Funds Quarterly Legal and Regulatory Update

Period covered:
1 October 2015 – 31 December 2015

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FUNDS QUARTERLY LEGAL AND REGULATORY UPDATE

UCITS

(i) UCITS Regulations

On 5 October 2015, the Central Bank of Ireland (the "**Central Bank**") issued a new set of regulations relating to Irish domiciled UCITS, their management companies and their depositaries titled *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Undertakings for Collective Investment in Transferable Securities) Regulations 2015* (the "**UCITS Regulations**"). The UCITS Regulations entered into force on 1 November 2015 and have replaced the UCITS Notices from that date.

The Central Bank UCITS Guidance Notes have also been replaced with website guidance which "*will retain all of the guidance currently located in the Guidance Notes and UCITS Notices".* The website guidance can now be accessed on the Central Bank's website via the following link:

http://www.centralbank.ie/regulation/industry sectors/funds/ucits/Pages/GuidanceonUCITSRegulations.aspx

As noted in our last update, Dillon Eustace published an article on the UCITS Regulations which can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial_Services/New_CentralBank UCITS Regulations.pdf

(ii) Central Bank publishes Guidance Note on UCITS - Organisation of Management Companies

The Central Bank published a Guidance Note on UCITS - Organisation of Management Companies (the "**Guidance Note**") on 5 October 2015.

The Guidance Note provides guidance on the type of information which should be included in the detailed business plan in support of an application for the authorisation of a UCITS management company. The Guidance Note is also relevant for a self-managed investment company.

The Guidance Note is available via the following link:

http://www.centralbank.ie/regulation/industrysectors/funds/ucits/Documents/151005_ORGANISATION OF UCITS MANAGEMENT COMPANIES FINAL_DL.pdf

(iii) Central Bank publishes Guidance Note on UCITS Financial Derivative Instruments and Efficient Portfolio Management

In October 2015, the Central Bank published a Guidance Note on UCITS Financial Derivative Instruments and Efficient Portfolio Management (the "**Guidance Note**"), which was updated on 4 November 2015.

The Guidance Note provides guidance on the following areas:

- Relevant legislation;
- Permitted FDI;
- Global exposure;
- Commitment approach;
- Types of FDI which may be excluded from the global exposure calculation;
- Netting;
- Hedging;
- VaR;
- OTC Derivatives – general;
- Techniques and instruments for purposes of efficient portfolio management; and other requirements.

The Guidance Note is available via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/151102-FDI EPM GN FINAL_DL.pdf

(iv) Central Bank publishes the first edition of its Investor Money Regulations Q&A

The Central Bank published the 1st edition of its Money Investor Regulations Q&A in October 2015.

The Q&A sets out answers to queries likely to arise in relation to the implementation of the Investor Money Regulations ("**IMR**") and seeks to assist in limiting uncertainty until definitive positions and practices are finalised. This 1st edition of the Q&A covers general questions around the applicability of the IMR, segregation, risk management and investor money examination.

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

http://www.centralbank.ie/regulation/ClientAssetsandInvestorMoney/InvestorMoneyRegulations/Documents/151002 IMR Q 20A Final.pdf

(v) Central Bank updates its UCITS Application and Post Authorisation forms

In October 2015, the Central Bank updated its suite of UCITS Application forms and published a number of Post Authorisation forms which can be accessed via the following links:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Pages/forms.aspx

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Pages/post-authorisation.aspx

(vi) Central Bank publishes 9th , 10th and 11th edition of its UCITS Questions and Answers ("Q&A")

In November 2015, the Central Bank published the 9th and 10th editions of its UCITS Q&A, while the 11th edition was published in December 2015.

The 9th edition sees the addition of 9 new questions:

- Question ID 1049 clarifies the typographical error in Regulation 9(12) of the UCITS Regulations;
- Question ID 1050 clarifies the Central Bank's position on Regulation 9(4) of the UCITS Regulations following the withdrawal of Guidance Note 2/07;
- Question ID 1051 clarifies when the requirement (under Regulation 95(3)(a)(ii) and Regulation 113(3)(a)(ii) of the UCITS Regulations) to produce the second set of half-yearly accounts commences;
- Question ID 1052 clarifies the typographical error in Regulation 124(3) of the UCITS Regulations;
- Question ID 1053 clarifies the transitional arrangements that apply in relation to the managerial functions listed in Schedule 10 of the UCITS Regulations;
- Question ID 1054 confirms that the Central Bank no longer requires promoters of UCITS to maintain a minimum capital of €635,000.
- Question ID 1055 confirms the Central Bank's position on the alternative method of valuation as set out in Regulation 36(1);
- Question ID 1056 clarifies where conditions are imposed on fund administrators acting for UCITS; and
- Question ID 1057 confirms that there is no regulatory obstacle to holding subscription / redemption monies of individual sub-funds as fund assets within a single account in the name of the umbrella UCITS. On 22 December 2015, the Central Bank issued

guidance on Umbrella Fund Cash Accounts and a summary of this guidance is set out in section (viii) below.

The 9th edition also amends the following question:

- Question ID 1043 now clarifies that the disclosure of long or short positions on a net or gross basis can be determined by the responsible person provided the basis used is clearly disclosed in the prospectus.

In the 10th edition, Question ID 1058 was added to address an omission in relation to Regulation 78(2)(b) of the UCITS Regulations by clarifying the timing of the submission of the first annual audit report of a UCITS to the Central Bank. In addition Question ID 1050, which provides guidance in relation to Regulation 9(4) of the UCITS Regulations, was amended to clarify that each financial index must meet the relevant criteria and no look through can be applied, however this is without prejudice to Article 9(2) of the Eligible Assets Directive 2007/16/EC which allows investments in financial derivatives whose underlyings are eligible assets with concentration levels in excess of that permitted by the UCITS Regulations to be regarded as financial derivatives on a combination of assets.

The 11th edition saw the addition of Question ID 1059 which clarifies an omission in Regulation 105 of the UCITS Regulations.

The updated Q&As are available via the following links:

http://www.centralbank.ie/regulation/industrysectors/funds/ucits/Documents/151104_UCITS QA NO FINAL_DL.pdf

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/UCITS QA Edition.pdf

http://www.centralbank.ie/regulation/industry-sectors/funds/Documents/UCITS QA 11th Edition.pdf

(vii) Commission adopts final text of the Delegated Regulation implementing UCITS V

On 17 December 2015, the Commission adopted the final text of the Delegated Regulation implementing UCITS V. This text has been transmitted to the Council and Parliament who now have three months to review it before it is published in the Official Journal of the EU. The Delegated Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the EU and shall apply six months after its entry into force.

The final text of the Delegated Regulation can be accessed via the following link:

http://ec.europa.eu/transparency/regdoc/rep/3/2015/EN/3-2015-9160-EN-F1-1.PDF

(viii) Umbrella Fund Cash Accounts

On 22 December 2015, the Central Bank published guidance relating to the holding of cash assets of umbrella funds in a single account at the level of an umbrella fund ("**an umbrella cash account**") in the name of the investment fund, the fund management company on behalf of the investment fund or the depositary.

Cash assets refer to subscription and redemption money received from or due to investors in the sub-funds of the umbrella fund and dividend money due to investors from sub-funds.

The guidance deals with the following topics:

- General Principles;
- When it is not appropriate to operate an umbrella cash account;
- Policies and procedures;
- Disclosure to investors;
- Treatment of subscription, redemption and dividend monies in umbrella cash accounts; and
- Insolvency of one sub-fund within an umbrella fund.

A copy of the guidance on Umbrella Fund Cash Accounts is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Pages/Umbrellafunds-cashaccounts.aspx

(ix) Central Bank publishes guidance for fund management companies and an update on CP 86

In the feedback statement on Consultation Paper CP 86 - Consultation on Fund Management Company Effectiveness - Delegate Oversight (**"CP 86"**), published in June 2015, the Central Bank set out under the heading of "Next Steps" that it would publish three additional publications to provide guidance to fund management companies on the following matters:

- Delegate Oversight;
- Organisational Effectiveness;
- Directors' Time Commitments;
- Managerial Functions;
- Operational; and
- Procedures

On 4 November 2015, the Central Bank published its first publication setting out guidance for fund management companies (the "**Guidance**"), which covers:

1. Delegate Oversight;
2. Organisational Effectiveness; and
3. Directors' Time Commitments.

The Guidance sets out that it should be evident from the fund management company's board minutes that the fund management company is acting in accordance with the Guidance, if this is the case.

A brief synopsis of each of the topics is set out below:

1. Delegate Oversight – The Guidance provides that a board of a relevant company has ultimate responsibility for all aspects of management that are not specifically reserved to the shareholders (whether by constitutive documents or applicable law).

   A fund management company may, notwithstanding the ultimate management responsibility of its board, delegate in whole or in part certain specific tasks which form part of the fund management company's management functions. While the tasks may be delegated, however, ultimate responsibility for those management functions themselves cannot be delegated.

   The board should satisfy itself that the manner of delegation is such that the relevant board responsibilities can be discharged, that management roles delegated internally can be effectively performed and that the external delegate performs the relevant task to an appropriate standard.

   A board should exercise skill, care and diligence when identifying and approving the appointment of a delegate for any task. It should satisfy itself as to the capacity of the prospective delegate to undertake such task to the required standard. To this end the board should receive and be satisfied with periodic reports from appropriately authorised personnel of the delegate.

   The board should, notwithstanding any delegation of tasks, take all major strategic and operational decisions affecting the fund management company and any investment funds it manages.

   Examples of key responsibilities that should be retained by the board include the following:

- Issue of the prospectus, where the fund management company has responsibility in this regard;

- Review and approval of financial accounts and investment fund documentation, where the fund management company has responsibility in this regard;
- Temporary suspension of redemptions, or other measures taken in response to adverse financial developments, where the fund management company has responsibility in this regard;
- Approval and periodic review of the business plan or programme of operations, as the case may be, and compliance with it;
- Its own internal governance, including the appointment and retention of directors and any staff, the capacity of directors to fulfil their roles and conflict of interest policies;
- Adoption and review of a comprehensive suite of policies and procedures and, to the extent that reliance is placed on the policies and procedures of delegates, periodic review of the appropriateness of such reliance;
- Satisfying itself that arrangements are in place to enable compliance with applicable legal and regulatory requirements;
- Appointment, oversight and removal of delegates (including the basis on which delegates may further delegate tasks);
- Investment approach;
- Launches or closures of sub-funds and share classes; and
- Distribution strategies including the jurisdictions into which the investment funds are marketed.

The Guidance also sets out the board's responsibilities under each of the following headings:

- Investment Management;
- Distribution;
- Risk Management;
- Operation and administration;
- Support and resourcing; and
- Boards of externally-managed investment companies.

2. Organisational Effectiveness – The Guidance provides that one of the independent directors of a fund management company, which could be the Chair if he or she is independent, should undertake an organisational effectiveness role. The purpose of this role is to ensure that there is an independent director within the fund management company who has the specific task of keeping the effectiveness of the

organisational arrangements of the company under ongoing review, with his or her reports being submitted to the board for discussion and decision.

The independent director who undertakes this task will be on alert for organisational issues and will escalate these to the board.

Some non-exhaustive examples of the types of matters which the independent director undertaking the organisational effectiveness role will be involved in are:

- Monitoring the adequacy of a fund management company's internal resources to its day-to-day managerial roles;
- Reviewing the organisational structure of the fund management company and considering whether it remains fit for purpose;
- Considering the conflicts of interest affecting the fund management company and its investment funds under management and initiating action, such as escalation to the board, where these are having or are likely in the near future to have an adverse impact;
- Reviewing the board composition and reporting on this to the board;
- Organising periodic board effectiveness evaluations and overseeing how well the decision taken by the fund management company and the arrangements for the supervision of delegates are working in the interests of investors.

3. Director's Time Commitment – The Guidance sets out that directors and boards should agree a minimum time allocation for board meeting attendance; this should include all necessary preparation, review of documents and also, where appropriate, travel time. The agreed minimum time allocation should be documented in the director's letter of appointment.

   Sufficient time should be set aside as a buffer for directors to deal with ad hoc issues that arise from time to time. This should be in addition to the normal time allocated to each director role.

   Additional time should be allocated where a director carries out a Chairperson role. This time allocation should be agreed with each board and be commensurate with any additional work that this role requires.

   A designated person role for managerial functions should be considered separately to the role of director and a separate letter of appointment should issue in respect of a designated person role for managerial functions.

   Individuals with multiple directorships should consider the conflicts which may arise when sitting on a number of boards and the corporate interconnectivity that is created.

The ultimate responsibility for compliance with all regulatory obligations rests with the boards and the individual directors.

The Guidance is available in full via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/ucits/Documents/151023_FUND MANCOSGUIDANCE FINAL_DL.pdf

On 23 December 2015, the Central Bank provided an update to stakeholders on CP86. In the update, the Central Bank refers to the feedback statement to CP 86 which advised that the Central Bank would publish further guidance for fund management companies by the end of 2015 and that it would require existing fund management companies to update business plans/programmes of operation to reflect the revised managerial functions and the organisational effectiveness role by 30 June 2016.

However, as of 23 December 2015 the Central Bank confirmed that work on preparing the additional draft guidance for fund management companies covering the topics of managerial functions, operational and procedures is on-going and that it anticipates publishing such draft guidance for public consultation by the end of Quarter 1 2016.

To reflect this extended timeframe and to facilitate orderly transition, the deadline for compliance by existing fund management companies (i.e. fund management companies authorised before 1 November 2015) with the revised managerial functions and new organisational effectiveness requirements will be at least six months after the completion of the consultation process.

The feedback statement is available at the following link:

https://www.centralbank.ie/regulation/poldocs/consultationpapers/Documents/CP86 Consultation Paper on Fund Management Company Effectiveness Delegate Oversight/Feedback statement, consultation and guidance concerning fund management company boards.pdf

AIFMD

(i) Central Bank publishes updated AIFMD Q&A

The Central Bank published the 16th and 17th editions of the AIFMD Q&A on 5 October and 4 November 2015 respectively.

The updates see the addition of four new questions:

- Question ID 1097 explains that directed brokerage services may involve the negotiation of recaptured commissions and monitoring of brokers to ensure that the

selected brokers provide the highest standards for execution, value added services and investment research on behalf of their clients.

- Question ID 1098 clarifies that the requirement to document the rationale for board composition in the programme of operations applies only to new AIFMs seeking authorisation, however the Central Bank is of the view that it is good practice for existing authorised AIFM's to document the rationale for the board composition when next updating the programme of operations.

- Question ID 1099 sets out that unitholder approval will not be required where the depositary certifies that the changes to a trust deed of a unit trust or deed of constitution of a common fund are not material and will not prejudice unitholders;

  and

- Question ID 1100 confirms there is no regulatory obstacle to holding subscription and redemption monies of individual sub-funds, as fund assets, within a single account in the name of the umbrella fund.

The 17th edition revised Question ID 1030, which relates to whether a professional investor fund or a QIAIF can have a Non EU AIFM, to set out that such funds can continue to be managed by a non EU AIFM under the existing transitional arrangements until such time as the European Commission has reached a decision on the application of the AIFMD passport to non-EU AIFMs.

The Q&As are available via the following links:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/151002_EDITION 2016 AIFMD DOC FINAL_DL.pdf

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/151104_EDITION 2017 AIFMD 0QA DOC FINAL_DL.pdf

(ii) Central Bank publishes AIFMD – Post Authorisation forms

In October 2015, the Central Bank has published a number of forms to assist in this process which can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Pages/default.aspx

(iii) ESMA publishes advice on the application of the AIFMD passport to non-EU AIFMs and AIFs

On 13 October 2015, Steven Majoor, chair of ESMA gave a speech on the application of the AIFMD passport to non-EU AIFMs and AIFs.

Key points from the speech include the following areas of focus for ESMA:

- To continue its assessment of Hong Kong, Singapore and the US with a view to reaching a definitive conclusion on whether to extend the passport to those countries;
- To assess a second group of non-EU countries, Australia, Canada, Japan, the Cayman Islands, the Isle of Man and Bermuda;
- To focus on putting in place a framework that includes preparing for increased supervisory co-operation; and
- To look at how to promote a common approach on various divergent issues it identified in its July opinion.

The speech is available at the following link:

http://www.esma.europa.eu/system/files/20151535_econ_scrutiny_hearing_aifmd_passport_opening_statement_steven_maijoor.pdf

(iv) Central Bank publishes Reporting Guidance for AIFs

The Central Bank has recently published Reporting Guidance (the "**Guidance**") for AIFs.

This guidance is relevant to all AIFMs, including Internally Managed AIFs, which are authorised or registered by the Central Bank or who manage or market AIFs in Ireland.

This guidance should be used in conjunction with the Online Reporting System User Manual.

The Guidance is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/funds/aifmd/Documents/AIFMD Reporting Guidance Note.pdf

The Online Reporting System User Manual is available via the following link:

http://www.centralbank.ie/regulation/processes/onlinereporting/Pages/Introducti on.aspx

(v) Central Bank publishes the latest version of the AIF Rulebook

On 4 November 2015, the Central Bank published its latest version of the AIF Rulebook.

Chapter 3 of the AIF Rulebook relating to AIFMs has been amended to reflect the following:

- The reduction in number of managerial functions to six;
- The requirement to appoint a director with responsibility for "organisational effectiveness"; and

- The requirement that there can be only one designated person per managerial function.

The above changes were made on foot of Consultation Paper CP 86 - Consultation on Fund Management Company Effectiveness - Delegate Oversight (**"CP 86"**). On 23 December 2015, the Central Bank provided an update to stakeholders on CP86. In the update, the Central Bank refers to the feedback statement to CP 86 which advised that the Central Bank would publish further guidance for fund management companies by the end of 2015 and that it would require existing fund management companies to update business plans/programmes of operation to reflect the revised managerial functions and the organisational effectiveness role by 30 June 2016.

On 4 November 2015, the Central Bank published its first publication setting out guidance for fund management companies (the "**Guidance**") covering:

- Delegate Oversight;
- Organisational Effectiveness; and
- Directors' Time Commitments.

A summary of the Guidance is set out in the UCTIS section (ix) of this legal and regulatory update. However, as of 23 December 2015 the Central Bank confirmed that work on preparing the additional draft guidance for fund management companies covering the topics of managerial functions, operational and procedures is on-going and that it anticipates publishing such draft guidance for public consultation by the end of Quarter 1 2016.

To reflect this extended timeframe and to facilitate orderly transition, the deadline for compliance by existing fund management companies (i.e. fund management companies authorised before 1 November 2015) with the revised managerial functions and new organisational effectiveness requirements will be at least six months after the completion of the consultation process.

The AIF Rulebook can be accessed via the following link:

http://www.centralbank.ie/regulation/marketsupdate/Documents/AIF_Rulebook_November 2015 Final.pdf

(vi) Central Bank issues Consultation on Amendments to AIF Rulebook - CP99

On 30 November 2015, the Central Bank published a consultation on the amendments to the AIF Rulebook ("**CP99**"). The Central Bank's AIF Rulebook was introduced with effect from 22 July 2013. When the AIF Rulebook was first published, the Central Bank undertook to keep it under review and to adjust it on a periodic basis where appropriate revisions are identified.

Some of the noteworthy changes proposed include:

- A clarification where the Qualifying Investor AIF may grant an exemption from the QIAIF minimum subscription to AIFM group entities;
- Requirement for depositaries to always provide reporting on non-Irish authorised AIFs to which they provide services, even if another entity is separately reporting for these investment funds;
- Updating of the capital filing requirements section to align with submissions now made online and to align with the approach taken under the Central Bank UCITS Regulations;
- An extension of the requirements applying to QIAIFs with registered AIFMs during the start-up period to include the requirement to treat all investors fairly and the requirement to inform investors of any changes in respect of depositary liability;
- Alignment of the collateral rules for the RIAIF with those recently introduced for UCITS; and
- Clarification that the requirement to hold minimum capital as eligible assets and in a separate account does not apply to internally-managed AIF.

The consultation closes on 24 February 2016.

CP99 can be accessed via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/Consultationon amendments to AIF Rulebook Consultation Paper CP99.pdf

European Long Term Investment Funds ("ELTIF")

(i) Irish Funds Industry Association Response to ESMA's Consultation on the ELTIF Regulation

On 14 October 2015, the Irish Funds Industry Association responded to ESMA's consultation on draft Regulatory Technical Standards to accompany the implementation of the ELTIF Regulation. The consultation pertains to the following technical areas:

- Length of life for an ELTIF;
- The use of derivatives for hedging purposes;
- Criteria for assessing the market for the orderly disposal of assets;
- Calculations methods, definitions and presentation of format costs;
- Specifications on the range of facilities available to retail investors; and

- Criteria for valuation of assets to be divested.

The approach taken in the response is to prevent a detailed and prescriptive framework of exhaustive criteria being developed due to the varied nature of investment projects required to be structured within ELTIFs. The response recommends the framework be constructed in a similar fashion to those currently in place, such as UCITS and AIFMD. Another proposal put forward in the response is to clarify that facilities for retail investors be provided via technology rather than a physical presence being required in each Member State where the ELTIF is distributed to retail investors.

The Irish Funds Industry Association response to the Consultation is available at the following link:

http://files.irishfunds.ie/1444905148-ESMA-ELTIF-Irish-Funds-Consultation-Response-October-2015.pdf

(ii) ESMA publishes responses to the Consultation on draft RTS under the ELTIF Regulation (the "Consultation")

On 20 October 2015, ESMA published the responses received to its Consultation on Draft RTS under Regulation (EU) 2015/760 (the "**ELTIF Regulation**"). The ELITF Regulation, which entered into force on 9 June 2015, establishes a new investment vehicle, the European long-term investment fund (**"ELTIF")**, which will be available to all types of investors across the European Union, including retail investors. The objective of the ELTIF Regulation is to provide long-term, stable returns by restricting the asset classes in which ELTIFs can invest, with the objective of stimulating employment and economic growth in the European Union. The draft RTS addresses:

- When financial derivative instruments are used solely for hedging purposes;
- When the life of an ELTIF is considered sufficient in length;
- The criteria to be used for the orderly disposal of ELTIF assets; and
- Disclosure costs and availability to retail investors.

ESMA is expected to finalise the draft RTS in the next few months, which will then be submitted to the European Commission for endorsement.

The Consultation and responses thereto can be accessed via the following link:

https://www.esma.europa.eu/consultation/Consultation-draft-regulatory-technical-standards-under-ELTIF-Regulation responses

The Securities Financing Transactions Regulation

(i) The Council of the European Union formally adopt the draft EU Regulation on reporting and transparency of securities financing transactions

In November 2015, the Council of the European Union formally adopted the draft EU Regulation on reporting and transparency of securities financing transactions (the "**Regulation**"). The Regulation introduces measures to improve transparency in three main areas, namely:

- The monitoring of the build-up of systemic risks in the financial system related to securities financing transactions ("**SFTs**");
- The disclosure of information on such transactions to investors whose assets are employed in the transactions; and
- Reuse of collateral provided by companies.

The Regulation is designed to improve transparency with the aim of preventing banks and other financial intermediaries from trying to circumvent banking regulation by shifting parts of their activities to the less-regulated bank-like credit intermediation (the so called *shadow banking* sector).

The Regulation, which was published in the Official Journal of the EU on the 23 December 2015, enters into force on the 12 January 2016 and is directly applicable in all EU Member States from that date.

Dillon Eustace has published an article providing an overview of the Regulation, its key requirements and the dates by which those requirements come into force. The article can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Financial Services/The Securities Financing Transaction Regulation.PDF

Irish Collective Asset – Management Vehicles ("ICAV")

(i) Conversion of a Cayman or British Virgin Islands Fund to an Irish ICAV

The Irish Department of Finance (the "**Department**") has recently published regulations outlining that funds migrating from the jurisdictions of the British Virgin Islands and the Cayman Islands may apply to the Central Bank to be registered as an ICAV by way of continuation, the only requirement being the migrating fund must be a legal entity.

According to the Department, registering as an ICAV with the Central Bank will not establish a new legal entity nor prejudice the identity of the current entity. Consequently, the migrating fund's existing performance data can be retained whilst avoiding

unfavourable tax liabilities and other costs generally associated with mergers of an offshore fund with an onshore fund.

The Regulations can be found at the following link:

http://www.finance.gov.ie/sites/default/files/SI 2015.pdf

European Market Infrastructure Regulations ("EMIR")

(i) EMIR Regulatory Return – Guidance Note

Following a review of trade repository data as at 31 August 2015 a number of Non-Financial Counterparties ("**NFCs**") were identified as having significant derivative positions. Trade repository data was reviewed by each derivative class (Commodity, Credit, Currency, Equity and Interest Rate) and from this review, the most significant NFCs were selected (NFCs that have significant derivative positions but are not classified as NFC+).

The Central Bank requires these NFCs to complete the EMIR Regulatory Return ("**ERR**") for the period 1 January 2015 to 31 December 2015. Correspondence to the identified NFCs was issued on Wednesday 30 September 2015. The completed ERR for 2015 is due for submission to the Central Bank by 29 January 2016.

All completed ERRs should be addressed to, EMIR Unit, Securities and Markets Supervision Division, Central Bank of Ireland Block D, Iveagh Court, Harcourt Road, Dublin 2. Or alternatively responses may be emailed to emir@centralbank.ie.

A soft copy of the ERR along with guidance on completing the return is available on the Central Bank website;

https://www.centralbank.ie/regulation/EMIR/Pages/EMIR Regulatory Return (ERR).aspx

(ii) ESMA publishes Q&A on implementation of EMIR

On 1 October 2015, ESMA published the 14th update of its Q&A document on the implementation of EMIR (the "**Q&A**"). The Q&A provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.

The content of the document is aimed at competent authorities under EMIR to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements of EMIR. The first version of this document was published on 20 March 2013, subsequent updates have been published on a regular basis. This document is expected to be updated and expanded as and when appropriate.

This updated version provides guidance on the procedure to be adopted where a counterparty obtains a new LEI number due to a merger or acquisition.

The ESMA Q&A on implementation of EMIR is available at the following link

https://www.esma.europa.eu/databases-library/esma-library?page=8

(iii) ESMA submits final draft regulatory technical standards on the Clearing Obligation – Credit Derivatives

On 2 October 2015, ESMA submitted draft regulatory technical standards ("**RTS**") for the central clearing of Credit Default Swaps ("**CDS**") to the European Commission. The draft RTS define the types of CDS contracts which will have to be centrally cleared, the types of counterparties covered by the obligation and the dates by which central clearing of CDS will become mandatory.

The CDS RTS relate to untranched index CDS for two indices; (i) iTraxx Europe Main and (ii) iTraxx Europe Crossover.

The European Commission may now proceed to adopt the RTS or reject it. Any adoption by the European Commission of the RTS must simultaneously be notified by it to the European Parliament and the Council, which then have a three month period in which to object to the RTS.

The RTS are available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1481_final_report_clearing_obligation_index_cds.pdf

(iv) ESMA updates list of authorised EU Central Counterparties ("CCPs") – CME Clearing Europe extends services

On 4 November 2015, ESMA published an update of its list of CCPs which are authorised under EMIR.

The update concerns CME Clearing Europe which has been authorised to extend its activities and services to clear short term interest rate futures and deliverable swap futures.

The list can be accessed via the following link:

https://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf

(v) ESMA consults on indirect clearing arrangements under EMIR and MiFID

On 5 November 2015, ESMA published a consultation paper (the "**CP**") on draft regulatory technical standards relating to indirect clearing arrangements. The CP sought views on

indirect clearing arrangements for both OTC derivatives (under EMIR) and for exchange-traded derivatives (under MiFIR).

The phrase "indirect clearing arrangements" refers to circumstances in which a clearing member provides clearing services to an "indirect client", that is, a client of the clearing member's direct client.

The CP represents an attempt by ESMA to reconsider indirect clearing arrangements for both the Exchange Traded Derivatives ("**ETD**") and OTC markets in a comprehensive and coordinated fashion, in order to produce a common approach to indirect clearing for both markets. ESMA's proposals in the CP focus primarily on account structure and segregation models for indirect clients as well as the obligations on liquidation or porting of indirect client positions and assets as part of default management activities

The consultation closed on 17 December 2015.

A copy of the CP is available via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1628_-_consultation_paper_on_indirect_clearing_under_emir_and_mifir.pdf

(vi) ESMA updates EMIR standards on data reporting

On 13 November 2015, ESMA published its final report (the "**Final Report**") on changes to the reporting requirements under EMIR. The Final Report summarises the proposals set out by ESMA in a consultation paper dated 10 November 2014 and includes additions and changes to the reporting requirement.

The Final Report updates the existing technical standards to:

- Clarify data fields, including their description, format or both;
- Adapt existing fields to the reporting logic prescribed in existing Q&As or to reflect specific ways of populating them; and
- Introduce new fields.

The Final Report provides for a 9 month deferral period following the entry into force of the changed requirements. The Final Report has been sent to the European Commission for approval and the changed reporting requirements are likely to be in effect in late 2016.

A copy of the report can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

(vii) ESMA will not exempt the collateralisation of bank guarantees for energy derivatives under EMIR

On 19 November 2015, ESMA announced its decision not to extend the current three year grace period which permits non-financial firms to use bank guarantees that are not collateralised for their energy derivatives transactions that are cleared by EU central counterparties ("**CCPs**") under EMIR. As of 15 March 2016, all CCPs will be required to fully collateralise commercial bank guarantees that cover transactions in derivatives relating to electricity or natural gas.

ESMA determined not to extend the existing grace period for the following reasons:

- The elimination of an undue source of risk for CCPs arising from non-collateralised guarantees;
- The current three-year grace period was deemed to be sufficient to permit the wholesale energy market to prepare for the incoming collateral requirements;
- Some European CCPs are already requiring fully collateralized bank guarantees;
- EMIR requires CCPs to only accept collateral that is highly liquid; and
- A further postponement would lead to discrepancies with international standards for CCPs.

A copy of the press release can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015-1750_emir_statement_re_bank_guarantees_energy_market.pdf

(viii) Memorandum of Understanding on Cooperation Arrangements and Exchanges of Information related to information on derivatives contracts held in trade repositories

The Securities and Futures Commission ("**SFC**") of Hong Kong and ESMA have agreed a Memorandum of Understanding regarding arrangements for the exchange of information related to the information on derivatives contracts held in trade repositories registered in accordance with the respective laws and regulations (the "**MoU**"). The MoU, which came into effect on 19 November 2015, gives ESMA and the SFC indirect access to trade repositories established in the EU and Hong Kong.

A copy of the MoU can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/mou_esma-sfc_indirect_access_to_tr_data_-_mou.pdf

(ix) Interest Rate Swap Clearing to start in June 2016

On 1 December 2015, Commission Delegated Regulation (EU) 2015/2205 (the "**Delegated Regulation**") for the regulatory technical standards in respect of central clearing for the first classes of interest rate derivatives under EMIR was published in the Official Journal of the EU. The Delegated Regulation came into force on 21 December 2015.

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

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

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

Category	Counterparty Type	Clearing Obligation Commencement
1	Clearing members of a recognised or authorised CCP for at least one of the classes of interest rate swaps covered by the Delegated Regulation	6 months after the Delegated Regulation enters into force; i.e. 21 June 2016
2	Financial Counterparties ("**FCs**") and certain alternative investment funds ("**AIFs**") belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion using the month end average for January, February and March 2016	12 months after the Delegated Regulation enters into force; i.e. 21 December 2016
3	FCs and AIFs not in either category 1 or 2 above	18 months after the Delegated Regulation enters into force; i.e. 21

		December 2018
4	Non-Financial Counterparties that exceed the clearing threshold ("**NFC+**") not falling within another category	Three years after the Delegated Regulation enters into force; i.e. 21 December 2018
5	Category 1, 2 or 3 involving an intra-group transaction with a non-EU counterparty	21 December 2018 or, if by such date an equivalence decision has been adopted regarding a relevant third country, a specified date following such decision

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

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

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

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN

(x) ESMA consults on draft regulatory technical standards ("RTS") on access to data and aggregation and comparison of data under EMIR

On 11 December 2015, ESMA published a consultation paper on draft RTS relating to data access, and aggregation and comparison of data across trade repositories ("**TRs**") under Article 81 of EMIR. The consultation paper proposes amendments to the current regulatory technical standards to ensure direct and immediate access to data and aggregation and comparison of data across TRs.

The proposed improvements set out in the consultation paper refer to the following aspects:

- Standardised output format of the TR data, based on international ISO standards, allowing better comparison and aggregation of data across repositories;

- Minimum types of data queries that need to be available for the authorities;
- Standardised and secure data exchange, based on ISO standards, between TRs and national competent authorities;
- Standard frequencies for the provision of direct and immediate access to TR data; and
- Secure machine-to-machine connection and use of data encryption protocols.

The consultation closes on 1 February 2016 and the consultation paper is available at this link:

https://www.esma.europa.eu/sites/default/files/library/esma-2015-1866_-_consultation_paper_on_access_aggregation_and_comparison_of_tr_data.pdf

Packaged Retail and Insurance-based Investment Products

(i) The 2016 Work Programme of the Joint Committee of the European Supervisory Authorities ("ESAs")

The 2016 Work Programme of the Joint Committee of the ESAs was published on 5 October 2015 (the "**Work Programme**").

In 2016, the Joint Committee will continue to give a high priority to consumer protection, in particular the work on Packaged Retail and Insurance-based Investment Products ("**PRIIPs**"), and cross-sectoral risk analysis. Moreover, it will proceed with the joint regulatory work already underway in areas such as anti-money laundering, financial conglomerates and securitisation while being prepared to address any new developments in the European regulatory field if necessary.

The Work Programme can be accessed via the following link:

http://www.esma.europa.eu/system/files/jc_2015_055_2016_work_programme_of_the_joint_committee_of_the_european_supervisory_authorities.pdf

(ii) Joint consultation paper on PRIPPs key information for EU information for EU retail investors

On 11 November 2015, the joint committee of the ESAs launched its consultation paper on PRIIPs Key Information Documents ("**KIDs**") (the "**Consultation Paper**") in order to obtain the views of stakeholders on the draft Regulatory Technical Standards (**"RTS"**) developed by the European Supervisory Authorities (ESAs: EBA, EIOPA and ESMA) pursuant to the Regulation (EU) No 1286/2014 on Key Information Documents for Packaged Retail and Insurance-based Investment Products (the **"PRIIPs Regulation"**).

The draft RTS relate to three Articles under the PRIIPs Regulation:

- The presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs within the document, under Article 8 (5);
- The review, revision, and republication of KIDs, under Article 10 (2); and,
- The conditions for fulfilling the requirement to provide the KID in good time, under Article 13 (5).

The draft RTS text and accompanying Annexes (which contain a template for the KID, and the proposed methodologies underpinning the presentation of risks, rewards and costs) form the core of the Consultation Paper.

The KID, once finalised and implemented, aims to provide EU retail investors with consumer-friendly information to enable retail investors to understand and compare packaged retail and insurance-based investment products.

The Chair of the Joint Committee Steven Maijoor commented:

"Today's consultation is a major step forward for the EU's retail investors by setting out clear proposals on the contents of the KID, which are aimed at improving safeguards and transparency around investment products."

The Consultation Paper can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/jc_2015_073_cp_priips_key_information_documentsb.pdf

Responses to the Consultation Paper must be filed on/before 29 January 2016.

Credit Rating Agencies Regulation ("CRAs")

(i) ESMA publishes two sets of technical advice and a report on CRAs

On 2 October 2015, ESMA published two sets of Technical Advice and a Report on the regulation of CRAs in the EU (the "**Papers**"). These Papers provide an overview of competition and insight into the market dynamics of this industry. They also consider measures to provide stronger controls around credit ratings for structured finance instruments and to reduce reliance on credit ratings.

In summary the Papers set out:

- Technical Advice on Competition, Choice and Conflicts of Interest in the CRA industry
  ESMA finds that the EU CRA Regulation has improved the governance and operation of CRAs but that it is too soon to comprehensively assess the impact of measures

regarding competition and conflicts of interest included in the CRA Regulation of 2013.

- Technical Advice on Reducing Sole and Mechanistic Reliance on Credit Ratings
  ESMA reports on ongoing efforts to reduce sole and mechanistic reliance on credit ratings and finds references to credit ratings still remain in national and EU legislation, as well as within the collateral frameworks of some central banks.

- Report on the Possibility of Establishing one or more Mappings of Credit Ratings Published on the European Rating Platform
  ESMA states that it will launch the European Rating Platform in 2016, which is a platform that allows users to compare credit ratings issued by different CRAs.

The European Commission will consider the above and then issue its own reports to the European Parliament and Council. ESMA proposes to reassess the implementation of the CRA Regulation within the next 3 to 5 years.

The Technical Advice and Report can be accessed via the following links:

https://www.esma.europa.eu/system/files/esma-2015-1472_technical_advice_on_competition_choice_and_conflicts_of_int....pdf

https://www.esma.europa.eu/system/files/esma-2015-1471_technical_advice_on_reducing_sole_and_mechanistic_reliance_on_external_credit_ratings.pdf

https://www.esma.europa.eu/system/files/esma__2015-1473_report_on_the_possibility_of_establishing_one_or_more_mapping....pdf

https://www.esma.europa.eu/system/files/esma-2015-1472_technical_advice_on_competition_choice_and_conflicts_of_int....pdf

(ii) ESMA publishes 2015 market share calculations for CRAs

On 18 December 2015, ESMA published a document (the "**Document**") setting out a market share calculation for EU credit rating agencies ("**CRAs**") required by Article 8d of the CRA Regulation.

In the Document ESMA sets out:

- A table showing the category of credit ratings offered by each CRA registered in the EU between 2011 and 2015;

- A market share calculation based on 2014 turnover from credit rating activities and ancillary services at group level in the EU.

The Document is available at the following link:

https://www.esma.europa.eu/press-news/esma-news/esma-publishes-its-cra-market-share-calculation

ESMA

(i) ESMA publishes draft RTS on electronic access point

On 25 September 2015, ESMA delivered its Regulatory Technical Standards ("**RTS**") on the European Electronic Access Point ("**EEAP**"), as required under the amended Transparency Directive, to the European Commission for endorsement. The press release accompanying the RTS, states that the objective of the EEAP is to provide an easy search and access tool for end-users looking for regulated information, such as annual reports and major shareholdings on issuers admitted to trading on regulated markets in Europe.

The EEAP will be developed over the next couple of years and made available to end users after 1 January 2018. ESMA encourages Officially Appointed Mechanisms in each Member State to start preparing for implementation at national level as soon as possible.

The report is available at the following link:

https://www.esma.europa.eu/system/files/2015-1460_esma_final_report_on_draft_rts_on_eeap.pdf

(ii) ESMA consults on the European single electronic format

ESMA launched its public consultation on its regulatory technical standards on the European Single Electronic Format ("**ESEF**") (the "**Consultation Paper**") in September 2015. The Consultation Paper includes an assessment of current electronic reporting, an analysis of the policy objectives included in the Transparency Directive and explores ways forward with regard to the establishment of an ESEF by taking into account technical developments in financial markets and telecommunication technologies.

The Consultation period closed on 24 December 2016.

The Consultation Paper can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-1463_esma_consultation_paper_on_esef.pdf

(iii) ESMA publishes final guidelines on Alternative Performance Measures

On 5 October 2015, ESMA published its final guidelines on Alternative Performance Measures ("**APM's**") for listed issuers (the "**Guidelines**").

An APM is "*a financial measure of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting framework".* The Guidelines are aimed at promoting the usefulness and transparency of APMs included in prospectuses or regulated information. Adherence to the Guidelines will improve the comparability, reliability and/or comprehensibility of APMs.

The Guidelines are not applicable to:

- Measures defined or specified by the applicable financial reporting framework such as revenue, profit or loss or earnings per share;
- Physical or non-financial measures such as number of employees, number of subscribers, sales per square meter (when sales figures are extracted directly from financial statements) or social and environmental measures such as breakdown of workforce by type of contract or by geographic location;
- Information on major shareholdings, acquisition or disposal of own shares and total number of voting rights; and
- Information to explain the compliance with the terms of an agreement or legislative requirement such as lending covenants or the basis of calculating the director or executive remuneration.

According to the Guidelines, issuers or persons responsible for the prospectus should define the APMs used and their components as well as the basis of calculation adopted, including details of any material hypotheses or assumptions used. The prospectus should also indicate whether the APM or any of its components relate to the (expected) performance of the past or future reporting period.

The Guidelines will apply to APMs disclosed on or after 3 July 2016.

http://www.esma.europa.eu/system/files/2015-esma-1415en.pdf

(iv) ESMA publishes 2016 Work Programme

On 7 October 2015, ESMA published its work programme (the "**Programme**") for 2016.

The key priorities for 2016 include:

- Supervisory convergence. This will be a core focus in ESMA's activities in relation to the implementation, supervision and enforcement of common EU rules. In support of this work ESMA will produce a supervisory convergence work programme and continue its cooperation with national competent authorities ("**NCAs**") and other institutions, including the Joint Committee of the European Supervisory Authorities to ensure sectoral consistency;

- Markets in Financial Instruments Directive II (**"MiFID II"**) and Markets in Financial Instruments Regulation (**"MiFIR"**). This work will continue to dominate activity in 2016, however in line with the shift in priorities the focus will be particularly on guidelines and Q&As helping with the consistent implementation of MiFID II across NCAs that will need to be developed. Single rulebook activity will also continue as ESMA still has a range of technical standards to draft; and

- Data collection and management. The 2015-2017 IT work programme will be dominated by the requirements under MiFID II and MiFIR for data collection and reporting. Additionally, ESMA will build tools and collect data related to credit rating agency supervision and investor protection. It will continue its developments of systems in support of its supervision, risk monitoring and single rulebook activities, including two projects ESMA is carrying out on behalf of NCAs on financial instruments reference data and access to trade repositories.

The Programme is available at the following link:

http://www.esma.europa.eu/system/files/2015-1475_esma_2016_work_programme.pdf

On 10 December 2015, the Chair of ESMA, Steven Majoor delivered a speech on the topic of regulating for a truly single capital market. Mr Majoor outlined that ESMA welcomes the publication by the European Commission of the Action Plan on the Capital Markets Union and supports its aims and objectives.

Mr Majoor believes that a single capital market also requires greater consistency in supervision across the EU and this is clearly an area in which ESMA should assume a leading role. Furthermore, ESMA is committed to expanding its focus on supervisory convergence in the coming years, and to adapting its approach to these activities through, for example, the development of a standalone supervisory convergence work programme.

The speech is available at the following link:

https://www.google.com.ph/www.esma.europa.eu__system__files_force__library__F2015-1861_steven_maijoor_-_agefi_keynote_speech_10_dec_2015.pdf

(v) ESMA outlines enforcement priorities for listed companies' 2015 financial statements

On 27 October 2015, ESMA published its annual statement on European Common enforcement priorities for listed companies' 2015 financial statements (the "**Statement**").

The Statement specifies topics which ESMA, together with European National Enforcers, see as areas which require particular attention when examining listed companies' 2015 financial statements. The common enforcement priorities target recurring issues identified in the application of IFRS requirements and current economic conditions that may pose difficulties to issuers. Specifically, the areas which will be focused on are the current interest rate environment, foreign exchange rate and country risks.

In the Statement, it is highlighted that ESMA and European National Enforcers will monitor and supervise the application of the IFRS requirements outlined in the priorities. National Authorities are obliged to incorporate the application of the requirements into their reviews and to take action where appropriate. ESMA intends to gather the data on how European listed entities have applied the priorities and will publish its findings in early 2017.

The Statement can be accessed via the following link:

https://www.esma.europa.eu/system/files/2015-1606_press_release_-_common_enforcement_priorities_for_2015_financial_statements.pdf

(vi) ESMA responds to the International Financial Reporting Standards Foundation (IFRSF) Request for Views on its Review of Structure and Effectiveness

On 19 November 2015, ESMA responded to the IFRSF's Request for Views on its Review of Structure and Effectiveness (the "**Response**").

The following are the main points that ESMA makes in the Response:

- ESMA is of the opinion that setting financial reporting standards for listed entities should remain the main focus and priority of the IASB;
- ESMA highlights the need for consistent application of IFRS across the globe;
- ESMA views the IFRS Interpretations Committee as indispensable, but calls on the Trustees to further enhance its functioning and effectiveness; and
- ESMA considers the basic governance arrangements of the IFRS Foundation continue to be appropriate. While ESMA does not object to any of the organisational changes proposed by the Trustees, it suggests that additional efforts to safeguard the public accountability of the IFRS Foundation be reflected in the changes to the Constitution.

The Response can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015-1738_esma_letter_to_ifrsf_-_trustees_review_of_the_structure_and_effectiveness_of_the_ifrsf.pdf

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

(i) EFAMA publishes statistical release for Quarter 2, 2015

On 1 October 2015, EFAMA published its international statistical release ("the **Release**") containing the worldwide investment fund industry results for the second quarter of 2015. Worldwide net cash flows to all funds was €596 billion in the second quarter, compared to €564 billion of net inflows in the first quarter of 2015. Globally, bond funds posted an inflow of €100 billion in the second quarter of 2015, after recording an inflow of €176 billion in the first quarter.

Global investment fund assets increased 2.3% to reach $41.5 trillion at the end of the second quarter of 2015, compared with a decrease of 1.6% on a euro denominated basis. On a euro denominated basis, equity fund assets decreased 2.8% to €15.1 trillion at the end of the first quarter of 2015. The Release states that bond fund assets decreased 2.5% to €7.7 trillion.

According to the statistics, the United States and Europe held the largest worldwide distribution of assets at the end of June 2015. The Release indicates that Ireland is on the top ten list of fund domiciles with 5% market share. On the European market, long term UCITS attracted net inflows of €191 billion, down from €264 billion.

The Release is available in full via the following link:

https://www.efama.org/Publications/Statistics/International/Quarterly International/151001_International Statistical Release 2015 Q2.pdf

(ii) EFAMA report highlights fund processing rates reach new levels of automation

On 23 November 2015, EFAMA published the latest industry fact sheet which provides an overview of the net sales and net assets of investment funds domiciled in Europe at month end.

The statistics within the fact sheet highlight the decrease in net sales of UCITS to 1 billion euro, down from 9 billion euro in August. EFAMA attributes this decrease to net outflows from money market funds. In contrast, long-term UCITS recorded an increase in net sales from 3 billion euro in August to 12 billion euro in September.

The Investment Funds Industry Fact Sheet can be accessed via the following link:

http://www.efama.org/statistics/SitePages/European Monthly Industry Fact Sheet.aspx

European Commission

(i) European Commission invites feedback on framework for financial services

On 30 September 2015, the European Commission issued a consultation paper inviting all interested parties to provide feedback and evidence on the benefits, unintended effects, consistency and coherence of the financial legislation adopted in response to the financial crisis.

The European Commission is looking for evidence and concrete feedback on:

- Rules affecting the ability of the economy to finance itself and to grow;
- Unnecessary regulatory burdens;

- Interactions, inconsistencies and gaps;
- Rules giving rise to possible other unintended consequences.

Responses must be received via the online questionnaire by 16 January 2016.The questionnaire is available at the following link:

http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm

The consultation paper is available at the following link:

http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework review/docs/consultation-document_en.pdf

Payment Services Directive

(i) Revised Payment Services Directive ("PSD2") Frequently Asked Questions published

On 8 October 2015, the European Commission published a set of Frequently Asked Questions ("**FAQs**") in relation to PSD2. PSD2 will repeal the 2009 Payment Services Directive ("**PSD1**") and seeks to further standardise and make interoperable card, internet and mobile payments, as well as reducing barriers to entry, align charging and ensuring consistent application across the EU.

The FAQ's can be accessed via the following link:

http://europa.eu/rapid/press-release_MEMO-15-5793_en.htm

(ii) Council of Europe adopts the proposed Directive repealing and replacing the Payment Services Directive

On 16 November 2015, the Council of the EU adopted the proposed Directive repealing and replacing the Payment Services Directive (**"PSD2"**). An agreement on the text was reached with the European Parliament on 5 May 2015 and the Parliament consequently adopted its position at first reading on 8 October 2015. Member States will have two years to transpose the directive into their national laws and regulations.

Some of the changes that the PSD2 will introduce are:

- Introduction of strict security requirements for the initiation and processing of electronic payments and the protection of consumers' financial data;

- Opening the EU payment market for companies offering consumer or business-oriented payment services based on the access to information about the payment account – the so called "payment initiation services providers" and "account information services providers";
- Enhancing consumers' rights in numerous areas, including reducing the liability for non-authorised payments, introducing an unconditional ("no questions asked") refund right for direct debits in euro; and
- Prohibition of surcharging (additional charges for the right to pay e.g. with a card) whether the payment instrument is used in shops or online.

On 25 November 2015, the Council of the EU published a revised version of the text of the revised PSD2. The changes generally correct formatting and correct references to authorities and legislation.

The revised text can be accessed via the following link:

http://data.consilium.europa.eu/doc/document/PE-35-2015-REV-3/en/pdf

(iii) The European Banking Authority ("EBA") consults on draft RTS and exchange of information for passporting under PSD2.

On 11 December 2015, the EBA launched a consultation on its draft Regulatory Technical Standards ("**RTS**") and exchange of information between competent authorities for passporting under article 28(5) of the revised Payment Services Directive.

The draft RTS will ensure that information regarding payment institutions conducting business in one or more EU Member States is exchanged consistently between the national authorities of the home and host Member States and will establish a harmonised framework which aims to provide clarity to payment institutions about regulatory requirements to encourage the cross-border provision of payment services in the EU market.

A link to the consultation paper can be accessed via the following link:

http://www.eba.europa.eu/documents +Passporting+Notifications .pdf

Transparency Directive

(i) ESMA prepares for entering into force of amended Transparency Directive

The Transparency Directive ("**TD**"), which creates a common basis for disclosure and dissemination of regulated information to the markets on a regular and on-going basis, was amended in 2013 and entered into force on 26 November 2015.

In order to promote the implementation and contribute to a harmonised EU application, ESMA published the following four documents on 22 October 2015 relating to the amended TD:

- Updated Q&A

  The Q&A addresses new and existing TD requirements and terminology and provides clarification on the definition of a home Member State, the division of responsibilities between home and host Member States, the disclosure and dissemination of regulated information and the aggregation rule for the calculation of notification thresholds of voting rights. In total, 7 new Q&As have been added, 4 revised and 10 deleted.

- A new standard Home Member State Disclosure form

  The purpose of the form is for issuers to disclose their home Member State. Use of the new form will reduce the administrative burden for issuers by simplifying different types of disclosure forms into one single document and ensuring that all national authorities receive a consistent set of information. The use of this form is not mandated by the TD but recommended by securities regulators.

- A new standard form for the notification of major holdings

  The purpose of the form is for shareholders to notify major holdings of voting rights to competent authorities and issuers as required under the TD. The use of this standard form is not mandated by the TD, however, its use is recommended by securities regulators as it will provide investors with comparable information on major holdings and simplify the process for persons subject to the notification obligation.

- Re-publication of the indicative list of financial instruments subject to notification requirements

  For the benefit of market participants, ESMA has re-published the indicative list of financial instruments subject to notification requirements. ESMA will monitor developments in the financial markets and update the list as appropriate.

The above documents can be accessed via the following links:

https://www.esma.europa.eu/system/files/esma-2015-1595_document_qas_on_td.pdf

https://www.esma.europa.eu/system/files/esma-2015-1596__standard_form_for_disclosure_of_home_member_state.docx

https://www.esma.europa.eu/system/files/esma-2015-1597_standard_form_for_major_holdings.docx

https://www.esma.europa.eu/system/files/esma-2015-1598_indicative_list_of_financial_instruments.docx

(ii) Central Bank updates Transparency Rules

The Central Bank's Transparency Rules ("**Rules**") were updated effective 30 November 2015. In accordance with the provisions of Section 1383(7) of the Companies Act 2014, where appropriate the Central Bank has also included guidance in these Rules on the steps that may be taken to comply with Transparency law. The changes made to the rules are to reflect the transposition of Directive 2013/EU/2013.

The updated Rules include deletion of references to interim management statements, changes to the major shareholdings notification requirements, amendments to home Member State notification procedures, the inclusion of references to the new standard forms, deletion of guidance relating to filing of amendment to instruments of incorporation along with other minor changes.

The updated Rules provide that, in accordance with the provisions of the Companies Act 2014, the imposition of administrative sanctions shall apply in relation to a contravention of the Rules.

The Rules can be accessed via the following link:

https://www.centralbank.ie/regulation/securities-markets/transparency/Documents/Transparency Rules.pdf

Market Abuse Directive

(i) Market Abuse Directive published in Official Journal ("OJ")

On 18 December 2015, the European Commission Implementing Directive ((EU) 2015/2392) on the Market Abuse Regulation (Regulation 596/2014) (**"MAR"**) relating to reporting to competent authorities of actual or potential infringements of MAR was published in the Official Journal of the EU.

The Implementing Directive lays down rules specifying the procedures relating to reporting actual or potential breaches of MAR set out in Article 32(1) of the Regulation, including the arrangements for reporting and for following-up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data.

The publication can be accessed via the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:332:TOC

Prospectus Directive

(i) Commission adopts legislative proposal for Prospectus Regulation

On 30 November 2015, the European Commission adopted the Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when

securities are offered to the public or admitted to trading (the '**Proposed Regulation'**). This Proposed Regulation was adopted following a review of the Prospectus Directive 2003/71/EC and proposes overhaul of the rules that allow companies to raise money on public markets or by means of a public offer with potential investors. According to the European Commission, the Proposed Regulation will enable investors to make informed investment decisions and simplify the rules for companies that wish to issue shares or debt and foster cross-border investments in the Single Market.

Commenting on the proposed new rules, Commissioner for Financial Stability, Financial Services and the Capital Markets Union Jonathan Hill stated:

"We need a prospectus regime that gives investors the information they need, but that does not pile up unnecessary costs and put companies off raising money on the public markets. Today's proposal strikes a better balance. It will make the system simpler, cheaper and quicker. It will safeguard investors, while making it easier for small and medium-sized enterprises and other businesses to raise money."

The Proposed Regulation will make the following changes:

- Exempting the smallest capital raisings;
- Creating a lighter prospectus for smaller companies;
- Shorter prospectuses and better investor information;
- Simplifying secondary issuance for listed firms;
- Fast track and simplified frequent issuer regime; and
- Single access point for all EU prospectuses.

The text of the Proposed Regulation is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0583

(ii) Commission Delegated Regulation supplementing the Prospectus Directive (2003/71/EC) and amending Commission Regulation (EC) No 809/2004 has been adopted

On 30 November 2015, the Commission adopted the Commission Delegated Regulation supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

The adopted text can be accessed via the following link:

http://ec.europa.eu/finance/securities/docs/prospectus/151130-delegated-regulation_en.pdf

Central Bank of Ireland

(i) Revised Industry Funding levies

The Central Bank Act 1942 (Section 32D) Regulations 2015 (the "**2015 Funding Regulations"**) were signed into law on 7 October 2015 and became effective on that day. As of that date, all financial service providers are liable to pay an annual levy which must be paid no later than 28 days from the date of the levy notice. If a financial service provider fails to pay the levy by the required date the Central Bank may take steps to recover the levy and this may include court proceedings. A financial service provider must keep all records on which the levy has been calculated for so long as the 2015 Funding Regulations stipulate which currently is for a period of six years.

On 21 October 2015, the Central Bank published the Guide to Industry Funding Regulation 2015 (the **"Guide"**) to provide a background to the 2015 Industry Funding Regulations, to explain the significant changes and to outline the process for the calculation of the industry funding levy for the various industry sectors.

Some of the significant changes for 2015 are as follows:

- Treatment of Pension Costs – Under the current funding arrangements, industry is levied for 50 per cent of the costs incurred on financial regulation activities, with certain exceptions. In general, these costs are levied on various sectors of industry on a proportionate basis, depending on the level of regulatory input and oversight required. In August 2015, representatives of the key industry groups were briefed by the Central Bank on the proposed 2015 levies applicable to their sectors. Concerns were expressed in relation to the increasing costs of financial regulation with particular emphasis on the sharp increase in costs associated with the Central Bank's Pension Scheme.

  The Central Bank acknowledges the impact that this volatility has on individual levies and for this reason introduced a change in the method of levying current service pension costs. Under the revised approach, the impact of pension volatility will be spread over a rolling ten year period. This will partially mitigate the increases from the previously advised 2015 levy amounts which are now circa eight per cent lower than originally communicated.

  In planning the approach to the 2016 levy year the Central Bank will consider:

  (i) The views expressed by industry bodies over recent weeks; and

(ii) The responses to the consultation paper on the review of funding arrangements.

- Collection of Outstanding Levies – To ensure that those who do pay their levy are not required to subsidise those who do not pay, the Central Bank has appointed external legal services to assist in the collection of outstanding levies

- Changes to Industry Funding Categories – The ICAV Act, 2015, provides an additional legal structure, namely the ICAV, for Irish authorised investment funds. The definition of available fund structures has been extended in the 2015 Industry Funding Regulations to capture these new fund structures.

The 2015 Funding Regulations and the Guide are available via the following link:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/S.I. No40f 2015Central BankAct 1942 (Section 32D) Regulations 2015.pdf

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/CLEANGuideToIndustryFundingRegulations2015DRAFT.pdf

(ii) Consultation Paper on proposed Central Bank Regulations to apply to Administration Firm

On 4 November 2015, the Central Bank published CP 97 Consultation on Central Bank Investment Firm Regulations 2015 ("**CP 97**"). CP 97 highlighted the Central Bank's intention to publish an Investment Firms rulebook in the form of Central Bank regulations under the Central Bank (Supervision and Enforcement) Act 2013 (referred to in CP 97 as the **proposed Central Bank Investment Firm Regulations**). It is intended that the proposed Central Bank Investment Firm Regulations will consolidate all of the current regulatory requirements issued by the Central Bank under the IIA as applicable to Fund Administrators by regulations to be introduced by the Central Bank.

In particular CP 97 contains the following proposals:

- Chapter 5 of the Central Bank's AIF Rulebook contains certain requirements applicable to Fund Administrators including those related to capital. It is proposed that those requirements including capital will be removed from the AIF Rulebook and will, in the future, form part of the proposed Central Bank Investment Firm Regulations. The requirements will remain similar to the existing requirements but there are some changes proposed as detailed below:

    (i) The definitions of own funds items will be brought broadly into line with certain modernisations made by the CRR/CRD IV regime. In particular, it is proposed that tier 2 capital will be capped at one-third of tier 1 capital - presently no limit is applied. In addition, there are certain new deductions from capital proposed;

(ii) The method of calculation of the fixed overhead requirement will be refined to better align with CRR/CRD IV;

(iii) Certain other definitions, amendments and clarifications are also included.

According to CP 97 the purpose behind these changes is to ensure that Fund Administrators are subject to a robust capital requirements regime that is broadly aligned to the CRR/CRD IV regime which applies to certain other investment firms, whilst remaining proportionate to the nature and scale of their activities.

- Chapter 5 of the Central Bank's AIF Rulebook also contains certain requirements applicable when Fund Administrators outsource activities. The proposed changes are detailed below:

(i) The circumstances and conditions where the final check and release of the NAV may be outsourced by the Fund Administrator are more clearly specified and defined;

(ii) A new requirement for Fund Administrators to make an annual return to the Central Bank concerning outsourced activities is proposed;

(iii) Certain other definitions, amendments and clarifications are also included.

According to CP 97 the primary purpose behind these changes is to set out clearly the limited circumstances in which a Fund Administrator may outsource the check and release of final NAV calculations and to specify the conditions to be complied with by Fund Administrators in such circumstances. The requirement to make an annual return to the Central Bank will also assist in the supervision of Fund Administrators with regard to their outsourced activities.

The Reporting Requirements for Fund Administrators (as detailed on the Central Bank's website at http://www.centralbank.ie/regulation/industry-sectors/fund-service-provider/administrators/Pages/reporting.aspx) will be replaced by Part 3 of the draft Central Bank Investment Firm Regulations which cross refers to Schedule 1 of the draft Central Bank Investment Firm Regulations.

The deadline for responses to CP 97 is 27 January 2016

(iii) Central Bank Consultation on Risk Assessment and Capital Planning for Fund Administrators

In CP 97 (as detailed above) it sets out that the Central Bank is examining the option of applying a capital planning requirement to certain non-MiFID firms and a further consultation paper would be issued to deal with this matter. On 22 December 2015, the Central Bank published Consultation Paper 100 Consultation on Risk Assessment and Capital Planning for Fund Administrators (**"CP 100"**) to consult on this matter.

The Central Bank proposes introducing a risk assessment and capital planning requirement for Fund Administrators authorised under the Investment Intermediaries Act, 1995 to reflect improvements in capital planning in recent years throughout the financial services sector. It is proposed that this requirement would be introduced by way of additional regulations to be inserted into Part 5 of the proposed Central Bank Investment Firm Regulations (the **"Proposed Regulations"**). It is also proposed to issue guidance on the Proposed Regulations, referred to herein as **"Proposed Guidance"**. The text of the Proposed Regulations and the Proposed Guidance are attached to CP 100.

By introducing the new requirements by way of regulations combined with guidance, the Central Bank aims to facilitate the practice of capital planning in a manner that is proportionate to the business. The Proposed Regulations set out what must be done by all, while the Proposed Guidance sets out what may be appropriate for many firms while recognising that it is not describing what must be done by all. For some firms it will be sufficient to be able to explain why they decided not to do some of what is suggested in the Proposed Guidance. As is the current practice with respect to regulatory guidelines within the funds sector, the intention is that a Fund Administrator should either comply with all sections of the Proposed Guidance or be able to explain why a particular section is not applicable for that Fund Administrator and what alternative steps it is taking to ensure compliance with the relevant regulation.

The proposed new requirements would broadly align the capital planning requirements applicable to Fund Administrators to those already applying to MiFID investment firms in Ireland under the Capital Requirements Directive ('**CRDIV**') and Capital Requirements Regulation[3] ('**CRR**'). In summary, CRDIV requirements include a requirement to:

- Carry out an internal capital adequacy assessment process;
- Assess, in that context, a number of specifically identified risks to the institution; and
- Set aside capital to meet those risks based on the capital adequacy assessment undertaken.

The Central Bank considers that it is appropriate that an equivalent requirement should be applied to Fund Administrators, however it has tailored the requirement, including the list of sources of risk, to reflect the specific nature of the business of Fund Administrators and the Central Bank's supervisory focus for such firms.

While the Central Bank is consulting on all of the Proposed Regulations and Proposed Guidance, it has requested stakeholders' views on the following questions in particular:

1. Regulation 98 of the Proposed Regulations proposes requiring Fund Administrators to have in place sound, effective and comprehensive strategies, processes and systems to identify and manage the risks that are applicable to the Fund Administrator and to assess whether the Fund Administrator has adequate own funds to cover those risks. This requirement encourages a risk-focused approach to capital and brings requirements in this area broadly in line with those applying to MiFID investment firms in Ireland. Do you agree with the approach proposed?

2. Regulation 101 of the Proposed Regulations proposes a list of sources of risk and requires that a Fund Administrator must, at a minimum, assess whether each of the risks listed is relevant for its business and, if it is, the adequacy of the Fund Administrator's existing measures to address that risk. The Proposed Guidance provides further detail on what might be covered when considering each risk and Central Bank expectations for management of these risks. Do you agree with the proposed list of sources of risk and the guidance provided? Are there any additional risks which should be included?

The deadline for responses to CP 100 is 15 March 2016

(iv) Central Bank publishes new Prospectus Handbook

On 2 November 2015 the Central Bank published the latest version of the Prospectus Handbook. The Prospectus Handbook (the "**Handbook**") is relevant for issuers of transferable securities which are subject to Directive 2003/71/EC (the "**Prospectus Directive**") and certain law firms, listing agents, stockbrokers and investment banks who act as service providers to those issuers. The purpose of the Handbook is to assimilate all relevant information into one place so as to give market participants an overview of the relevant requirements and procedures.

The Handbook is divided into three sections with each section highlighting a different aspect of the prospectus review, approval and publication process. All sections link together and should be read in conjunction with one another. The sections comprise of the following:

- Section one provides an overview of the requirements relating to the structure and content of a prospectus;
- Section two sets out details of the procedures to be followed by a relevant person, or their agent, regarding the drawing up, approval and publication of a prospectus to be published when an offer is made and/or securities are admitted to trading; and
- Section three contains additional guidance regarding various aspects of the prospectus review, approval and publication process beyond that included in the Rules.

The Handbook is available at the following link:

http://www.centralbank.ie/regulation/securities-markets/prospectus/Documents/Prospectus Handbook November 2015.pdf

(v) Central Bank issues compilation on Resident Investment Funds Return ("MMIF")

The Central Bank has recently issued a compilation setting out the statistical reporting requirements for investment funds resident in Ireland in relation to the MMIF (the "**Compilation**").

The Compilation is available at the following link:

https://www.centralbank.ie/polstats/stats/reporting/Documents/MMIF-Noteson Compilation.pdf

(vi) Central Bank publishes programme of themed inspections in Markets Supervision for 2016

On 14 December 2015, the Central Bank published its programme of themed inspections (the "**Programme**"), reflecting its supervisory priorities for 2016 and anticipating areas of emerging risk.

The Programme, which supplements the Central Bank's day to day supervisory work, will focus on 12 areas, building on the supervisory work in 2015 in the areas of cyber-security, operational risk and pricing of investment funds.

Dillon Eustace has published an article on this topic which can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory and Compliance/Central Banks programme of themed inspections for 2016.pdf

(vii) Central Bank publishes strategy for 2016-2018

On 23 November 2015, the Central Bank published its Strategic Plan for the three year period 2016 to 2018.

This Strategic Plan builds on work already started in preceding years, such as:

- Implementing and assessing unconventional monetary policy measures;
- Stepping up engagement with firms' boards and senior management towards a strong consumer-centred culture; and
- Extending on-site inspection capabilities across all sectors of the financial services industry.

It will also take on new and increased responsibilities in the coming years, including:

- Delivering the new Central Credit Register;
- Implementing new European insurance requirements, Solvency II; and

- Working in close co-operation with the new Single Resolution Board on resolution matters concerning Significant and Cross Border Institutions.

Key projects will be undertaken during the lifetime of the plan including:

- Reviewing the Central Bank's organisational design and structure and ensuring the organisation can attract and retain the right people with the right skills and experience to meet its needs; and deploying a major new data and information management strategy; and

- Moving the Central Bank's city centre staff to a new head office, in order to improve the Central Bank's efficiency, collaboration and ways of working.

In recognition of the importance of transparency in its activities and performance the Central Bank will prepare a report of its progress in relation to this Strategic Plan which will be published annually within six months of each year end.

A copy of the Strategic Plan is available at the following link:

http://www.centralbank.ie/publications/Documents/StrategicPlan2016 2018.pdf

(viii) Funds Statistics – Quarter 3 2015

On 21 December 2015, the Central Bank published the Investment Funds Statistics for Quarter 3, 2015. An overview of the results is set out below:

- The net asset value of investment funds resident in Ireland (**"IFs"**) declined by 7 per cent over the quarter to Quarter 3 2015, to €1,355 billion from €1,456 billion in Quarter 2 2015, however €30 billion of this decline was due to a reclassification of bond funds to money market funds;

- Over the quarter, IFs experienced a negative revaluation of 7 percent overall with equity and bond funds leading the downward revaluations by recording minus 10 and 5 percent revaluations respectively;

- In a quarter in which increased concern regarding the slowing Chinese economy, lead to spill over effects for global financial markets, equity funds were the hardest hit with revaluation decreases of €54 billion over the quarter; and

- Holdings of government debt stood at €290 billion in Quarter 3 2015, with transactions inflows outweighing negative revaluations as investors searched for safe heavens.

A link to the press release is set out below:

http://www.centralbank.ie/press-area/press-releases/Pages/InvestmentFundsStatisticsQ32015.aspx

Separately, the Central Bank also published the Money Market Funds Statistics for Quarter 3, 2015 on 21 December 2015. An overview of the results is set out below:

- The net asset value of money market funds (**"MMFs"**) stood at €424 billion at the end of September 2015. Investor flows stabilised somewhat in Quarter 3, with net transaction outflows of €657 million, following outflows in Quarter 2 of €37 billion.
- The increase in net asset values from June 2015 was driven by a reclassification from bond funds to MMF. Excluding the reclassification, total assets would have declined by €14 billion.
- Total debt securities held by MMFs in September 2015 was €330 billion, excluding reclassifications of €25 billion MMF holdings of debt securities remained broadly stable over Quarter 3.

A link to the press release is set out below:

http://www.centralbank.ie/press-area/press-releases/Pages/MoneyMarketFundQ32015.aspx

Anti-Money Laundering /Counter-Terrorist Financing

(i) Joint Committee of European Supervisory Authorities ("ESAs") consults on the Fourth Money Laundering Directive ("MLD4") risk based supervision and risk factors guidelines

On 21 October 2015, the Joint Committee of the ESAs published two consultation papers on guidelines required under MLD4. As previously reported in our last update Member States are obliged to transpose MLD4 into national law by 26 June 2017.

The consultation paper (JC 2015 060) on the risk-based supervision guidelines focuses on the characteristics of a risk-based approach to anti-money laundering (**"AML"**) and counter financing of terrorism (**"CFT"**) supervision, and the steps supervisors should take when conducting supervision on a risk-sensitive basis. The aim is to create both a common understanding of risk-based supervision and to establish consistent and effective supervisory practices across the EU, complaint with the Financial Action Task Force's (**"FATFs"**) standards.

The consultation paper on the guidelines (JC 2015 061) covers simplified and enhanced customer due diligence and the factors which credit and financial institutions should consider when assessing the AML/CFT risk associated with individual business relationships and occasional transactions. The aim is to promote the development of a common understanding by firms and competent authorities across the EU of what the risk-based approach to AML/CFT entails and how it should be applied. The proposed guidelines which are contained in the consultation paper are divided into two parts; Title II is generic and applies to all firms whereas Title III is sector specific and complements the

generic guidance in Title II. Title III sets out risk factors that are of particular importance in certain sectors and provides guidance on the risk-sensitive application of Customer Due Diligence measures by firms in those sectors.

The Central Bank as a member of ESA's AML Committee has inputted into the drafting of both consultation papers. Comments on the consultation papers should be received by 22 January 2016. It is intended that the guidelines will be finalized in early 2016 and that they will be updated as necessary on an on-going basis. It is hoped that once finalized the guidelines will help firms identify, assess and manage the money-laundering and terrorist financing risk associated with individual business relationships and occasional transactions in a risk-based, proportionate and effective way.

The consultation papers are available at the following links:

http://www.eba.europa.eu/documents/10180/1240311/JC+2015+060+Joint+Consultation+on+Guidelines+on+AML_CFT+RBS_Art.pdf

http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+Joint+Draft+Guidelines+on+AML_CFT+RFWG+Art+17+and+29.pdf

(ii) Central Bank publishes guidelines on completing trust or company service provider applications

On 4 November 2015, the Central Bank published guidelines on completing trust or company service provider applications (the "**Guidelines**") which provide guidance on the requirements for applying for authorisation as a Trust or Company Service Provider ('**TCSP**') under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) ("**CJA 2010**").

A TCSP means any person whose business it is to provide any of the following services:

- Forming companies or other bodies corporate;
- Acting as a director or secretary of a company under an arrangement with a person other than the company;
- Arranging for another person to act as a director or secretary of a company;
- Acting, or arranging for a person to act, as a partner of a partnership;
- Providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership; and
- Acting, or arranging for another person to act, as a trustee of a trust acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

The Guidelines provide that all the information requested in the application form and the listed documentation in Appendix 1 of the application form must be provided to the Central Bank in support of a TCSP application. In addition, the Central Bank notes that:

- Two directors of the applicant firm must sign the declarations on pages 14, 15 and 20 of the form; and
- Two directors of the parent firm must sign the declaration on page 16.

The application and supporting documentation should be submitted electronically to tcsp@centralbank.ie. The original signed application form must also be posted to the address listed on the application form. A non-refundable fee of €130 must accompany each application.

The Guidelines can be accessed via the following link:

https://www.centralbank.ie/regulation/processes/anti-money-laundering/TCSP/Documents/TCSP Application Guidance.pdf

(iii) Central Bank publish report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector

On 18 November 2015, the Central Bank published its report on Anti-Money Laundering/Countering the Financing of Terrorism and Financial Sanctions Compliance in the Irish Funds Sector (the **"Report"**). The Report is based on on-site inspections carried out by the Central Bank on a sample of Funds and Fund Service Providers (**"Firms"**) operating in Ireland in 2014 and supplemented by off-site assessments.

The findings of the Report focus on Compliance and Governance, Customer Due Diligence (**"CDD"**), Identification and Escalation of Suspicious Transactions, Terrorist financing and Financial Sanctions.

Key points identified in the Report include:

- Insufficient evidence that the requirements of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) ("**CJA 2010 as amended**") were implemented and that adequate risk assessments were performed in a timely manner;
- A lack of oversight of service providers carrying out AML/CTF functions on behalf of the relevant fund;
- Reliance on third parties where the legislative requirements of section 40(5) (i.e. that there is a written agreement in place between the relevant firm and the relevant third party whereby the relevant third party agrees to forward any CDD to the firm upon request of CJA 2010 as amended) are not satisfied;
- Insufficient evidence of effective on-going monitoring of investor transactions;

- Insufficient documentation being retained to support the application of simplified customer due diligence ("**SCDD**");
- A lack of procedures and controls for ceasing the provision of services to, or discontinuing business relationships with, investors who have failed to provide the required or updated CDD documentation or information requested by Firms;
- Weaknesses in the suspicious transaction reporting processes and procedures and the record keeping associated with these reports;
- Deficiencies in the on-boarding process of PEPs, including the failure to sufficiently identify, verify and document Source of Funds ("**SOF**") and Source of Wealth ("**SOW**");
- Insufficient evidence that new PEPs (and existing investors re-categorised as PEPs) are subject to senior management approval and the completion of enhanced due diligence (**EDD**);
- Insufficient evidence that all members of the Firm's board and/or staff at the Firm had received instruction in the law relating to AML/CFT issues; and
- Documented policies and procedures not being adhered to in all cases.

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

http://www.centralbank.ie/regulation/processes/anti-money-laundering/Documents/ReportonAntiMoneyLaundering-Nov2015.pdf

(iv) Central Bank briefing on ESA's AML guidelines and FATF mutual evaluations review 2016

On 14 December 2015, the Central Bank provided a brief outline to industry on the ESA's anti-money laundering (**"AML"**) draft guidelines (detailed at (i) above) and the forthcoming FATF mutual evaluation review (**"MER"**) that is due to take place in 2016 and to explain what involvement the private sector will have during the process.

At the briefing the Central Bank highlighted the following resources;

- Further information on ESA's Guidelines and how to submit comments;
- Further information on the FATF MER Process;
- FATF Methodology;
- FATF Recommendations.

These resources are available on the Central Bank's website at the following link; https://www.centralbank.ie/events/Pages/home.aspx

Data Protection

(i) Safe Harbour principles declared invalid by the European Court of Justice

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

Arrangements, agreed between the United States and the European Commission, allowed companies based in the U.S. to store personal data about European citizens on U.S. based computer servers without breaching EU data protection law, which in Ireland have been implemented by the Data Protection Acts 1988 and 2003. This has allowed Irish subsidiaries of U.S. companies, or even Irish companies which use service providers based in the U.S. to transfer personal data to the U.S. without breaching data protection laws.

This case is the culmination of an action brought against Facebook in the Irish High Court by an Austrian student, Max Schrems. Mr Schrems argued that personal data processed by Facebook is unprotected because it is transferred to the United States, where it is not treated in accordance with EU data protection laws. The ECJ found that the European Commission had neither the legal means to police the Safe Harbour agreement nor the power to prevent U.S. intelligence from collating EU citizens' data. Rather than wait for a successor agreement, the ECJ dismissed the existing arrangement as a breach of EU data protection rules and the fundamental rights of EU citizens. The ECJ also found that the DPC was not precluded from investigating the original complaint.

Until a new transatlantic agreement is put in place, the outcome of this ruling creates legal uncertainty for all companies currently relying on the Safe Harbour arrangements as a legitimate means of transferring personal data to the U.S.

In light of the ruling, the European Commission issued a guidance note (the "**Guidance**"). According to the Guidance the Commission's top priorities are:

- To ensure a high level of protection of personal data when transferred across the Atlantic;
- The continuation of transatlantic data flows with adequate safeguards; and
- A coordinated response with national Data Protection Authorities to ensure the uniform application of EU law in the internal market and clear guidance for European businesses.

The Guidance can be assessed at the following link:

http://europa.eu/rapid/press-release_MEMO-15-6014_en.htmc

Dillon Eustace has published an article on this topic which can be assessed at the following link:

http://www.dilloneustace.ie/download/1/Publications/Corporate/European_Court_of_Justice Data Protection Ruling.pdf

(ii) European Commission welcomes EU-wide legislation on cybersecurity

On 8 December 2015, the European Commission issued a press release (the "**Release**") welcoming the first EU-wide legislation on cybersecurity. According to the Release, information systems are affected by an increasing number of security incidents and therefore it is a priority for the Commission to help prevent these incidents.

The proposed legislation aims to ensure a high common level of cybersecurity in the EU by:

- Improving Member States' national cybersecurity capabilities through setting out strong policies to maintain a level of network and information security;
- Improving cooperation between Member States, and between public and private sector bodies against risks and incidents affecting network and information systems;
- Requiring companies in critical sectors, such as energy, transport and banking to adopt risk management practices.

Commenting on the proposed legislation, the European Commission Vice President for the digital single market, Andrus Ansip stated:

"Trust and security are the very foundations of a Digital Single Market. If we want people and businesses to use and make the most of connected digital services, they need to trust them to be secure in the case of attack or failure. The internet knows no border – a problem in one country can have a knock-on effect in the rest of Europe. This is why we need EU-wide cybersecurity solutions. Last night's agreement is an important step in this direction, but we cannot stop here: we plan an ambitious partnership with the industry in the coming months to develop more secure products and services."

The Release is available at the following link:

http://europa.eu/rapid/press-release_IP-15-6270_en.htm

(iii) Agreement reached on new Data Protection Regulation

On 15 December 2015, trilogue negotiations between the EU Commission, the European Parliament and the EU Council concluded with agreement being reached on the new General Data Protection Regulation (the "**GDPR**"). Agreement was also reached on a new data protection directive for the police and criminal justice sector (the "**Directive**").

The draft agreements were passed by the Committee on Civil Liberties, Justice and Home Affairs on Thursday 17 December 2015. The final texts of the GDPR and the Directive are expected to be agreed in early 2016 and should become applicable in Member States in 2018.

More information can be found at the following link:

http://europa.eu/rapid/press-release_IP-15-6321_en.htm

Irish Stock Exchange

(i) Irish Stock Exchange ("ISE") publishes quarterly statistics

On 15 October 2015, the ISE published its quarterly statistics for Quarter 3 2015 (the "**Statistics**"). The Statistics illustrate that the ISE had more than 34,200 securities from over 4,100 issuers in 80 countries around the globe on its markets at the end of September 2015. New debt securities admitted in the first nine months of 2015 amounted to 5,429 as compared to 5,078 in Quarter 3 2014, which brings the total up to more than 26,000 debt listings.

Among the new debt instruments listed during Quarter 3 were issuers from China, North America, the Middle East and Europe. These included:

- A €300m debt security listed by Beijing Energy Investment Holdings Limited, the Chinese state-owned investment enterprise;
- A £400m debt listing from Kraft Heinz, the US food company;
- DirecTV, the US entertainment group which listed three new securities of £750m, £350m and €500m;
- A $575m debt instrument listed by Mexico's federal electricity commission;
- Italian airline, Alitalia, which listed a €375m security; and
- Danica Pension, the pension arm of Denmark's Danske Bank, which listed a €500m bond.

Data on turnover and number of trades showed a strong interest from investors in Irish Government bonds and treasury bills during the quarter. Turnover topped €40.9bn in Quarter 3, bringing the total for the first nine months to €201bn, 10% higher than the first nine months of 2014.

The Statistics can be found at the following link:

http://www.ise.ie/Media/News-and-Events/2015/Q3-2015-ISE-market-statistics.pdf 2015

(ii) Guide to listing Investment Funds on the Irish Stock Exchange ("ISE")

On 17 November 2015, Dillon Eustace published a Guide to listing Investment Funds on the Irish Stock Exchange (the "**Guide**"). It provides guidance on the following areas:-

- Advantages of listing on the ISE;
- Listing application procedures;
- Conditions for listing;
- ISE listing fees; and
- Ongoing reporting obligations on listed funds.

The Guide can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Listings/Guide to listing Investment Funds on the Irish Stock Exchange.PDF

Companies Act 2014

(i) Conversion of an existing private company

The Companies Act 2014 (the **"Act"**) became law on 1 June 2015 with a transition period of 18 months for certain elements. The Act represents a significant reform of Ireland's company law regime by consolidating, reforming and amending existing company law legislation. The Act impacts every Irish company together with all directors and shareholders.

In particular all existing private companies will need to make a decision whether to convert to:

- A company limited by shares (**"LTD"**); or
- A designated activity company (**"DAC"**); or
- Another type of company (public limited company, Societas Europaea).

It is likely that most companies will choose to be either a LTD or a DAC therefore we have set out the key features of both these company forms below.

The key features of an LTD are:

- An Ltd can have between 1 and 149 shareholders;
- The liability of shareholders in an LTD is limited;

- An LTD may have just 1 Director;
- An Ltd must have a Company Secretary. If there is only one Director, the sole Director cannot also act as Company Secretary;
- An Ltd must have a one-document constitution (to replace the current memorandum and articles of association);
- An LTD cannot have an objects clause (which is a clause which limits the objects and business of the company to those listed in the clause). This means an LTD has full unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction;
- The board (including a sole director) of an LTD will automatically be deemed to have authority to bind the company;
- An LTD cannot list any securities (including debt). If your company needs to list securities, then the DAC option should be chosen; and
- An LTD may dispense with holding an Annual General Meeting even where it has more than one member.

The Act sets out a clear framework for the conversion process to an LTD, however the most efficient way in which to do this is for the shareholders of the company to pass a special resolution to adopt a new constitution replacing the existing memorandum and articles of association.

However, it should be noted that a DAC is the closest of the new company types to an existing private company.

Some of the key feature of a DAC are:

- A DAC will be suitable where the company is, or needs to be, limited to carrying on a specific activity;
- A DAC will also be suitable for those who want to list debt securities on a stock exchange or publish an offering document;
- Existing credit institutions and insurance companies are also obliged under the Act to convert to a DAC;
- A DAC will have a two-document constitution;
- A DAC will have an objects clause, so the company's corporate capacity will be restricted;
- A DACs name must end with "designated activity company" or the Irish equivalent;
- A DAC must have at least two directors; and

- Single-member DACs may dispense with holding an Annual General Meeting, multi-member DACs may not.

The Act also sets out a clear framework for the conversion process to a DAC. The most efficient way in which to do this is for the shareholders to pass an ordinary resolution adopting a new constitution to replace the existing memorandum and articles of association and changing the company name within 15 months of the commencement date of 1 June 2015 (i.e. before 1 September 2016).

The Act provides for an 18 month transition period, commencing on 1 June 2015, for companies to convert. Until a company converts to an LTD, it will be treated as a DAC during the 18 month transition period.

It should be noted that, in circumstances where the shareholders fail to take the necessary action to convert the company, the directors are obliged to convert the company to an LTD before the end of the transition period. At the end of that transition period, where an existing private company fails to elect to convert to some other type of company, that company will be deemed to have become an LTD. However, the LTD legal form may not be appropriate for the company in question and certain companies may be obliged to register as a DAC based on their regulatory status (for example insurance companies).

The Act makes provision for relief where a company does not re-register as a DAC before the end of the 18 month transition period. Essentially, one or more of a company's shareholders holding not less than 15% of its issued share capital, or one or more creditors meeting certain qualification criteria, may apply to the Irish courts for an order directing the company to re-register as a DAC.

Work Place Relations Act 2015

(i) The Work Place Relations Act 2015

The Workplace Relations Act, 2015 ("the **Act**") came into operation on 1 October 2015 and applies to employment legislation and equal treatment legislation and provides for the resolution, mediation and adjudication of employment disputes and complaints. The Act will remove the existing dispute resolution infrastructure of the Employment Appeals Tribunal and the Equality Tribunal and replace them with a new Workplace Relations Commission ("the **Commission**" or "the **WRC**"). The Labour Court will hear any appeals from the Commission.

The Act creates a number of offences and provides that where an employee is employed by a corporate entity, a prosecution may be brought against a director, manager, secretary or other officer where the offence is committed with their consent or connivance. As to sanctions, in addition to any fine, a convicted person will have to pay the Commission's costs and expenses unless there are special and substantial reasons.

Under the Act, the Commission is given a wide role in promoting good workplace relations, providing guidance, doing research, and providing advice and information. The Chief Executive of the WRC will be called the "Director General" ("**DG**") and will hold office for an initial term of 5 years (with a maximum of up to 10 years) and will report to the Minister for Jobs, Enterprise and Innovation ("the **Minister**"). The Commission may furnish draft Codes of Practice to the Minister (except in respect of the Employment Equality Act 1998) and, once approved, a Code of Practice will be admissible in any proceedings.

Further information is provided in an article on this topic published by Dillon Eustace, which is available at the following link:

http://www.dilloneustace.ie/download/1/untitled folder/The Workplace Relations Act 2015.pdf

Irish Taxation Update

(i) Common Reporting Standard (CRS) – Gone Live

While legislation to implement the CRS in Ireland was introduced in Finance Act 2014 by inserting Section 891F of the Taxes Consolidation Act 1997, the Regulations implementing CRS (Statutory Instrument 583 of 2015) were approved in late December and are **effective from 1 January 2016**.

Under the CRS, participating jurisdictions will be required to exchange certain information held by financial institutions regarding their non-resident customers. Over 90 jurisdictions have committed to exchanging information under the CRS and a group including Ireland, have committed to the early adoption of the CRS (known as the 'Early Adopter Group') with the first data exchanges taking place in September 2017. Ireland's published list of Participating Jurisdictions for CRS/DAC2. In line with the above, DAC2 (which is a revised Directive on Administrative Co-operation which came into force in December 2014 and extends Council Directive 2011/16/EU from Revenue held information to financial account information) essentially imports the CRS into EU legislation and legislation to implement the Directive in Ireland was introduced in Finance Act 2015 by inserting Section 891G of the Taxes Consolidation Act 1997.

Ireland's published list of Participating Jurisdications for CRS/DAC2 can be accessed via the following link:

http://www.revenue.ie/en/business/aeoi/participating-jurisdictions.pdf

Guidance & Commentary

The CRS, along with its related Commentary sets out exactly what information is to be exchanged and is available below. In addition to this the OECD have developed a CRS Handbook to help with the implementation of CRS globally, and have published some

FAQs on the OECD website. The Irish Revenue Commissioners have also issued some FAQs regarding local implementation, but do not intend, unlike for FATCA, to issue specific Guidance Notes on CRS.

The FAQs are available via the following links:

http://www.oecd.org/tax/automatic-exchange/

http://www.revenue.ie/en/business/aeoi/crs-faqs.pdf

(ii) EU Savings Directive – The End is Nigh

The EU Savings Directive ("**EUSD**") was adopted in June 2002 in order to ensure the proper operation of the internal market and to tackle the problem of tax evasion. It has been in force since 1 July 2005. Under the EUSD, paying agents were required to report interest and certain income in the nature of interest, paid to individuals resident in an EU Member State other than the one in which the income is paid. The EUSD requires Member States to automatically exchange information with each other on such interest income. Then in March 2014 the European Commission formally adopted a council directive (the "**Amending Directive**") amending the EU Savings Directive (2003/48/EC). The amendments sought to, inter alia, (i) extend the scope of the Directive to payments made through certain Non-EU intermediate structures for the ultimate benefit of an EU resident individual and (ii) include certain EU entities and legal arrangements which are not subject to effective taxation within the definition of a "residual entity" and (iii) expand the definition of interest to cover other income substantially equivalent to interest. However on 18 March 2015 the Commission presented a proposal to Council to repeal the Savings Directive (including the Amending Directive) and on 10 November 2015, the Council of the European Union adopted a Directive repealing same. While there are still a few concluding matters to be resolved (e.g. discussions regarding some of Ireland's bilateral agreements with certain associated and dependent territories of the United Kingdom and the Kingdom of the Netherlands are ongoing) for the most part the EUSD is now defunct, having been superseded by the Common Reporting Standard/DAC2 (see (i) above).

(iii) Finance Act 2015

Non-Irish AIF's

The Act included an amendment to Section 1035A to reflect the introduction of the Alternative Investment Fund Managers Directive ("**AIFMD**"). The purpose of the specific amendment is to provide that a non-resident AIF will not be viewed as having a taxable presence in Ireland solely as a result of that non-resident AIF being managed by an authorised independent Irish tax resident AIF manager.

ICAV

The definition of "collective investment undertaking" is to be amended to include an authorised Irish Collective Asset-management Vehicle ("**ICAV**"). Although this definition refers to investment funds established prior to the introduction of the gross roll-up regime for investment funds on 1 April 2000, the definition continues to have relevance to all regulated funds, including those established after 1 April 2000, in the context of the double tax treaty between Ireland and the USA. The purpose of the amendment is to remove any uncertainty around the application of the Ireland/US double tax treaty.

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This Funds Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 December 2015, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace

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