of proportionality, specifying the tasks, responsibilities and organisation of the management body, the organisation of institutions and groups, including the need to create transparent structures that allow for a supervision of all their activities and specifies requirements for the three lines of defence and, in particular, the risk management, compliance and audit function; and.

- Update and replace the existing set of Guidelines on internal governance (GL 44 published in 27 September 2011) and introduce additional aspects that aim to foster a sound risk culture to be implemented by the management body, to strengthen its oversight over the institutions' activities and their risk management framework. Additional guidelines have been provided to further increase the transparency of institutions' offshore activities and the consideration of risks within institutions' change processes.

The consultation runs until 28 January 2017 and can be located at the following link:

http://www.eba.europa.eu/documents/10180/1639914/Consultation+Paper+on+Guidelines+on+internal+governance+%28EBA-CP-2016-16%29.pdf

(iii) Consultation Paper - Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under the Capital Requirements Directive and the MiFID II Directive

On 28 October 2016, the EBA and ESMA published a joint Consultation Paper on draft guidelines on the assessment of the suitability of members of the management body and key function holders under the CRD and the MiFID II Directive.

These draft guidelines specify the requirements regarding the suitability of members of the management body of credit institutions, investment firms, financial holding companies and mixed financial holding companies. The draft guidelines:

- Provide common criteria to assess the individual and collective knowledge, skills and experience of members of the management body as well as the good repute, honesty and integrity, and independence of mind of members of the management body;
- Require members of the management body to commit sufficient time to perform their duties and specify how the number of directorships held by members of the management body should be counted, for significant institutions;
- Set out how different aspects of diversity, educational and professional background, age, gender and geographical provenance should be taken into account in the recruitment process; and
- Highlight the importance of induction and training to ensure the initial and ongoing suitability of members of the management body, and call for institutions to establish training policies and to allocate appropriate financial and human resources to induction and training.

The consultation is open until 28 January 2017, and can be located at the following link:

https://www.eba.europa.eu/documents/10180/1639842/Consultation+Paper+on+Joint+ESMA+EBA+Guidelines+on+suitability+of+management+body+(EBA-CP-2016-17).pdf/fdaf8526-54c2-40a9-aa85-6fdb6565fe38

(iv) EBA publishes discussion paper on new prudential regime for investment firms

On 4 November 2016, the EBA published a discussion paper on designing a new prudential regime for investment firms (the **"Discussion Paper**"). The Discussion Paper was produced in response to a call for advice by the European Commission in June 2016. The Discussion Paper requests views on proposals for a new prudential regime for investment firms that are not "systemic and bank-like".

The proposed framework focuses on the risks that investment firms pose to customers and to market integrity and liquidity and proposes a system whereby ongoing capital requirements are calculated based on capital factors that are attributed to one of these types of risk and increased by a measure of the risk to which the investment firm itself is exposed whereby an investment firm that poses more risk to customers and markets will have higher capital requirements that an investment firm that poses less risk.

The Discussion Paper considers the possibility of keeping the existing prudential treatment for investment firms set out in the Capital Requirements Regulation ("**CRR**"), as well as other issues such as corporate governance and remuneration requirements. The deadline for responses is 2 February 2017, as the EBA intends to submit an opinion and report on the new prudential regime to the European Commission by 30 June 2017.

A copy of the Discussion Paper is available at the following link:

http://www.eba.europa.eu/documents/10180/1647446/Discussion+Paper+on+a+new+prudential+regime+for+Investment+Firms+%28EBA-DP-2016-02%29.pdf

(v) Joint Committee of ESAs' publishes final report and revised joint guidelines on prudential assessment of acquisitions

On 20 December 2016, the Joint Committee of ESAs published a final report containing revised joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector.

The revised guidelines, replacing the 2008 version, aim to:

- Clarify key concepts, such as indirect holdings, persons acting in concert and decision to acquire as well as matters relevant to the assessment of an acquisition, such as the financial soundness of the proposed acquirer and suspicions of money laundering or terrorist financing;

- Clarify when the competent authority should provide an acknowledgement of receipt of the notification of an acquiring transaction thereby ensuring a consistent interpretation of time limits; and

- For indirect acquisitions of qualifying holdings apply a two-step test consisting of a "control" test supplemented by a "multiplication" test.

The Joint Committee consulted on a draft version of the revised guidelines between July and October 2015. Feedback on the consultation is set out in section 6 of the report.

The guidelines will now be translated into all the official languages of the EU and apply from 1 October 2017.

The link to the final report containing the guidelines can be found here:

https://esas-joint-committee.europa.eu/Publications/Guidelines/JC%20GL%202016%2001%20(Joint%20Guidelines%20on%20prudential%20assessment%20of%20acquisitions%20and%20increases%20of%20qualifying%20holdings%20-%20Final).pdf

The European Commission

(i) Irish Funds response to European Commission's public consultation on the main barriers to the cross-border distribution of investment funds

On 7 October 2016, Irish Funds submitted its response to the public consultation on the main barriers to the cross-border distribution of investment funds across the EU, which was launched in June 2016.

In its response, Irish Funds outlined the barriers it found to cross border distribution. These included marketing costs, regulatory costs and tax issues. Responses to the consultation were mainly led by the industry European Distribution and CMU Working Groups.

A link to the European Commission's public consultation can be found at the following link:

http://ec.europa.eu/finance/consultations/2016/cross-borders-investment-funds/index_en.htm?&lang=en&newsletter_id=166&utm_campaign=Finance%20&utm_content=Main%20barriers%20to%20the%20cross%20borders%20distribution%20of%20investment%20funds%20across%20the%20EU%20&utm_medium=email&utm_source=fisma_newsletter

The Irish Fund's response to the consultation can be found at the following link:

http://files.irishfunds.ie/1476347648-Cross-border-consultation-Final.pdf?_cldee=YnJlZWRhLmN1bm5pbmdoYW1AZGlsbG9uZXVzdGFjZS5pZQ%3d%3d&recipientid=contact-60deb89e6c66e411aea8d89d67632eac-5516eada4ab446ecbb7a91d27f81e881&urlid=0

(ii) European Commission publishes G7 principles on cyber security for the financial sector

On 11 October 2016, the European Commission published the text of the G7 fundamental elements of cyber security in the financial sector with an accompanying statement. In the statement, the European Commission welcomes the work done by the G7 Cyber Expert Group to address the increase in sophistication, frequency and persistence of cyber threats in the financial sector in order to promote the consistency of cybersecurity approaches among G7 Partners and the potential risk to financial stability.

In order to achieve this, multiple non-binding, high-level fundamental elements were designed for private and public entities in the financial sector, which are described as 'building blocks' upon which an entity can design and implement its cybersecurity strategy and operating framework, informed by its approach to risk management and culture. Public authorities can use the principles to guide public policy, regulation and supervision.

The G7 fundamental elements of cyber security are as follows:

- Element 1: Cybersecurity Strategy and Framework – Establish and maintain a cybersecurity strategy and framework tailored to specific cyber risks;

- Element 2: Governance – Define and facilitate performance of roles and responsibilities for personnel implementing, managing and overseeing the effectiveness of the cybersecurity strategy and framework;

- Element 3: Risk and Control Assessment – Identify functions, activities, products, and services and identify and implement controls to protect against and manage those risks within the tolerance set by the governing authority;

- Element 4: Monitoring – Establish a systematic monitoring process to rapidly detect cyber incidents and evaluate the effectiveness of identified controls;

- Element 5: Response to Cyber Incidents – Including the timely assessment of the nature, scope, and impact of a cyber incident and notification of internal and external stakeholders;

- Element 6: Recovery – Resume operations responsibly, while allowing for continued remediation;

- Element 7: Information Sharing – Engage in the timely sharing of reliable, actionable cybersecurity information with internal and external stakeholders on threats, vulnerabilities, incidents, and responses, etc.; and

- Element 8: Continuous Learning – Review the cybersecurity strategy and framework regularly and when events warrant.

A copy of the full G7 principles on cyber security for the financial sector can be found at the following link:

http://ec.europa.eu/finance/general-policy/docs/global/161011-cybersecurity-fundamental-elements_en.pdf

(iii) European Commission's communication on Work Programme 2017

On 25 October 2016, the European Commission published a communication to the European Parliament, the Council of the EU, the European Economic and Social Committee and the Committee of the Regions (the "**Communication**").

The Communication outlined the Commission's work programme for 2017, including;

- 21 key initiatives across the Commission's ten political priorities;

- 19 intended withdrawals or modifications of pending proposals; and

- 18 actions to review the quality of existing EU legislation.

The latest work programme is intended to provide an insight into the Commission's aims for 2017, following on from the publication of the Commission's 2016 work programme in October 2015.

The Communication can be found in full at the following link:

http://ec.europa.eu/atwork/pdf/cwp_2017_en.pdf

International Organisation of Securities Commissions ("IOSCO")

(i) Update: IOSCO Consultation on Good Practices for the Termination of Investment Funds

On 17 October 2016, IOSCO's consultation on Good Practices for the Termination of Investment Funds (the "**Consultation**") closed to responses from the public. Irish Funds led the development of the industry response which was submitted to IOSCO on the same day.

The Consultation, published 18 August 2016, aimed to obtain feedback from stakeholders on good practices for the voluntary termination of collective investment schemes and other fund structures such as commodity, real estate and hedge funds. The scope of the Consultation covers retail investment funds and investment funds for professional investors.

The Consultation covers the following:

- Disclosure at time of investment;
- Decision to terminate;
- Decision to merge;
- During the termination process; and
- Specific types of investment funds.

Responses to the Consultation were accepted before 17 October 2016.

Irish Funds submitted their response in an effort to maximise unitholder value, avoid unnecessary costs and provide finality to unitholders, funds and service providers. A copy of the response can be found at the following link:

http://files.irishfunds.ie/1476790173-Irish-Funds-Submission-Fund-termination-practice-Final.pdf?_cldee=YnJlZWRhLmN1bm5pbmdoYW1AZGlsbG9uZXVzdGFjZS5pZQ%3d%3d

&recipientid=contact-60deb89e6c66e411aea8d89d67632eac-8ac0eedf720c409ea51b3548806a5232&urlid=0

On 17 October 2016, EFAMA published their response to the Consultation. In addition to individual answers regarding IOSCO's Good Practices, EFAMA stated:

- They agree that the decision to terminate a fund can have significant impact on investors in terms of the costs associated with such an action, or the ability for investors to redeem their holdings during the termination process;

- Their recommendation that, in this regard, even in the context of a fund's voluntary termination, asset managers must abide by their fiduciary obligation to act in the best interest of their investors; and

- That they would like to draw IOSCO's attention on the definition of the notion of a termination process. In this regard, EFAMA feels it is important to clarify that the scope of this process covers every action taken once the decision to launch the process is reached. Hence, any actions prior to this, for instance related to the assessment and consideration prior to taking such a decision, is not part of the termination process.

EFAMA's full response to the Consultation can be found at the following link:

https://www.efama.org/Publications/Public/AIFMD/EFAMA%20response%20to%20the%20IOSCO%20Consultation%20on%20Termination%20of%20Investment%20Funds.pdf

(ii) IOSCO Guidance to improve quality of reporting on compliance with financial benchmarks principles

On 16 December 2016, IOSCO published a report setting out guidance to improve the consistency and quality of reporting on compliance with its principles for financial benchmarks, which were published in July 2013.

Given the variety of benchmarks operating in the market place, IOSCO determined that guidance on statements of compliance should be flexible and take the form of reasonable expectations for reporting.

IOSCO has decided, for now, not to provide further guidance on proportionality, but instead seek greater disclosure from administrators on where and how they had applied a proportional approach.

A copy of the guidance is available at the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD549.pdf

(iii) IOSCO Final Report on Retail OTC Leveraged Products

On 21 December 2016, IOSCO published a final report on retail OTC leveraged products, which analyses offers of rolling-spot forex contracts, contracts for differences and binary options to retail investors (the **"Final Report"**).

The Final Report identifies various risks related to the marketing and sale of complex OTC leveraged products to retail investors, and describes how some regulators are responding to the challenges these products present. Examples of concerns raised include:

- Retail investors may not be able to assess the risks associated with these products or withstand the losses they may incur;
- There can be difficulties relating to the withdrawal of client funds and aggressive or misleading marketing and sales practices; and
- Many firms use on-line advertising, social media, expert blogs and other cross-border marketing techniques to attract investors, some of which can be aggressive and/or misleading in some jurisdictions.

The Final Report describes a variety of possible regulatory approaches and standards for mitigating the risks that OTC leveraged products pose to retail investors.

A copy of the Final Report is available at the following link:

https://www.iosco.org/library/pubdocs/pdf/IOSCOPD550.pdf

Market Abuse Regulation

(i) ESMA final guidelines on market soundings and delayed disclosure of inside information under MAR

On 20 October 2016, ESMA published a press release announcing that the following guidelines relating to the Market Abuse Regulation ("**MAR"**) (**"MAR Guidelines"**) had been published in the official languages of the EU:

- Delay in the disclosure of inside information (ESMA/2016/1478); and
- Persons receiving market soundings (ESMA/2016/1477).

ESMA had previously published the English version of these guidelines in July 2016.

The guidelines relating to the "Delay in the disclosure of inside information" came into effect on 20 December 2016.

On 10 November 2016, ESMA published a revised version of its guidelines on “Persons receiving market soundings” under MAR and these revised guidelines come into effect on 10 January 2017.

The MAR Guidelines can be found in full at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf

https://www.esma.europa.eu/sites/default/files/library/2016-1477_mar_guidelines_-_market_soundings.pdf

(ii) ESMA updates Q&A on MAR

On 20 December 2016, ESMA published an updated version of its Q&A on MAR. The updated Q&A includes:

- Three new Q&A (questions 3 to 5) in section 2: managers' transactions; and
- Four new Q&A (questions 5 to 8) in section 3: investment recommendations and information recommending or suggesting an investment strategy.

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

https://www.esma.europa.eu/sites/default/files/library/2016-1664_mar_qa_december_2016.pdf

Prospectus Directive

(i) Updated version of ESMA Q&A on Prospectuses

On 20 December 2016, ESMA published version 26 of its Q&A on prospectuses. Changes since the last version include a new question and answer on the application of ESMA's guidelines on alternative performance measures (**“APMs”**). The answer to the new question 101 clarifies how to apply the guidelines when constituent parts of a prospectus straddle the date on which the guidelines came into force, which was on 3 July 2016. The following should be noted:

- Where a registration document containing APMs was published before 3 July 2016 and that registration document is combined with a securities note published on or after 3 July 2016, the guidelines do not apply to the registration document but only to the securities note and the summary, where applicable;
- Where the information contained in such a registration document is incorporated by reference into a prospectus or a base prospectus published on or after 3 July 2016, the guidelines do not apply to the registration document but only to the remainder of the prospectus or base prospectus;

- Where a registration document containing APMs was approved but not published before 3 July 2016 and that registration document is combined with a securities note published on or after 3 July 2016, or the information contained in that registration document is incorporated by reference into a prospectus or a base prospectus published on or after 3 July 2016, the guidelines apply to the registration document as well as to the securities note and the summary, where applicable, or to the prospectus or base prospectus. In these instances, the registration document should be updated through the mechanism set out in Article 12(2) of the Prospectus Directive; and

- Where a prospectus or registration document published before 3 July 2016 is supplemented on or after 3 July 2016 and the supplement contains APMs, the guidelines apply to the supplement.

A copy of the updated Q&A is available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2016-1674_qa_on_prospectus_related_topics.pdf

(ii) ESMA feedback statement on European Single Electronic Format Consultation Paper

On 21 December 2016, ESMA published a feedback statement providing an overview of feedback received on its consultation on draft regulatory technical standards on the European Single Electronic Format (**"ESEF"**) together with ESMA's response.

ESMA sets out the digital format which issuers in the EU must use to report company information from 1 January 2020. It concludes that Inline XBRL is the most suitable technology for ESEF, because it enables both machine and human readability in one document. The digital format will allow users to carry out software-supported analysis and comparison of large amounts of financial information.

ESMA's main conclusions are that:

- Issuers must prepare their annual financial reports in the human readable XHTML (Extensible Hyper Text Markup Language) format, which can be read by standard browsers without the need for specialised tools;

- Only where annual financial reports contain IFRS consolidated financial statements must issuers label this information using XBRL (Extensible Business Reporting Language), which is machine-readable. The XBRL data is embedded directly into the XHTML document through the Inline XBRL format. ESMA may extend mandatory labelling of information using XBRL to other parts of the annual financial report or to financial statements prepared under third country GAAP at a later stage; and

- The IFRS Foundation's Taxonomy should be used to transfer financial information into structured data for the electronic reporting of IFRS financial statements.

ESMA will now focus on developing the detailed technical rules, field test its proposed solution and expects to be in a position to submit the technical standard to the European Commission for endorsement towards the end of 2017.

Transparency Directive

(i) Central Bank publishes Transparency Rules and Transparency Regulatory Framework Q&A

On 4 November 2016, the Central Bank issued Transparency Rules under Section 1383 of the Companies Act 2014. The Transparency Rules set out procedural and administrative requirements and guidance in respect of the Transparency (Directive 2004/109/EC) Regulations 2007, as amended (the **"Regulations"**).

In addition on 25 November 2016, the Central Bank published the First Edition of the Transparency Regulatory Framework Q&A. The Transparency Regulatory Framework Q&A sets out answers to queries which may arise in relation to the Regulations and the Central Bank's Transparency Rules.

A copy of the Central Bank's Transparency Rules and Transparency Regulatory Framework Q&A are available at the links below:

http://www.centralbank.ie/regulation/securities-markets/transparency/Documents/161104%20Transparency%20Rules%20-%20FINAL%20clean.pdf

http://www.centralbank.ie/regulation/securities-markets/transparency/Documents/Transparency%20Q%20and%20A%2025%20November%202016.pdf

Central Bank of Ireland

(i) Central Bank publishes 2016 Industry Funding Levies

On 10 October 2016, the Central Bank published its 2016 Guide to the Industry Funding Levies (the **"Guide"**) along with an accompanying statement.

Under the current funding arrangements, which are approved annually by the Minister for Finance, regulated entities are levied 50 per cent of the costs incurred on financial regulation, with some exceptions. The balance is funded by the Exchequer by means of subvention from the Central Bank. In general, costs are levied on industry sectors on a proportionate basis, depending on the level of regulatory input and oversight required.

The budget for financial regulation for 2016 reflects:

- The growth of the financial sector and number of firms and funds regulated in Ireland;

- The additional mandates, number and complexity of the financial regulations that the Central Bank is tasked with supervising and enforcing, most notably Alternative Investment Fund Managers Regulations and the Solvency II, which introduced a harmonised EU-wide insurance regulatory regime and came into force on 1 January 2016; and

- The phased roll-out of the measures detailed in the Central Bank's 2016-2018 Strategic Plan, including addressing the IMF recommendations such as bringing low-impact supervision up to an acceptable standard of intensity, improving the Central Bank's IT infrastructure and the increased cost of contested enforcement actions, such as inquiries, refusals, appeals and litigation.

The Guide is intended to be a user-friendly means of understanding the levy calculation process and is divided into five sections:

1. A background to the 2016 Industry Funding Regulations;

2. Significant changes to the levy in 2016;

3. How the levy is calculated for each industry sector;

4. Calculation of the levy rates for individual financial service providers and how the net Annual Funding Requirement is determined; and

5. Appendices including a comparison of 2016 and 2015 net Annual Funding Requirements, the population of each Industry Sector, an introduction and background to Impact Scores and a glossary.

The Central Bank's Statement on the Industry Funding Levies 2016 can be found at the following link:

http://www.centralbank.ie/press-area/press-releases/Pages/StatementIndustryFundingLevies2016.aspx

The Guide to the 2016 Industry Funding Regulations can be found at the following:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202016%20FINAL.pdf

(ii) Central Bank plan to implement enhancement to ORION system for submitting QIAIF applications

On 17 November 2016, the Central Bank held a briefing on enhancements to the QIAIF ORION system and published guidance on enhancements to the ORION QIAIF system.

The principle enhancements to ORION include the following:

- ORION has been updated to incorporate QIAIF ICAV applications. The applicant will be able to select ICAV as the legal structure of the QIAIF and upload the Instrument of Incorporation;

- Clause based validations have been removed from ORION. The applicant will instead be required to upload checklist documents in relation to the relevant clause based documents;

- Legal Entity searches for the proposed parties to the QIAIF have been replaced by a simpler ‘Add Details’ functionality; and

- Questions relating to Loan Originating Funds have been added to the QIAIF Fund application and QIAIF Sub-Fund application.

From 5 December 2016, all QIAIF applications (including those structured as ICAVs) must be submitted electronically via ORION.

The Central Bank guidance on enhancements to the ORION QIAIF System is available at the following link:

http://www.centralbank.ie/regulation/processes/authorisation/Guidance/Documents/ORION%20QIAIF%20Enhancements%20Guide.pdf

(iii) Feedback Statement on Consultation on Central Bank Investment Firms Regulations

On 25 November 2016 the Central Bank published its Feedback Statement on Consultation on Central Bank Investment Firms Regulations 2015 (CP 97) (the **“Feedback Statement”**). CP 97 relates to the publication of an Investment Firms Rulebook (“**the Rulebook”**) which consolidates into one document all of the conditions and requirements which the Central Bank imposes on investment firms.

The Feedback Statement summarises the responses received to CP 97 and outlines the Central Bank’s comments and decisions, including the following:

- In response to queries on the proposal in CP 97 that existing capital requirements in the AIF Rulebook, as applicable to fund administrators, be amended and moved to the Investment Firm Regulations, the Central Bank has confirmed that prior written permission will be required from the Central Bank before any Common Equity Tier 1, Additional Tier 1 and Tier 2 instruments or capital contributions may be included in a fund administrator’s own funds. The Central Bank further confirmed that there has been no change in the criteria required for capital contributions to be included in own funds and that pre-existing capital instruments/capital contributions do not require approval by the Central Bank.

- In relation to the criteria outlined in Regulations 39 and 40, which deal with the release of final NAV by an Outsourcing Service Provider (**“OSP”**), the Central Bank confirmed that outsourcing by fund administrators, and by investment firms in general, is subject to ongoing review within the Central Bank and a review of outsourcing across all financial sectors is also being initiated. In light of this work and taking into account the large number of comments received in relation to the release of the final NAV by an OSP, the Central Bank has decided to:

- Retain the prohibition on outsourcing the check and release of the final NAV except in circumstances determined by the Central Bank;

- Set out those exceptional circumstances in guidance which will accompany the Central Bank Investment Firm Regulations. The type of guidance the Central Bank intends to provide in relation to the exceptional circumstance when the check and release of final NAV may be outsourced is set out in Annex 1 to the Feedback Statement;

- Clarify that previously approved outsourcing arrangements that do not comply with the guidance will not be required to change; and

- Retain the obligation on fund administrators to check the final NAV the day following its release by the OSP.

The Feedback Statement also includes a general overview of other matters raised in CP 97.

The Central Bank intends to publish Investment Firms Regulations together with guidance in early 2017.

The Feedback Statement is available via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/CP97%20Feedback%20Statement%20Investment%20Firms%20Regulations.pdf

(iv) Central Bank publishes findings of Thematic Review on operation of risk function

On 5 December 2016, the Central Bank published the outcome of a thematic review to assess the operation of the risk function by reviewing risk frameworks and risk culture across Investment Firms, Fund Service Providers and Stockbrokers.

The main findings of the review are:

- There is a divergence in the quality and effectiveness of risk frameworks;

- There were notable inconsistencies and deficiencies in how firms' approach identification of risks, documenting risks, quantifying risks, mitigating risks and communicating these risks within the firm; and

- Good practices identified in the firms' documentation are not always evident in the operations of the business.

The Central Bank encourages all boards to consider how it is addressing these aspects of the risk management framework. The Central Bank has attached an Appendix for use by firms when carrying out a self-assessment of their own risk framework and culture. The Central Bank states that where issues have been identified with individual firms, the Central Bank will follow up directly with firms concerned to address these issues.

The Central Bank's letter regarding its thematic review of risk function can be found at:

http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/administrators/Documents/Industry%20Letter%20-%20Thematic%20Review%20of%20Risk%20Function%205%20December%202016.pdf

(v) Central Bank publishes Thematic Review on oversight of outsourcing arrangements

On 19 December 2016, the Central Bank published its findings from its thematic review of oversight of outsourcing arrangements and has set out a number of questions that relevant entities such as Fund Managers, Fund Service Providers and Investment Firms should consider where such firms have outsourcing arrangements in place. The questions to be considered are as follows:

- Monitoring: Does the firm have appropriate key performance indicators and monitoring tools that are properly aligned to the outsourced activity and embedded in the risk framework?

- Reporting: Is the reporting on the performance of the outsourcing provider, including Board reporting, sufficiently detailed and does the frequency of reporting correspond to the criticality of the outsourced activity?

- Appraisal: Is the board satisfied that the initial due diligence analysis on the outsourcing provider was suitably rigorous and that on-going appraisals are equally thorough?

- Business Continuity: Does the firm have documented succession or remedial action plans in the case of disruption or termination of service and are these subject to robust testing on an ongoing basis?

- Outsourcing Policy: Does the firm's outsourcing policy take into account the entire life cycle of outsourcing?

In the event that a firm cannot answer yes to any of the questions above, it may want to take steps to rectify this to ensure its oversight of outsourcing arrangements is in line with Central Bank expectations.

We would recommend that firms present the results of the relevant assessment to the board along with any actions points arising from the assessment. This should be noted and recorded in the board minutes.

A copy of the thematic review is available at the following link:

http://www.centralbank.ie/regulation/marketsupdate/Documents/Themed%20Review%20Outsourcing%20ArrangementsDEC2016.pdf

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

(i) Department of Finance publishes National Risk Assessment for Ireland

On 7 October 2016, the Department of Finance published the first National Risk Assessment for Ireland (Money Laundering and Terrorist Financing) (the "**Risk Assessment**"), which was carried out in conjunction with the Department of Justice and Equality.

The aim of this process was to identify, understand and assess the money laundering and terrorist financing risks faced by Ireland and to develop strategies to address those risks and allocate sufficient resources to implement those strategies.

While this is Ireland's first Risk Assessment, Ireland as a FATF member and under its future legal obligations once the Fourth Money Laundering Directive (**"MLD4"**) comes into force will be required to update the Risk Assessment on an ongoing basis to reflect changes to existing and future threats and vulnerabilities as they emerge.

The Risk Assessment found Ireland's money laundering and terrorist financing risk profile to be broadly in line with the risk profile of other Member States of a similar size. At a macro-economic level a number of risk enhancing and risk reducing factors were identified.

Risk enhancing factors included:

- Ireland's open, free market principled economy with a service-exporting financial services that is generally regarded as highly interconnected;
- Ireland's membership of the EU which means the already open economy was further opened from 1973 to move goods, workers, services and capital across the internal borders of the EU; and
- Ireland's close economic ties with the United Kingdom, with a shared border increasing risk of certain cross-border activities.

Risk reducing factors found by the Risk Assessment included, amongst other factors:

- Ireland's single, centralised police force, An Garda Síochána, which allows it to effectively manage all types of crime;

- Ireland's comprehensive legislative framework criminalising both money laundering and terrorist financing; and

- Ireland's single, centralised and well-resourced financial services regulator, the Central Bank of Ireland that reflects adequately the scale and complexity of the financial sector.

The Risk Assessment also sets out the understanding of the nature and scale of criminal conduct in Ireland which generates illicit proceeds, particularly as informed by law enforcement authorities. This includes risks such as:

- **Drug offences –** According to the Risk Assessment, drug offences pose the most significant threat of money laundering to Ireland. While there has been a decrease in the numbers of drug offences recorded in recent years, drug offences still accounted for over 7% of all recorded offences in 2015.

- **Financial crime –** Such as social welfare fraud, inheritance scams and payment card scams.

- **Tax evasion** – Ireland is rated the easiest country in the EU to pay business taxes, and also the Member State with the second lowest burden of customs procedures in the EU. Academic research describes Ireland as a small, open economy which displays none of the characteristics of a tax haven. Ireland is also a strong supporter of the European Commission's work in the area of tax transparency and administrative cooperation.

- **Cybercrime** – Such as malware; denial of service attacks, hacking and intellectual property theft impact up to 44% of Irish businesses, which is almost double the rate in 2012. 36% of Irish businesses now also view cybercrime as the greatest future risk.

- **Other illicit trade** – Such as counterfeiting and intellectual property theft are emerging threats of money laundering in Ireland. Due to intelligence gaps, it is difficult to estimate the scale of the proceeds generated by these criminal activities, but intelligence suggests that the emergence and growth of online advertising and purchasing has increased the availability of illicit products in Ireland.

The Risk Assessment includes a table which sets out a brief overview of each sector and its final risk rating for potential money laundering and terrorist financing risk. It is important to note that these are residual risk ratings after taking mitigants and other relevant factors into account, however a higher rating does not necessarily indicate that there is low compliance in the sector. Some sectors will by their nature or scale remain higher risk even with robust AML/CTF compliance. The following ratings are of note:

- Funds/ Fund Administrators Medium High

- Life Assurance Medium Low

- Asset Managers — Medium Low
- Investment Firms — Medium High

A copy of the full Risk Assessment can be found on the Department of Justice and Equality's website at the following link:

http://www.justice.ie/en/JELR/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf/Files/National_Risk_Assessment_Money_Laundering_and_Terrorist_Financing_Oct16.pdf

(ii) Register of Beneficial Ownership Requirements

On 15 November 2016, the Department of Finance published the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2016 (the **"AML Regulations"**), which came into effect on the same day. These AML Regulations transpose Article 30(1) of MLD4 into Irish law in advance of the 26 June 2017 transposition deadline. In accordance with Article 30(1), Member States, such as Ireland, are required to oblige corporates and other legal entities to obtain and hold adequate, accurate and current information on their beneficial ownership, including details of the beneficial interests held.

Further to the publication of the AML Regulations, most Irish companies are now obliged to hold adequate, accurate and current information on their beneficial ownership on an internal register (the **"Register"**). The AML Regulations affect companies incorporated under the Companies Act 2014 (the **"Act"**) as well as existing companies within the meaning of that Act and other legal entities incorporated in Ireland (**"Relevant Entities"**). Therefore this will include unregulated companies as well as regulated companies such as UCITS investment companies, AIF investment companies, ICAVs and fund administrators.

- **Meaning of Beneficial Owner**

The term "beneficial owner" is defined in the AML Regulations as meaning the natural person(s) who ultimately owns or controls a Relevant Entity through either a direct or indirect ownership of a sufficient percentage of shares or voting rights or ownership interest in that entity. Where a natural person holds more than 25% of the shares of the Relevant Entity or has an ownership interest of more than 25%, then that shall be an indication of direct ownership by that person. Where a corporate or multiple corporates hold more than 25% of the shares or other ownership interest exceeding 25% in the Relevant Entity and those holdings are controlled by a natural person, that shall be an indication of indirect ownership.

If the Relevant Entity is not able to identify (or if there is any doubt that the person(s) identified are the beneficial owner(s)), the natural person(s) who holds the position of "senior managing official(s)" shall be listed in the Register. The Relevant Entity must also document and keep records of all actions taken in order to identify the beneficial owners of the Relevant Entity as such term is defined in the AML Regulations.

Exemptions

As outlined above, the AML Regulations apply to Relevant Entities which essentially refers to every company or other legal entity incorporated in Ireland. However, there is an exemption for those companies that are:

(i) Listed on a regulated market that is subject to disclosure requirements consistent with EU Law; or

(ii) Subject to equivalent international standards which ensure adequate transparency of ownership information.

The AML Regulations do not affect trust structures governed by Irish law. A separate provision of MLD4 deals with the beneficial ownership of trusts, however this provision has not as yet been transposed into Irish law.

Register

The AML Regulations require every Relevant Entity to take all "reasonable steps" to obtain adequate, accurate and current information in respect of its beneficial owners. In this regard the AML Regulations require the Relevant Entity to take certain steps to identify any beneficial owners. Further to this obligation if the Relevant Entity has reasonable cause to believe that an individual is a beneficial owner it must give a notice to that individual asking that person to confirm whether he/she is a beneficial owner. If the relevant individual is a beneficial owner he/she must confirm and correct any particulars of the notice within one month of the receipt of such notice.

Separately, if the Relevant Entity believes that someone else has information about any beneficial owner it must serve a notice on that person looking for the relevant information.

A duty is also imposed upon a natural person who is a beneficial owner, or who ought to know that they are one, to notify the Relevant Entity that they are a beneficial owner if they have not received a notice from the Relevant Entity requesting this information. There is also a duty on natural persons in certain circumstances to notify relevant changes in beneficial ownership.

The information in the Register must contain the following particulars in respect of each beneficial owner:

- Name, date of birth, nationality and residential address;
- A statement of the nature and extent of the interest held by each such beneficial owner;
- The date on which each natural person was entered into the Register; and

- The date on which each natural person who ceased to be a beneficial owner ceased to be such an owner.

Relevant Entities are required to keep and maintain this information since 15 November 2016 and they must also seek to ensure that this information is up to date and take measures where there are any changes to the beneficial owners.

- **Sanctions**

Failure by the Relevant Entity to comply with the obligations contained in the AML Regulations is an offence and the Relevant Entity can be liable on summary conviction to a fine not exceeding €5,000. It is also an offence for an individual to fail to comply with his/her obligations under the AML Regulations, including failing to comply with the terms of the notice received from the Relevant Entity. Such an individual can be liable on summary conviction to a fine not exceeding €5,000.

- **Next Steps**

Companies should consider the impact of the AML Regulations and the steps they will need to comply with the obligations set out in the AML Regulations. In particular, they will need to consider how they will maintain the Register and prepare the various notices to be served on shareholders as required by the AML Regulations.

A copy of the AML Regulations is available at the following link:

http://www.finance.gov.ie/sites/default/files/Beneficial%20Ownership%202016%20Si%20560%20Final.pdf

(iii) Joint Committee of ESAs final version of guidelines on risk-based supervision under MLD4

On 16 November 2016, the Joint Committee of the ESAs published the final version of its guidelines on risk-based supervision under MLD4 (the "**Guidelines**").

The Guidelines, addressed to National Competent Authorities (**"NCAs"**) responsible for supervising the compliance of credit and financial institutions with AML obligations, are based on a mandate set out in Article 48(10) of MLD4. They firstly set out the characteristics of a risk-based approach to AML and CTF supervision, and identify the role of NCAs in identifying and assessing the money laundering risk to which their sector is exposed, and consequently adjusting the focus, intensity and frequency of supervisory actions in line with the risk-based approach.

The Guidelines emphasise the need for, amongst other things:

- Suitably qualified staff to carry out risk-based AML and CTF supervision in an informed and consistent manner; and

- A policy that ensures that the size or systemic importance of a credit or financial institution is not the sole indicator of the extent to which it is exposed to money laundering and terrorist financing risk, particularly in the cases of smaller firms;

The Guidelines state that they apply a year from the date they are issued. Under MLD4, the final version of the Guidelines is to be issued by 26 June 2017. The Joint Committee intends to keep the Guidelines under review, once they have been adopted, and to update them as appropriate.

A link to the Guidelines in full can be found here:

https://www.eba.europa.eu/documents/10180/1663861/Joint+Guidelines+on+Risk-Based+Supervision+(ESAS+2016+72).pdf

(iv) European Commission adopts Delegated Regulation amending list of high-risk third countries under MLD4

On 25 November 2016, a Commission Delegated Regulation was published which amended Commission Delegated Regulation (EU) 2016/1675 supplementing MLD4 by identifying high-risk third countries with strategic deficiencies.

The explanatory memorandum to the new Delegated Regulation explains that, as stressed in recital 28 to MLD4, the European Commission will adapt its assessment to changes made to information sources from international organisations and standard setters, such as those issued by the FATF. As a consequence, the European Commission aims to update the list to reflect the progress, or the lack of progress, made by high-risk third countries in removing the strategic deficiencies.

The European Commission has adopted the new Delegated Regulation in the light of FATF's recent on-site visit to Guyana where it was found that Guyana has made significant progress on AML and CTF matters. Consequently, the European Commission has concluded that Guyana should no longer be considered to be a third-country with strategic AML and CTF deficiencies and Guyana has been removed from the list of high-risk third countries under MLD4. The European Commission adopted the Delegated Regulation on 24 November 2016.

The new Delegated Regulation, which is binding in all Member States, entered into force on the 26 November 2016. A copy is available at the following link:

http://data.consilium.europa.eu/doc/document/ST-14857-2016-INIT/en/pdf

(v) Central Bank publishes Bulletin on Anti-Money Laundering and Third Party Reliance

On 6 December 2016, the Central Bank published the first publication of the Anti-Money Laundering bulletin, which focuses on third party reliance and sets out the Central Bank's expectations in this area (the "**Bulletin**"). The Bulletin seeks to provide guidance and feedback for credit and financial institutions in relation to anti money laundering and counter-terrorist financing.

In relation to third party reliance, the Central Bank expects that:

- There is a signed agreement in place between the firm and the third party;
- Firms only rely on third parties to perform Customer Due Diligence; and
- Firms should conduct regular assurance testing to ensure documentation can be retrieved quickly and without undue delay, and that the quality of the underlying documents obtained is sufficient.

The Bulletin can be found via the following link:

http://www.centralbank.ie/regulation/processes/anti-money-laundering/Documents/Anti-Money%20Laundering%20bulletin%20on%20Third%20Party%20Reliance%20-%20December%202016.pdf

(vi) European Commission publishes a proposal for a Directive on criminalisation of money laundering

On 21 December 2016, the European Commission published a Proposal for a Directive on criminalisation of money laundering (the **"Proposal"**). On 2 February 2016, the European Commission presented an Action Plan against terrorism financing, with a key action being to consider a possible proposal for a Directive to introduce minimum rules regarding the definition of the criminal offence of money laundering and to approximate sanctions. This complements other initiatives such as the proposed Directive on combating terrorism and the amendments to MLD4 published in July 2016.

The Proposal acknowledges that all Member States criminalise money laundering but there are some differences that require change:

- There are significant differences in the respective definitions of what constitutes money laundering, on the predicate offences, for example the underlying criminal activity which generated the property laundered, and the level of sanctions;
- The current legislative framework is neither comprehensive nor sufficiently coherent to be fully effective and can be exploited by criminals and terrorists who can choose to carry out their financial transactions where they perceive anti-money laundering measures to be weakest; and
- At the operational level, the differences in the definitions, scope and sanctions of money laundering offences affect cross-border police and judicial cooperation between national authorities and the exchange of information. For example, differences in the scope of predicate offences make it difficult for Financial Intelligence Units and law enforcement authorities in one Member State to coordinate with other EU jurisdictions to tackle cross-border money laundering.

The Proposal can be found at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM:2016:826:FIN&qid=1378484867646&from=EN

(vii) Council of the EU compromise proposal on MLD5

The European Commission published the proposed Directive amending the Fourth Money Laundering Directive (**"MLD4"**) in July 2016, which is known as the Fifth Money Laundering Directive (**"MLD5"**).

The Council has proposed a number of amendments to the European Commission's MLD5 proposal including to the transposition date for MLD4 and MLD5, provision on group supervision and provisions on implementing acts relating to interconnectivity of EU Member States' beneficial ownership registers.

The Council has advised that Member States will have 12 months to transpose MLD5 into national laws and regulations following its publication in the Official Journal of the EU, although there will be longer periods (24 or 36 months) in which to implement the various provisions on beneficial ownership registers.

The Council's negotiating mandate on MLD5 was agreed on 20 December 2016, with a view to enabling negotiations with the Parliament to start in early 2017. A vote is scheduled for 25 January 2017.

The latest text from the Council is set out below:

http://data.consilium.europa.eu/doc/document/ST-15605-2016-INIT/en/pdf

Data Protection

(i) European Commission proposes amendments to adequacy decisions on "white-listed" countries and decisions on standard contractual clauses

Following the presentation of two draft Commission Implementing Decisions (the "**Decisions**") proposing amendments to the existing adequacy decisions on "white-listed" countries and the decisions on standard contractual clauses (**"SCCs"**) permitting the transfer of personal data outside of the European Economic Area at the Article 31 Committee meeting on 3 October 2016, the European Commission published Commission Implementing Decision (EU) 2016/2295 and Commission Implementing Decision (EU) 2016/2297 on 16 December 2016.

The purpose the Decisions is to comply with ruling in Max Schrems, the ruling of the European Court of Justice, which invalidated Article 3 of the Safe Harbor adequacy decision.

As recorded in the Max Schrems ruling, national data protection authorities' (“**NDPA’s**”) powers to suspend and prohibit data flows were limited. The Decisions attempt to remove comparable provisions and restrictions in the existing adequacy and SCCs decisions, thereby ensuring that the NDPAs can use all the powers provided under EU and national law.

Following the introduction of the Decisions, whenever NDPAs exercise their powers leading to the suspension or definitive ban of data flows to third countries, for the protection of individuals personal data, the Member State concerned shall without delay inform the European Commission, which will then forward the information to the other member states.

The Decisions are available via the following links:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2295&from=EN

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2297&from=EN

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December 2016

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